

Freedom Respect Equality Dignity: Action

NGO Submission to the Human Rights Committee:

Australia: Addendum



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Addendum

March 2008

ABOUT THIS SUBMISSION

This Addendum provides further updated information to the NGO Report that was submitted to the United Nations Human Rights Committee in September 2008 on Australia's compliance with the *International Covenant on Civil and Political Rights*.

This Addendum also contains the following appendices:

- (a) Appendix 1 provides a revised Executive Summary of the NGO Report, which incorporates the updated information contained in this Addendum; and
- (b) Appendix 2 contains a revised list of Proposed Recommendations to be included in the Concluding Observations of the Committee.

The NGO Report to the Human Rights Committee and this Addendum have been prepared by the Human Rights Law Resource Centre, Kingsford Legal Centre and the National Association of Community Legal Centres. These submissions have been compiled with substantial contributions from over 50 NGOs and have been supported, in whole or in part, by more than 200 NGOs across Australia.



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Article 1 — Right of Self-Determination

A. RIGHT OF SELF-DETERMINATION

A.1 Recognition of Self-Determination for Indigenous Australians

This section updates the information commencing at page 24 of the NGO Report.

1. The current 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.¹
2. On 17 December 2008, the Minister for Indigenous Affairs, Jenny Macklin, invited the Australian Human Rights Commission's Social Justice Commissioner, Tom Calma, to convene an independent Indigenous Steering Committee to develop and present to government a model for a new National Indigenous Representative Body.² This Steering Committee is expected to release a preliminary proposal following a three-day workshop in the week commencing 16 March.³
3. The establishment of a representative and effective Indigenous body is essential for the realisation of Article 1 of the *ICCPR* by Indigenous Australians.

A.4 Intervention into Northern Territory Indigenous Communities

This section updates the information commencing at page 28 of the NGO Report.

4. After one year of operation of the Northern Territory Intervention, the Australian Government established the Northern Territory Emergency Response Review Board (**Review Board**) to conduct 'an independent and transparent review of the Northern Territory Intervention'.⁴ The Review Board released its report on 13 October 2008, concluding that the situation in remote Northern Territory communities and town camps remained 'sufficiently acute to be described as a national emergency and that the Northern Territory Intervention should continue'.⁵

¹ *Consultations for the proposed National Indigenous Representative Body*, Department of Families, Housing, Community Services and Indigenous Affairs (2009), available at <http://www.fahcsia.gov.au/internet/facsinternet.nsf/indigenous/rebody.htm>.

² *Aboriginals of Australia: New Representative Body*, Unrepresented Nations and Peoples Organisation (2008), available at <http://www.unpo.org/content/view/9029/77/>.

³ Australian Human Rights Commission, 'National Indigenous workshop kicks off in Adelaide next week' (Press Release, 6 March 2009), available at http://www.humanrights.gov.au/about/media/media_releases/2009/13_09.html.

⁴ Hon Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, *NT Emergency Response Review Board*, 6 June 2008, available at http://www.facsia.gov.au/internet/jennymacklin.nsf/print/nter_measure_23oct08.htm.

⁵ *Report of the NTER Review Board October 2008* (20 September 2008), 10; Hon Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, *Compulsory income management to*

5. In making this conclusion, the Review Board also made three overarching recommendations:⁶
 - (a) there is a continuing need to address the unacceptably high level of disadvantage and social dislocation experienced by Indigenous Australians living in remote communities in the Northern Territory;
 - (b) there is a requirement for a relationship with Indigenous people based on genuine consultation, engagement and partnership; and
 - (c) there is a need for government actions affecting Indigenous communities to respect Australia's human rights obligations and to conform to the *Racial Discrimination Act 1975* (Cth) (***Racial Discrimination Act***).
6. In its Report, the Review Board was highly critical of some elements of the Northern Territory Intervention, referring to:
 - (a) widespread Indigenous hostility to the Australian Government's actions;⁷
 - (b) a sense of betrayal and disbelief,⁸ and
 - (c) incomprehension at the linkage between child welfare and some of the measures of the Northern Territory Intervention.⁹
7. The Review Board commented that experiences of racial discrimination and humiliation were told with such passion and regularity that it felt compelled to advise the Minister for Indigenous Affairs during the course of the review that such widespread Indigenous hostility to the Australian Government's actions should be regarded as a matter for serious concern.¹⁰ Nonetheless, it observed definite gains and heard widespread, if qualified, community support for many Northern Territory Intervention measures.¹¹
8. In response to the Review Board's report, the Australian Government acknowledged that the Northern Territory Intervention will not achieve robust long term outcomes if measures do not conform to the *Racial Discrimination Act*.¹² The Australian Government indicated its intention to revise the core measures of the Northern Territory Intervention, such as compulsory income quarantining and compulsory five year leases, so that they are either more clearly 'special measures' or non-discriminatory, in conformity with the *Racial Discrimination Act*.¹³

continue as key NTER measure, 23 October 2008, available at http://www.facsia.gov.au/internet/jennymacklin.nsf/print/nter_measure_23oct08.htm.

⁶ *Report of the NTER Review Board October 2008*, above n 5, 12.

⁷ *Ibid.*, 8.

⁸ *Ibid.*

⁹ *Ibid.*, 34.

¹⁰ *Ibid.*, 8.

¹¹ *Ibid.*, 34.

¹² Hon Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, *Compulsory income management to continue as key NTER measure*, 23 October 2008, available at http://www.facsia.gov.au/internet/jennymacklin.nsf/print/nter_measure_23oct08.htm.

¹³ *Ibid.*

9. Despite these stated commitments by the Australian Government, the exclusion of the operation of the *Racial Discrimination Act* remains in force. Legislative amendments to bring the Northern Territory Intervention within the scope of the *Racial Discrimination Act* are said to be introduced in the Spring Parliamentary session in 2009. However, the nature and detail of these amendments, and whether they will be passed by the Senate (in which the Government does not have a majority), remains uncertain.¹⁴
10. In addition to the continued exclusion of the operation of the *Racial Discrimination Act*, and despite the concerns expressed by the Review Board,¹⁵ the current Australian Government has continued to maintain the application of most of the Northern Territory Intervention measures in full. Indeed, on 5 March 2009, the Australian Government moved to bolster the Northern Territory Intervention measures by guaranteeing funding for three more years.¹⁶ These draconian measures are described in detail at paragraphs 146 to 156 of the NGO Report.
11. Given the continued operation of many aspects of the Northern Territory Intervention, there remain very significant concerns about the ongoing serious and pervasive effects that the measures are having on Indigenous communities and, in particular, their traditional culture and way and life.
12. In its report, the Review Board stressed the importance of consultation at the grass roots level.¹⁷ Despite this recommendation, there are no systematic or formal mechanisms by which the Australian Government consults or engages with people who are subject to the Northern Territory Intervention to formulate policy and measures to address Indigenous disadvantage.
13. This ongoing lack of consultation with affected Indigenous communities represents serious concerns in relation to Article 1 of the *ICCPR*.

Additional Proposed Recommendation for Concluding Observations

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.

¹⁴ Ibid.

¹⁵ The Review Board made a number of specific recommendations, including that income quarantining continue on a voluntary basis imposed only as a precise part of child protection measures or where specified by statute and that it be subject to independent review. See *Report of the NTER Review Board October 2008*, above n 5, 12 and 21.

¹⁶ Patricia Karvelas, 'Macklin extends intervention', *The Australian*, 6 March 2009, available at www.theaustralian.news.com.au/story/0,25197,25145772-601,00.html.

¹⁷ *Report of the NTER Review Board October 2008*, above n 5, 47.

A.5 Native Title

This section updates the information commencing at page 31 of the NGO Report.

(a) **Proposed Reforms of Native Title (new section)**

14. In October 2008, the Australian Government introduced the Federal Justice System Amendment (Efficiency Measures) Bill (No 1) 2008, which proposes a range of reforms to improve the way that Australia's federal courts and tribunals deal with native title claims. The reforms are aimed at reducing the cost and length of trials and will benefit native title claimants by providing a more centralised and flexible system.
15. In December 2008, the Commonwealth Attorney-General also released a discussion paper on possible minor amendments to the *Native Title Act 1993* (Cth) (**Native Title Act**) to encourage more negotiated settlements of native title claims. These amendments are aimed at complementing the institutional reform referred to above and include welcome proposals to reduce evidentiary burdens and obstacles for claimants and to make it easier for a court to hear evidence of Indigenous traditional laws and customs.¹⁸

(b) **Northern Territory Intervention**

16. The compulsory acquisition of Indigenous land remains a significant concern with the Northern Territory Intervention. The three main measures by which the Australian Government has weakened Indigenous native title rights are:
 - (a) the acquisition of Indigenous land and community living areas through the statutory imposition of compulsory five year leases of that land to the Commonwealth;
 - (b) broad discretionary statutory powers in relation to Indigenous town camps; and
 - (c) the suspension of the future act provisions of the *Native Title Act*, thereby effectively suspending the operation of any native title rights inconsistent with the five year lease regime.
17. The High Court of Australia recently rejected a claim brought by a group of Northern Territory land owners and upheld the constitutional validity of the compulsory five year lease regime.¹⁹ However, while the constitutional challenge was unsuccessful, the High Court ruling means that Indigenous people in the Northern Territory whose land has been compulsorily acquired by the Federal Government must be provided with fair compensation. To date, no compensation has been paid to affected people by either the Federal Government or the Northern Territory Government.

Additional Proposed Recommendation for Concluding Observations

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.

¹⁸ *Native title reform*, Attorney-General's Department (2009), available at http://www.ag.gov.au/www/agd/agd.nsf/Page/Indigenouslawandnativetitle_Nativetitle_Nativetitereform.

¹⁹ *Wurridjal v The Commonwealth of Australia* [2009] HCA 2 (2 February 2009).

A.6 Extinction of Indigenous Languages (new section)

This is a new section relating to Article 1.

18. 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.²⁰ In response, the Federation of Indigenous and Torres Strait Islander Languages has petitioned the Australian Government to improve measures to preserve native languages and is seeking a national inquiry into the issue.²¹
19. The United Nations Educational, Scientific and Cultural Organization (UNESCO) has claimed that more than 100 languages in Australia are in danger of extinction.²² It is feared that the new Northern Territory Government policy will further endanger Indigenous languages.²³
20. Given the central importance of language to the maintenance of Indigenous culture and customs, the policy of forcing education in schools to be conducted in English has the potential to seriously threaten the existence of many Indigenous Australian languages and raises concerns in relation to Article 1 of the *ICCPR*.

Additional Proposed Recommendation for Concluding Observations

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.

²⁰ Northern Territory Government, 'Education Restructure Includes Greater Emphasis on English,' Media Release, 14 October 2008, available at <http://newsroom.nt.gov.au/index.cfm?fuseaction=viewRelease&id=4599&d=5>.

²¹ ABC News, 'Govt petitioned to preserve Indigenous languages,' 18 November, 2008, available at www.abc.net.au/news/stories/2008/11/18/2423386.htm.

²² ABC News, 'Indigenous languages under threat, UN finds,' 21 February 2009, available at <http://www.abc.net.au/news/stories/2009/02/21/2497718.htm>.

²³ ABC News, 'Linguists fear Indigenous language extinctions,' 1 March 2009, available at <http://www.abc.net.au/news/stories/2009/03/01/2504357.htm>.

Articles 2 and 26 — Treaty Entrenchment and Non-Discrimination

B. ENTRENCHMENT OF BASIC HUMAN RIGHTS

B.1 Federal Charter of Human Rights

This section updates the information commencing at page 38 of the NGO Report.

21. Coinciding with the 60th anniversary of the adoption of the *Universal Declaration of Human Rights*, the Commonwealth Attorney-General announced a broad-ranging community consultation on whether, and if so how, human rights should be better protected in Australia. The national consultation process is being conducted by an independent Consultation Committee appointed by the Attorney-General.
22. Public submissions to the Consultation Committee are due by 15 June 2009, and 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.²⁴
23. While the terms of reference for the consultation process 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 and do not commit the Australian Government to any further legislative measures to protect human rights.²⁵

B.2 Domestic Judicial Remedies

This section updates the information commencing at page 40 of the NGO Report.

24. In January 2009, the legislature in the Australian Capital Territory (**ACT**) passed amendments to the *Human Rights Act 2004* (ACT) that strengthened the remedial provisions by providing individuals with a direct cause of action for a breach of the legislation.²⁶ (*The ACT Human Rights Act is discussed in further detail at paragraphs 776 to 778 of the NGO Report.*)
25. In addition, the ACT's *Human Rights Act* was expanded to include an 'opt-in' provision for the private sector. Any corporate entity which opts in is subject to the same obligations as a 'public authority'. To date, however, no businesses have chosen to be bound by the legislation.

²⁴ Details about the National Human Rights Consultation are available at www.humanrightsconsultation.gov.au.

²⁵ National Human Rights Consultation, Terms of Reference, , available at http://www.humanrightsconsultation.gov.au/www/nhrcc/nhrcc.nsf/Page/Terms_of_Reference>.

²⁶ *Human Rights Amendment Act 2008* (ACT), s 40C.

C. NON-DISCRIMINATION

C.1 Indigenous Peoples

This section updates the information commencing at page 49 of the NGO Report.

26. As referred to above under Article 1, the measures involved in the Northern Territory Intervention continue to exclude the operation of the *Racial Discrimination Act*. This raises serious concerns in relation to Article 2 of the *ICCPR*.
27. In light of the continued suspension of the *Racial Discrimination Act*, a group of 20 Indigenous Australians affected by the Northern Territory Intervention measures submitted a Request for Urgent Action under the *International Convention on the Elimination of All Forms of Racial Discrimination*.²⁷ Among other things, the Request expressed concern about the suspension of the *Racial Discrimination Act* and the ongoing lack of meaningful consultation with affected Indigenous communities. The outcome of the Request is still pending.

Additional Proposed Recommendation for Concluding Observations

THAT the Australian Government immediately reinstate the operation of the *Racial Discrimination Act* in respect of all aspects of the Northern Territory Intervention.

C.2 Racial Discrimination

This section provides additional information to that commencing at page 50 of the NGO Report.

(a) Multicultural Advisory Council (new section)

28. In December 2008, the Australian Government established the Multicultural Advisory Council. The 16-member Council's term runs until 30 June 2010 during which time it will provide the Minister for Immigration and Citizenship with advice on:
 - (a) social cohesion issues relating to Australia's cultural and religious diversity;
 - (b) overcoming intolerance and racism in Australia;
 - (c) communicating the social and economic benefits of Australia's cultural diversity to the broad community; and
 - (d) issues relating to the social and civic participation of migrants in Australian society.²⁸
29. The establishment of the Council creates a focus on multicultural affairs and the development of a multicultural policy framework that was absent under the former Australian Government.

²⁷ A copy of the Request for Urgent Action is available at http://www.hrlrc.org.au/html/s02_article/article_view.asp?id=450&nav_cat_id=133&nav_top_id=56.

²⁸ Department of Immigration and Citizenship, *Stakeholder Engagement - Multicultural Advisory Council* (2008), available at <http://www.immi.gov.au/about/stakeholder-engagement/national/advisory/amac/>.

(b) Diverse Australia Program (new section)

30. In January 2009, following several incidents of racially motivated violence, the Australian Government introduced a grants scheme, entitled the *Diverse Australia Program*, to fund projects aimed at reducing cultural, racial and religious intolerance by promoting respect, fairness, inclusion and a sense of belonging.²⁹
31. Despite these developments, several commentators have argued that more work needs to be done to assist recently arrived migrants integrate into the Australian community through language, culture and skills training.³⁰ Concerns regarding the racism and violence experienced by young people in the Australian-Sudanese community are discussed in further detail under Article 27.

C.3 Women

This section provides additional information to that commencing at page 51 of the NGO Report.

(a) OP-CEDAW (new section)

32. In November 2008, the Australian Government acceded to the *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (OP-CEDAW)*. This significant step by the Australian Government is to be congratulated and will provide Australian women with an international avenue to seek redress if they believe their rights have been violated. To date, however, no formal steps have been taken by the Australian Government to implement the mechanisms required by OP-CEDAW.

(b) Review of the Sex Discrimination Act 1984 (Cth) (new section)

33. As referred to in paragraphs 210 and 211 of the NGO Report, the *Sex Discrimination Act 1984 (Cth) (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)*.
34. On 12 December 2008, the Senate Legal and Constitutional Affairs Committee released a report on its review of the *Effectiveness of the Sex Discrimination Act 1984 (Cth) in eliminating discrimination and promoting gender equality in Australia*. The Senate Committee's review makes 43 recommendations about how better to ensure gender equality in Australia, including recommending changes to the *Sex Discrimination Act*, the *Human Rights and Equal Opportunity Commission Act 1986 (Cth)* and the *Equal Opportunity for Women in the Workplace Act 1999 (Cth)*. The Australian Government is currently considering the recommendations of the Senate Committee.

²⁹ Department of Immigration and Citizenship, *Diverse Australia Program*, available at <http://www.harmony.gov.au/aboutus.htm>.

³⁰ Michael Edwards, 'Govt's Human Rights record under spotlight', ABC Online, 3 October 2008, available at <http://www.abc.net.au/news/stories/2008/10/03/2381492.htm>.

Additional Proposed Recommendation for Concluding Observations

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, 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 enacting:

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

C.5 Citizenship Test

This section updates the information commencing at page 49 of the NGO Report.

35. On 22 November 2008, an independent committee tasked to review the Australian ‘citizenship test’ (see NGO Report at paragraph 224) presented its report to the Minister for Immigration and Citizenship.³¹ The report found that the current citizenship test is flawed, intimidating and discriminatory, and made 34 recommendations to improve the process.³² In response, the Australian Government has indicated it is likely to be some time before the recommendations are implemented.³³

Additional Proposed Recommendation for Concluding Observations

The Australian Government should implement the recommendations of the Australian Citizenship Test Review Committee as a matter of priority.

³¹ Department of Immigration and Citizenship, *Citizenship Test*, available at <http://www.citizenship.gov.au/test/>.

³² Australian Citizenship Test Review Committee, *Moving Forward, Improving Pathways to Citizenship*, available at http://www.citizenshiptestreview.gov.au/_pdf/moving-forward-report.pdf.

³³ Department of Immigration and Citizenship, *Overview of the Citizenship Test*, available at <http://www.citizenship.gov.au/test/>.

C.6 People with Disability and Mental Illness

This section provides additional information to that commencing at page 55 of the NGO Report.

(a) **Convention on the Rights of Persons with Disabilities (new section)**

36. In July 2008, Australia ratified the UN *Convention on the Rights of Persons with Disabilities*.³⁴ Australian, Professor Ron McCallum, has been elected to the UN Committee on Rights of Persons with Disabilities.
37. To date, Australia has not committed to signing the Optional Protocol to the Convention, which gives the Committee the power to receive complaints from individuals and groups who believe that their rights under the Convention have been breached. In December 2008, a National Interest Analysis was tabled in parliament, which recommended accession to the Optional Protocol. The question of accession is now being considered by the Joint Standing Committee on Treaties.

(b) **Proposed Amendments to the Disability Discrimination Act (new section)**

38. The Australian Government recently introduced the Disability Discrimination and Other Human Rights Legislation Amendment Bill 2008 (Cth). The Bill seeks to amend the *Disability Discrimination Act 1992* (Cth) (**Disability Discrimination Act**) to provide a broader definition of what amounts to discrimination on the basis of disability. For example, the Bill creates a positive duty to make 'reasonable adjustments' for people with disability. The Bill also seeks to remove the 'dominant purpose' test from the *Age Discrimination Act 2004* (Cth).³⁵
39. In December 2008, the Senate referred the Bill to the Senate Legal and Constitutional Affairs Committee for inquiry and report. The Senate Committee's report, released in March 2009, included the following important recommendations:
- (a) that the Australian Government undertake additional consultation with stakeholders and give further consideration to refining the test for direct discrimination in the *Disability Discrimination Act*, in particular:
 - (i) the removal of the 'comparator' test; and
 - (ii) amendments to the definition of discrimination to ensure better protection of both direct and indirect discrimination;
 - (b) that the Australian Government consider implementing the Productivity Commission's recommendation that the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) be amended to allow disability organisations with a demonstrated connection to the subject matter of a complaint to initiate complaints in their own right and proceed to the Federal Court or Federal Magistrates Court if required; and
 - (c) that the Australian Electoral Commission expedite the implementation of more accessible voting procedures for voters with a disability.

³⁴ Stephen Smith, *Australia Ratifies UN Disabilities Convention*, available at <http://www.foreignminister.gov.au/releases/2008/fa-s080718.html>.

³⁵ Further discussion of the Bill is available at http://www.aph.gov.au/Senate/committee/legcon_ctte/disability_discrimination/info.htm.

Additional Proposed Recommendation for Concluding Observations

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 accede to the *Optional Protocol to the Convention on the Rights of Persons with Disabilities*.

C.8 Sexual Orientation and Gender Identity

This section updates the information commencing at page 58 of the NGO Report.

40. In November 2008, the Australian Parliament passed two pieces of legislation expanding the rights of same-sex couples in relation to financial and work-related benefits and entitlements. These amendments followed a report by the Australian Human Rights Commission in 2007 and an audit by the current Australian Government (see paragraphs 662 and 663 of the NGO Report). As a result of these welcome amendments, same-sex couples are now entitled to:

- (a) leave their superannuation entitlements to their partner or children upon death;³⁶
- (b) receive the same government entitlements as married and opposite-sex couples and their dependent children;³⁷ and
- (c) the same rights in relation to tax, social security, health care, aged care and employment as married and opposite-sex couples and their dependent children.³⁸

³⁶ *Same-Sex Relationships (Equal Treatment in Commonwealth Laws Superannuation) Act* (Cth) 2008.

³⁷ *Same-Sex Relationships (Equal Treatment in Commonwealth Laws General Law Reform) Bill* (Cth) 2008.

³⁸ *Aged Care Act 1997* (Cth), *Health Insurance Act 1973* (Cth), *National Health Act 1953* (Cth), *Prohibition of Human Cloning for Reproduction Act 2002* (Cth) and *Research Involving Human Embryos Act 2002* (Cth).

Article 3 — Equal Rights of Men and Women

D. EQUAL RIGHTS OF MEN AND WOMEN

D.1 Representation of Women

This section updates the information commencing at page 62 of the NGO Report.

41. In February 2009, the Australian Government appointed to the High Court of Australia the fourth female in Australia's history. There are three females currently sitting on the bench (of a total of seven High Court judges). This is a commendable step forward in increasing the representation of women in the Australian political and public life.
42. Further to the statistics in paragraphs provided in paragraphs 245 and 246 of the NGO Report, figures released in October 2008 report a further decline in female board representation and executive management positions since 2006.³⁹

D.5 Sexual Harassment in the Workplace (new section)

This is a new section that relates to Article 3.

43. A recent report by the Australian Human Rights Commission into the equality of women in the workplace has found that one in five women are subject to sexual harassment in the workplace.⁴⁰ Sex Discrimination Commissioner Elizabeth Broderick says the Commission's research reveals 'a significant lack of understanding, among both women and men, about what behaviours constitute sexual harassment'. The report, entitled *Sexual Harassment: Serious Business*, contains a range of recommendations aimed at:
- (a) the prevention, reporting and monitoring of sexual harassment;
 - (b) better legal protection from sexual harassment; and
 - (c) better support for victims of sexual harassment.

Additional Proposed Recommendation for Concluding Observations

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*.

³⁹ Equal Opportunity for Women in the Workplace Agency, *2008 Australian Census of Women in Leadership* (2008), available at http://www.eowa.gov.au/Australian_Women_In_Leadership_Census/2008_Australian_Women_In_Leadership_Census.asp.

⁴⁰ Australian Human Rights Commission, *Sexual Harassment: Serious Business* (October 2008) available at http://www.humanrights.gov.au/sexualharassment/serious_business/index.html.

Article 6 — Right to Life

F. RIGHT TO LIFE

F.1 Indigenous Peoples

This section updates the information commencing at page 73 of the NGO Report.

44. In November 2008, the Australian Government, together with state and territory governments, committed a joint \$1.6 billion to improve the state of Indigenous health. This constitutes the biggest single injection of new funding by an Australian government to improve Indigenous health outcomes.⁴¹
45. However, while the significant commitment of funding is to be welcomed, reports from bodies such as the Australian Medical Association (**AMA**) suggest that these funds are inadequate. The AMA released its annual report card⁴² presenting a ‘snapshot’ of the health of Indigenous children. President of the AMA, Dr Capolingua, said that the report ‘presents a disturbing picture of health conditions and outcomes more commonly associated with the Third World than with a wealthy nation such as ours’.
46. As expressed in the NGO Report, the state of Indigenous health represents serious concerns in relation to Article 6 of the *ICCPR*.

F.4 Climate Change

This section updates the information commencing at page 78 of the NGO Report.

47. In December 2008, the Australian Government released a White Paper on climate change which outlines the Australian Government’s policy and proposed design of a ‘Carbon Pollution Reduction Scheme’ and its medium-term target range for reducing carbon pollution into the future. This paper follows on from a July 2008 Green Paper which canvassed options on the design of the scheme. It takes into account the outcomes of a broad public consultation and includes input from more than 1,000 submissions.⁴³
48. The White Paper provides for a mandatory national target and strategy to reduce greenhouse gas emissions. The Australian Government has committed Australia to reducing greenhouse gas emissions by 5 per cent (compared to 1990 emissions) by 2020, but has left open the possibility that a more aggressive target of up to 15 per cent would be considered in the event that an international agreement could be reached in relation to carbon pollution reduction.

⁴¹ Australian Human Rights Commission, *Health equality for Indigenous Australians a step closer: Close the Gap Coalition welcomes COAG funding*, (Press Release, 30 November 2008).

⁴² Australian Medical Association, *AMA Report Card Series 2008 – Indigenous and Torres Strait Islander Health, Ending the Cycle of Vulnerability, the Health of Indigenous Children*, available at www.ama.com.au/system/files/node/4335/AMA+Indigenous+Health+Report+Card+2008.pdf.

⁴³ Commonwealth, *Carbon Pollution Reduction Scheme: Australia’s Low Pollution Future*, White Paper (2008), available at <http://www.climatechange.gov.au/whitepaper/>.

49. The Australian Government has come under significant criticism for its 5 per cent target, with various groups calling for a more aggressive target.⁴⁴ The Australian Government should be encouraged to increase its overall commitment to the issues of climate change and carbon reduction schemes.

F.5 Homelessness

This section updates the information commencing at page 82 of the NGO Report.

50. Following the release of its Green Paper (see paragraph 302 of the NGO Report), in December 2008 the Australian Government released a White Paper on homelessness. The paper, entitled *The Road Home*, sets out an action plan to halve homelessness by 2020 and improve housing affordability, particularly for vulnerable Australians.
51. The White Paper commits the Australian Government to providing \$800 million over five years to states and territories (who will also match this funding) to fund a range of initiatives, including new housing for homeless individuals and families across Australia.
52. Indigenous people will be provided with homes and support services at a rate that is proportionate to their percentage of the homeless population.
53. Despite the welcome commitments of additional funding, the White Paper fails to explicitly recognise homelessness as a human rights issue. In particular, it does not commit Australia to ensure the core minimum necessities for a dignified life, such as guaranteed access to emergency accommodation or the payment of social security or income support above the poverty line. The White Paper also failed to address legislation that criminalises homelessness, such as public space laws and anti-discrimination laws that permit discrimination on the basis of social status.

F.6 Police Shootings (new section)

This is a new section relating to Article 6.

54. The recent shooting of a teenage boy by police in Victoria (see Case Study below) has brought the issue of police shootings under close scrutiny. In particular, in the state of Victoria, police have a poor record in relation to fatal shootings: since 1987, 42 people have been shot dead by police. Data released by the Australian Institute of Criminology indicates that deaths caused by Victoria Police are well above those in other Australian states.⁴⁵

⁴⁴ See eg, 'More hot air needed', *The Australian* (National) 25 February 2009, available at <http://www.theaustralian.news.com.au/story/0,25197,25102239-16741,00.html>.

⁴⁵ Office of Police Integrity (2005), Review of Fatal Shootings by Victoria Police, Appendix 2 – Police shooting deaths in Australia 1990 to 2004, available at http://www.opi.vic.gov.au/documents/Review_of_fatal_shootings_by_Victoria_Police.pdf.

Case Study: Tyler Cassidy⁴⁶

Fifteen year old Tyler Cassidy was involved in a disagreement in his family home and left angry and upset. He went to a local shopping centre where, according to a witness, he stole two knives and the police were called. Tyler was later seen behaving irrationally with the knives in the shopping centre car-park, where further calls to police were made.

Four police officers arrived and tried to negotiate with the teenager. Tyler allegedly approached the police officers, resulting in capsicum spray being deployed which did not subdue him. He was subsequently shot dead by three of the four police officers simultaneously.

At the time he was shot, Tyler was 14 metres away from the police officers.

Victoria Police has been criticised for its 'heavy-handedness and lack of negotiation skills' during the shooting. An investigation into the actions of police is currently underway.

55. As a result of the incident referred to in the Case Study, the police union in Victoria has again raised the issue of the introduction of Taser guns for use by police officers. The issue of Taser guns is discussed in further detail under Articles 7 and 10.

Additional Proposed Recommendation for Concluding Observations

THAT police in all states and territories be provided with comprehensive and ongoing, non-violent negotiation and dispute resolution education and training.

THAT legislation be enacted at the Commonwealth level and in all states and territories to codify that firearms may only be used by police in the following circumstances:

- (a) where there is an imminent and grave threat to life or likelihood of serious injury; *and*
- (b) as a last resort; *and*
- (c) after providing a clear warning of the intention to use lethal force if the act or omission does not stop; *and*
- (d) after sufficient time for the warning to be observed; *and*
- (e) where the use of the firearm it is proportionate to the risk or threat posed.

⁴⁶ Case Study based on media reports of the incident, including: 'Timeline of the Tyler Cassidy Shooting', *The Australian* (National) 12 December 2008 available at <http://www.theaustralian.news.com.au/story/0.25197.24789822-5006785.00.html>; Mex Cooper, Andrea Petrie and Reko Rennie, 'Teen shot dead by police', *The Age* (Melbourne) 12 December 2008 available at www.theage.com.au/national/teen-shot-dead-by-police-20081211-6wtt.html?page=2.

F.7 Provision of Adequate Health Care (new section)

This is a new section relating to Article 6.

56. The right to life, in some circumstances, requires the state to take positive steps to protect the life of its citizens by ensuring the adequate provision of health care and appropriate treatment. In recent years, there have been a number of cases involving public hospital mismanagement of patients and medical negligence.

Case Study: Inadequate Maternity Care⁴⁷

In January 2009, a woman died in a regional country town after having an ectopic pregnancy. In normal circumstances, she could have survived but she reportedly waited for an ambulance for over two hours to transfer her to a larger hospital that was 60 kilometres away where she could have had life-saving surgery in the maternity ward.

Case Study: Jodie Whiteside⁴⁸

In January 2009, Ms Whiteside arrived at Maitland Hospital's emergency department, suffering the early stages of miscarriage. She was directed to a toilet cubicle where she miscarried and disposed of the 14-week-old foetus.

57. These Case Studies indicate that there are serious concerns regarding the funding and, in some circumstances, the competency of the health sector, raising concerns with Australia's compliance with Article 6 of the *ICCPR*.

⁴⁷ Lucy Battersby, 'Town mourns loss of woman caught out in small hospital', *The Age* (Melbourne) 10 January 2008, available at <http://www.theage.com.au/national/town-mourns-loss-of-woman-caught-out-in-small-hospital-20090109-7dp7.html>.

⁴⁸ Richard Maxton, 'I had to flush my child away: Mother's miscarriage horror', *Livenews* (online) 9 January 2009, available at http://livenews.com.au/Articles/2009/01/09/Woman_forced_to_miscarry_in_hospital_toilet_again.

Articles 7 and 10 — Freedom from Torture and Other Cruel Treatment

G FREEDOM FROM TORTURE AND OTHER CRUEL TREATMENT

G.3 Prisoners and Prison Conditions

This section updates the information commencing at page 102 of the NGO Report.

(b) Inadequate Mental Health Care in Prisons

58. Reports have recently emerged in the Northern Territory about the growing number of intellectually disabled and mentally ill people who remain incarcerated in harsh prison conditions, even after having served their sentences. Some of these people were unfit to plead, yet were incarcerated due to the lack of appropriate care facilities.
59. Also in the Northern Territory, mentally ill people who have committed minor offences are often placed in jail due to insufficient mental health housing facilities. As indicated in the Case Studies below, there is a significant number of mentally ill offenders not receiving proper support. The Chief Justice of the Northern Territory Supreme Court has said that it is 'utterly unacceptable that there is no support or housing facilities for mentally ill people who commit minor offences, other than jail'.⁴⁹ In Darwin, there are only 26 beds at the Royal Darwin Hospital, which can provide care for only the most critical of mentally ill prisoners. The shortage of beds results in many severely mentally ill prisoners being locked in isolation blocks in Darwin's overflowing prisons.⁵⁰

Case Study: Christopher Leo⁵¹

In December 2008, Chief Justice Martin of the Northern Territory's Supreme Court sentenced a 28 year old mentally ill Indigenous man to 12 months in jail because 'he had no choice but to keep Leo behind bars...as there was no support or housing facilities in the Territory to make him safe outside of prison'.

Mr Leo had already spent 16 months in Alice Springs prison for the aggravated assault of a woman in August 2007. He was found unfit to stand trial but was later found guilty in a special jury hearing. Mr Leo suffered tremendously in maximum security, including attempting to harm himself.

⁴⁹ Judge 'forced' to keep mentally ill man in jail (2008) ABC News Online, 22 December 2008, available at <http://www.abc.net.au/news/stories/2008/12/22/2453306.htm>.

⁵⁰ Natasha Robinson, 'Hopeless Days of Man, Adrian Faulton, Lost in the Legal System', *The Australian* 20 December 2008, available at <http://www.theaustralian.news.com.au/story/0,25197,24826238-5006790,00.html>.

⁵¹ Ibid.

Case Study: Adrian Faulton⁵²

Adrian Faulton, aged 25, is a severely intellectually disabled Indigenous man. Since the age of 15, he has committed mostly petty crimes. Mr Faulton is an example of a recurring offender who is a typical victim of the Northern Territory's mandatory sentencing laws.

Despite Mr Faulton being unfit to plead, he has been locked in a small concrete cell in Darwin's Berrimah Prison due to the Northern Territory's under-resourced mental health services.

60. A report released in December 2008 reveals that, between 2004 and 2008, only 1.5 per cent of prisoners in Victoria who are believed to have Hepatitis C have been treated for the virus.⁵³ The statistics were released by St Vincent's Hospital, which provides health care to prisoners in 13 of the 14 jails in Victoria. This is despite the fact that treatment for Hepatitis C is readily available. Prisons can play a significant role in controlling the level of hepatitis C in the prison population. Seventy five per cent of injecting drug users continue to inject in jail, usually with crude and blunt injecting equipment.⁵⁴

G.6 Police Use of Taser Guns

This section updates the information commencing at page 110 of the NGO Report.

61. The use of Taser guns by police officers is gaining greater acceptance in Australia. Taser guns are currently used by the Australian Federal Police, as well as police forces in four of the eight Australian states and territories.⁵⁵ In Victoria, a recent police shooting by Victoria Police (see Case Study of Tyler Cassidy above) has also re-invigorated debate about the introduction of Taser guns in Victoria.⁵⁶
62. In New South Wales, in October 2008 the use of Taser guns by police was expanded beyond specialist units to senior officers exercising general duties.⁵⁷ Since then, a report of the New South Wales Ombudsman has raised concerns regarding the use of Taser guns by general duties officers and recommended that the NSW Police Force refrain from further extending

⁵² Ibid.

⁵³ Julia Medew, 'Prisoners go Untreated as Hepatitis C Sweeps Jails' *The Age*, 29 December 2008, available at <http://www.theage.com.au/national/prisoners-go-untreated-as-hepatitis-c-sweeps-jails-20081228-767n.html?page=-1>.

⁵⁴ Ibid

⁵⁵ Taser guns are currently used in Western Australia, the Northern Territory, Queensland and New South Wales.

⁵⁶ 'We will look at tasers', *The Age*, 3 March 2009, available at <http://www.theage.com.au/national/we-will-look-at-tasers-20090302-8mqe.html?page=-1>.

⁵⁷ Tony Kelly, NSW Minister for Police, 'NSW Government delivers on Taser rollout to frontline police' (Press Release, 2 October 2008), available at http://www.police.nsw.gov.au/_data/assets/pdf_file/0019/143308/20081002_taser_rollout.pdf.

use of Taser guns by officers for at least two years.⁵⁸ However, the Ombudsman's recommendations have not been acted upon.

63. In Queensland, in March 2009 it was revealed that police used a Taser gun to subdue a 16 year old girl who had refused a direction to 'move on' while awaiting the arrival of an ambulance for an unconscious friend. The Chair of Queensland Crime and Misconduct Commission criticised the use of a Taser gun in the circumstances, stating that 'I don't think that this was an appropriate use of a Taser' and found that the police had shown 'poor discretion', and used excessive force, particularly given evidence that the girl was already subdued.⁵⁹
64. Despite serious international concerns regarding the use of Taser guns,⁶⁰ the Commonwealth Attorney-General has recently stated that he regards their use as appropriate in law enforcement situations.⁶¹ This statement, and the practice of the use of Taser guns in a number of Australian states and territories, raises serious concerns in relation to Articles 7 and 10 of the *ICCPR*.

Additional Proposed Recommendation for Concluding Observations

THAT all Australian jurisdictions implement comprehensive drug harm prevention and minimisation strategies in prison, including through the provision of condoms and needle and syringe exchange programs.

⁵⁸ NSW Ombudsman, *The use of Taser weapons by New South Wales Police Force* (November 2008), Executive Summary, available at <http://www.ombo.nsw.gov.au/publication/PDF/specialreport/Special%20Report%20on%20use%20of%20Taser%20weapons%20by%20NSWPF.pdf>.

⁵⁹ Tony Moore, 'Officer "quietly" subdued girl before she was tasered', *Brisbane Times*, 7 March 2009, available at <http://www.brisbanetimes.com.au/news/queensland/police-quietly-subdued-girl-before-she-was-tasered/2009/03/07/1235842704344.html>. See also 'Controversial Taser Footage Released', 7 March 2009, available at <http://news.ninensn.com.au/national/768159/controversial-taser-footage-released>.

⁶⁰ See, for example, Committee against Torture, *Conclusions and Recommendations of the Committee against Torture: Portugal*, [14], UN Doc CAT/C/PRT/CO/4 (2008).

⁶¹ Samantha Maiden, Interview with The Hon. Robert McClelland MP (Attorney-General), (ABC Local Canberra radio, 19 January 2009), available at http://www.attorneygeneral.gov.au/www/ministers/robertmc.nsf/Page/Transcripts_2009_FirstQuarter_19January2009-InterviewwithSamanthaMaidenABCLocalCanberraRadio.

Article 9 — Freedom from Arbitrary Detention

I. FREEDOM FROM ARBITRARY DETENTION

I.1 Immigration Law, Policy and Practice

This section provides additional information to that commencing at page 124 of the NGO Report.

(a) **Mandatory Immigration Detention**

(1) **Conditions of Immigration Detention Centres (new section)**

65. In January 2009, the Australian Human Rights Commission released its *2008 Immigration Detention Report* on conditions in Australia's immigration detention centres. The annual report notes some improvements in the treatment of immigration detainees but also reiterates some ongoing concerns. The Human Rights Commissioner, Graeme Innes, commented that while treatment of immigration detainees in Australia has improved,

[w]e are still seeing children being held in detention facilities, people being detained for prolonged and indefinite periods and dilapidated detention centres being used for accommodation and now we also have the disturbing reality that the massive prison-like Christmas Island facility is open for business.⁶²

66. The major recommendations in the Commission's report include that:⁶³

- (a) minimum standards for conditions and treatment of persons in immigration detention should be legislated;
- (b) the *Migration Act 1958* (Cth) (***Migration Act***) be amended so that immigration detention is the exception rather than the norm and the decision to detain a person is subject to prompt review by a court;
- (c) the detention of people on Christmas Island should cease; and
- (d) the recommendations of the national inquiry into children in immigration detention should be implemented by the Australian Government.

67. The failure of the Australian Government to implement these recommendations of the Australian Human Rights Commission causes serious ongoing concerns in relation to Australia's compliance with Article 7, 9 and 10 of the *ICCPR*.

⁶² Full article available at http://www.hreoc.gov.au/human_rights/immigration/idc2008.html.

⁶³ *Ibid.*

(2) Report of the Joint Standing Committee on Migration (new section)

68. In December 2008, the Joint Standing Committee on Migration tabled a report entitled *Immigration Detention in Australia: A New Beginning – Criteria for Release from Detention*.⁶⁴ This is the first report of a series of three against the inquiry's terms of reference.⁶⁵ The inquiry is ongoing and subsequent reports will be tabled in 2009.
69. Under the reforms proposed by the report, 'unauthorised arrivals' would be held in mandatory detention until health, security and identity checks have been completed. Beyond this, mandatory detention would continue to apply to unlawful non-citizens who present unacceptable risks to the community and to unlawful non-citizens who have repeatedly refused to comply with their visa conditions.
70. Health, identity and security checks are all routinely undertaken for those entering any Australian detention facility. However these checks have not previously operated as criteria for release. The Human Rights Commissioner has claimed the report reflects 'a fundamental shift' in policy but expresses concern as '[HREOC] has not received further detail on the practical implementation of the new approach, in particular how such changes will be enforced or guaranteed'.⁶⁶
71. The fact that the new directions identified by the Australian Government for immigration detention policy are yet to be implemented by legislation remains of serious concerns. Even if the changes recommended by the Joint Standing Committee on Migration are implemented, serious concerns in relation to Article 9 of the *ICCPR* will continue.

(f) Christmas Island (new section)

72. A significant concern in relation to Australia's immigration law, policy and practice is the re-opening in December 2008 of immigration detention centres on Christmas Island.⁶⁷
73. As explained in paragraph 409 of the NGO Report, the *Migration Act* provides that asylum seekers who arrive 'unlawfully' in Australia must be detained. Christmas Island is situated 2,600 kilometres off the coast of Perth, Western Australia and is extremely remote and inaccessible. Christmas Island contains several places of detention, including a new detention centre.
74. The Australian Human Rights Commission's *2008 Immigration Detention Report* stated that the new detention centre 'looks and feels like a high-security prison' and expressed
serious concerns about the immigration detention facilities on Christmas Island, particularly the new detention centre. It is a harsh facility with excessive levels of security.⁶⁸

⁶⁴ Available at <http://www.aph.gov.au/HOUSE/committee/mig/detention/report.htm>.

⁶⁵ For terms of reference see Joint Standing Committee on Migration website at <http://www.aph.gov.au/HOUSE/committee/mig/detention/tor.htm>.

⁶⁶ Joint Standing Committee on Migration, 'Immigration Detention from a human rights perspective,' Media Release 23 October 2008, available at <http://www.aph.gov.au/HOUSE/committee/mig/detention/media/media09.pdf>.

⁶⁷ Paul Maley, 'John Howard's detention centre to open,' *The Australian*, December 2008 available at www.theaustralian.news.com.au/story/0,25197,24821584-601,00.html.

⁶⁸ Available at http://www.hreoc.gov.au/human_rights/immigration/idc2008.html.

75. The report found that, regardless of what the detention facilities are like, Christmas Island is not an appropriate location to hold people in immigration detention or to process applications for asylum. Instead, all unauthorised arrivals who make claims for asylum should have those claims assessed through the refugee status determination process on the Australian mainland.
76. These issues continue to raise serious issues in relation to Australia's obligations under Article 9 of the *ICCPR*.

I.3 Mandatory Sentencing Laws

This section updates the information commencing at page 134 of the NGO Report.

77. Not only does mandatory sentencing exist in Western Australia, but it continues to be a part of the criminal justice framework in the Northern Territory.⁶⁹ For example, the *Misuse of Drugs Act 1990* (NT) provides that the court must impose an actual term of imprisonment for a second or subsequent drug offence including a charge of possession of prohibited drug. This means that those caught possessing even small quantities of cannabis more than once are subject to mandatory sentencing. The law applies regardless of whether the accused is a juvenile.
78. In December 2008, laws relating to mandatory sentencing for assault were extended.⁷⁰ As discussed in paragraphs 447 to 449 of the NGO Report, mandatory sentencing laws raise serious concerns under Article 9 of the *ICCPR*, as well as Article 6 of the *ICCPR* in light of the particular impact that the laws have on Indigenous Australians.

I.5 Policing Practices

This section provides additional, more detailed information in relation to the issues discussed in the NGO Report at pages 135 to 138.

(a) Police Discretion to Arrest

79. Most states have legislation providing police with power to 'apprehend' and detain a person in custody if they are intoxicated for their own protection.⁷¹ While the laws purport to have a care and protection aim, there are concerns that the laws are often misused by the police. A recent report of the Commonwealth Ombudsman expressed concern that police fail to pursue reasonable alternatives to taking intoxicated people into custody, particularly where those people were already making their way home or were in the company of friends who told police they were willing to care for them, and that police are often using such laws for purposes other than protecting the intoxicated person.⁷²

⁶⁹ See s 78A, s78B, s78BB *Sentencing Act*; s121 *Domestic and Family Violence Act* and s 37 *Misuse of Drugs Act*.

⁷⁰ *Sentencing Amendment (Violent Offences) Act 2008* (Act No. 30, 2008).

⁷¹ See for example, *Police Administration Act 1978* (NT) s 128; *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) s 206; and *Intoxicated People (Care and Protection) Act 1994* (ACT).

⁷² Commonwealth Ombudsman, *Australian Federal Police: Use of powers under the Intoxicated People (Care and Protection) Act 1994*, October 2008, 24.

Case Study⁷³

Abby is a 24 year old Indigenous woman in the Northern Territory, with no prior criminal record. Abby and her boyfriend were ejected from a nightclub on the basis of alleged bad behaviour by her boyfriend. The police apprehended both Abby and her boyfriend, and placed them in a police van.

At the police station, Abby tried to ring a lawyer on her mobile phone. The police seized it from her, manhandling her in the meantime. She was extremely upset and swore and fought against the three of four police officers who restrained her on the ground.

Abby was charged with disorderly conduct in a public place and disorderly conduct in the police cells. The police claimed that she was originally placed in custody on the basis of her intoxication, despite Abby not being intoxicated. CCTV footage from the cells showed the manner in which Abby was treated, and there was evidence of her injuries.

At court, the prosecution withdrew the disorderly behaviour in a public place due to a lack of evidence. However, Abby entered a plea of guilty to the disorderly behaviour at the police cells, though ultimately the Magistrate recorded no conviction against her.

(b) Targeting of Particular Groups

80. As identified in the NGO Report, there are some individuals and groups in the community who as a result of their race, religion, age, sex, disability or social status are more likely to encounter law enforcement officials and over-policing.
81. The NGO Report discusses the over-policing of Indigenous Australians in the Northern Territory (see paragraphs 462 and 463). Particularly as a result of the Northern Territory Intervention (see discussion under [Article 1](#)), there has been an increase in the police presence in Indigenous communities. While the Review Board's recent review of the Northern Territory Intervention found that the additional police were both needed and welcome, the report also raised concerns about the temporary or unstable nature of the police presence in some communities.⁷⁴
82. One particular example of over-policing in the Northern Territory is the issue of the vehicle seizures. The *Liquor Act 1978* (NT) provides that it is an offence to bring, control, possess, consume, sell or otherwise dispose of liquor in a restricted area⁷⁵ and that a police officer may seize someone's car if they believe that an offence has been, is being or is likely to be committed.⁷⁶ An application can be made for the return of the car, however if the application is unsuccessful, the authorities can sell the car and the owner will not receive any proceeds of the sale.

⁷³ Case Study provided by the North Australian Aboriginal Justice Agency.

⁷⁴ The report is available at <http://www.nterreview.gov.au/report.htm>.

⁷⁵ *Liquor Act 1978* (NT) s 75(1).

⁷⁶ *Liquor Act 1978* (NT) s 95(1)(a)(ii).

83. The purpose of the law is to prevent alcohol being brought into Indigenous communities where alcohol is prohibited.⁷⁷ However, the North Australian Aboriginal Justice Agency reports that the application of the laws remains particularly onerous and draconian, and has concerns about:
- (a) the time it is taking for vehicles to be returned;
 - (b) the lack of consistent enforcement procedure or practice by the police; and
 - (c) the disproportionate focus of the policing of the law on Indigenous people.

Case Study⁷⁸

Sally is four months pregnant and has an 18 month old child. On Christmas Eve, the police attended a domestic dispute at Sally's house and removed her to a women's shelter.

While she was being taken to the women's shelter, Sally's husband took her car and, with her uncle and others, transported alcohol in it. The police seized the car under the *Liquor Act 1978*. Sally had not given permission for the car to be taken or for alcohol to be in the car.

Without her car, Sally is now unable to drive to the store to buy food for her young child or to attend her medical appointments.

84. Other groups are also particularly vulnerable to over-policing:
- (a) the issues faced by young Australian-Sudanese people, and in particular harassment by police, are discussed in further detail under [Article 27](#);
 - (b) there is widespread racial bias against Indo-Chinese young people in the use of stop and search powers, which has led to a climate of fear, racism and hostility;⁷⁹
 - (c) homeless people often experience high levels of police interference in their daily lives, including being frequently searched, often unnecessarily and sometimes unlawfully, and suffering physical brutality at the hands of police officers;⁸⁰ and
 - (d) 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.⁸¹

⁷⁷ Northern Territory, *Parliamentary Debates* (Dr. Burns) Liquor Legislation Amendment Bill 2007 - Second Reading Speech, available at http://www.austlii.edu.au/au/legis/nt/bill_srs/lab2007309/srs.html.

⁷⁸ Case Study provided by the North Australian Aboriginal Justice Agency.

⁷⁹ David Dixon and Lisa Maher, 'Anh Hai: Policing, Culture and Social Exclusion in a Street Heroin Market', (2002) 12(2) *Policing and Society* 93, 93-110.

⁸⁰ Tamara Walsh, University of Queensland, *No Vagrancy: An examination of the impact of the criminal justice system on people living in poverty in Queensland*, June 2007, 7.

⁸¹ Intellectual Disability Rights Service Inc, *Enabling Justice – A Report on Problems and Solutions in relation to Diversion of Alleged Offenders with Intellectual Disability from the New South Wales Local Courts System*, May 2008, 14, available at http://www.idrs.org.au/pdf/enabling_justice.pdf. Phillip French, Disability Studies

Case Study⁸²

Jack, a young homeless person, has been involved in low-level criminal activity and is known to police. His intellectual disability and the fact that he has been a victim of serious abuse make him ill-equipped to handle police interaction. One day, two police officers approached Jack to talk to him because he was seen riding his bicycle without a helmet. The police decided to search him because he was outside a methadone clinic and looked 'nervous'. The police claimed that they suspected he might have drugs on him but did not locate anything of interest when they searched him. Although Jack was compliant with the search, he was upset, became verbally abusive and walked away from the officers. One of the police officers followed him and grabbed him from behind, telling him he was under arrest for offensive language. Jack lashed out at being grabbed and was then charged with resisting and intimidating police.

Additional Proposed Recommendation for Concluding Observations

THAT all Australian states and territories ensure that police officers are provided with comprehensive, ongoing education and training to equip them to interact and engage appropriately and sensitively with disadvantaged and vulnerable individuals and groups.

THAT all Australian states and territories develop policies and programs to reduce the use of criminal justice responses and interventions against vulnerable individuals and groups, including through the development of cautionary, diversionary and referral programs.

(d) Problems in Police Custody (new section)

85. A number of human rights issues, in particular in relation to Article 9, are raised in the context of police treatment of suspects who are in custody. Currently, the regulation of pre-charge detention in Australia is inconsistent and inadequate. For example, in Western Australia, there is no legislative regime for pre-charge detention. Victoria, Tasmania and the Northern Territory allow someone to be detained for questioning and investigation for a 'reasonable time' and do not provide a maximum period of detention. This potentially allows for long periods of detention for investigative purposes prior to charge, which in some circumstances may raise concerns in relation to Article 9 of the *ICCPR*. Even in those states and territories which do have maximum periods for detention, there is evidence that the mechanisms do not provide effective regulation of the treatment of suspects once in police custody.⁸³

and research Institute for Queensland Advocacy Incorporated, *Disabled Justice – The barriers for persons with disability in Queensland*, May 2007, available at www.qai.org.au/documents/doc_199.pdf.

⁸² Case study provided by Intellectual Disability Rights Service (NSW).

⁸³ See for example the situation in NSW – David Dixon, *Interrogating Images: Audio-visual recorded police questioning of suspects*, 2007.

86. An additional problem is often a lack of legal advice available for suspects in police stations before and during questioning.⁸⁴ Similarly, there is often inadequate provision for support of vulnerable suspects, such as access to social workers or interpreters where required.⁸⁵ This can often lead to detention for periods that are longer than necessary or permitted, and may raise issues with Article 9 of the *ICCPR*.

Case Study⁸⁶

Jarwand, who has a mild intellectual disability, became friends with a group of youths in his local area who worked out he had a cognitive impairment and exploited his vulnerability. Ultimately he was arrested by police for questioning about some graffiti. His mother, whose first language is not English, came to the police station with Jarwand. She told the desk officer that Jarwand had an intellectual disability and would need a trained support person to help him. Police were aware of a support person service available for Jarwand. The desk officer said he would pass on the message, but this never happened.

While his mother waited, thinking a support person was on their way, the police took Jarwand aside and said they just wanted to have a talk. Jarwand participated in an interview without understanding the caution, having a support person or receiving legal advice. He simply answered 'yes' to all questions because he wanted to keep the police happy. He was later charged for the graffiti.

Additional Proposed Recommendation for Concluding Observations

THAT all Australian states and territories legislation to ensure that any pre-charge detention be for the shortest period possible and, under no circumstances, exceed 24 hours.

(e) Police and Bail (new section)

87. In many states and territories, when a suspect has been arrested and charged, police have the power to grant bail on certain conditions.⁸⁷ Examples of very restrictive bail conditions that can be imposed by police include curfews, exclusions from certain places, non-association with certain people and duties to report. Police therefore have the ability to exercise a significant amount of control over the liberty of people of interest to them.

88. A recent report of the Victorian Law Reform Commission found that

[t]he overwhelming majority of bail decisions are made by laypeople – most by police and a small number by bail justices. The Commission is concerned that inappropriate bail conditions are more likely to be imposed by these decision makers than court. Police are not impartial

⁸⁴ See for example the situation in NSW – David Dixon, *Interrogating Images: Audio-visual recorded police questioning of suspects*, 2007.

⁸⁵ *Ibid*, 114.

⁸⁶ Case study from the Intellectual Disability Rights Service Inc (NSW).

⁸⁷ See eg, *Bail Act 1978* (NSW) ss 17 and 36 and *Bail Act 1977* (Vic) s 5.

decision makers.... conditions may be imposed by police to further the aims of policing rather than for the purposes of the Bail Act.⁸⁸

89. These broad discretionary powers, exercisable by non-judicial decision-makers, in many circumstances will impact of the liberty of individuals, which raises concerns with Article 9 of the *ICCPR*.

Additional Proposed Recommendation for Concluding Observations

THAT all Australian states and territories legislate to ensure that conditions of bail do not place any limits on the human rights of the accused, including in relation to freedom of movement and association, other than so far as is demonstrably justifiable, strictly necessary and proportionate.

Article 12 — Freedom of Movement

J. FREEDOM OF MOVEMENT

J.4 Deportation of Permanent Australian Residents

This section updates the information commencing at page 144 of the NGO Report.

90. In December 2008, the Australian Human Rights Commission released a report on the detention and deportation of non-citizens whose visas have been cancelled under section 501 of the *Migration Act 1958* (Cth) (***Migration Act***).⁸⁹ As discussed in paragraphs 483 and 484 of the NGO Report, if a non-citizen cannot, because of their criminal record, convince the Department of Immigration and Citizenship of their 'good character', the Department can cancel an existing visa under section 501 of the *Migration Act*. Many of these persons are held in immigration detention centres for long periods of time while they attempt to challenge the decision to cancel their visa, or while a claim for a protection visa is assessed.⁹⁰
91. In its report, the Commission noted that generally a person's visa is cancelled under section 501 when they are at the end of serving a prison sentence.⁹¹ They are then transferred directly from prison to immigration centre to await deportation, where 'it is not uncommon for [them] to spend more time in immigration detention than they did in prison'.⁹²

⁸⁸ Victorian Law Reform Commission, *Review of the Bail Act*, 2007, 127.

⁸⁹ Australian Human Rights Commission, *Background Paper: Immigration detention and visa cancellation under section 501 of the Migration Act* (January 2009), available at http://www.humanrights.gov.au/human_rights/immigration/501_migration_2009.html.

⁹⁰ Australian Human Rights Commission, *2008 Immigration Detention Report: Summary of Observations following Visits to Australia's Immigration Detention Facilities* (2008) 45.

⁹¹ *Ibid.*

⁹² *Ibid.*

92. The Commission recommended that the Department of Immigration and Citizenship should review the operation of section 501 of the *Migration Act* 'as a matter of priority' and that long-term permanent Australian residents should be excluded from its operations. The Commission also recommended that the Department and the detention services provider should ensure that risk assessments are conducted on a case-by-case basis through an assessment of the individual's history and circumstances. In support of this recommendation, the Commission highlighted that, although many section 501 detainees have been convicted of serious crime, in most cases they have completed their prison sentence and the expectation is that they have been punished and rehabilitated by the correctional system.⁹³

Additional Proposed Recommendation for Concluding Observations

THAT the Australian Government review the operation of section 501 of the *Migration Act 1958* (Cth) as a matter of priority and that long-term and permanent residents be excluded from the operation of section 501.

Article 13 — Procedural Rights against Expulsion

K. PROCEDURAL RIGHTS AGAINST EXPULSION

K.2 Deportation of Non-Citizens

This section updates the information commencing at page 147 of the NGO Report.

93. In November 2008, the Honourable John Clarke QC presented the report of his *Inquiry into the Case of Dr Mohamed Haneef* to the Attorney-General Mr Robert McClelland. The case of Dr Haneef is discussed in the NGO Report at page 148. This was followed by the release of the Australian Government's official response in December 2008, which included a commitment to consider various options in addressing many of the Inquiry's concerns.⁹⁴

Additional Proposed Recommendation for Concluding Observations

THAT the Australian Government implement the recommendations of the Clarke *Inquiry into the Case of Dr Mohamed Haneef* as a matter of priority.

⁹³ Ibid.

⁹⁴ Full response available at http://www.ag.gov.au/www/agd/agd.nsf/Page/Publications_AustralianGovernment_responsetoClarkeInquiryintotheCaseofDrMohamedHaneef-December2008.

Articles 19 and 20 — Freedom of Opinion and Expression

Q. FREEDOM OF OPINION AND EXPRESSION

Q.4 Sedition Laws

This section updates the information commencing at page 187 of the NGO Report.

94. As identified in paragraph 608 of the NGO Report, in 2006 the Australian Law Reform Commission (**ALRC**) released a report, entitled *Fighting Words: A Review of Sedition Laws in Australia*, which made 27 recommendations for reform of Australia's sedition legislation.⁹⁵
95. In December 2008, the Australian Government released its response to the ALRC Report.⁹⁶ The Government supported 25 of the 27 recommendations unconditionally and supported the remaining two recommendations in principle.⁹⁷ Key issues covered in the Government's response include:⁹⁸
- (a) the term 'sedition' will be removed from federal laws and renamed to 'urging violence';
 - (b) the elements of the offence of 'urging violence' will be clarified and modernised in a way that is consistent with the recommendations of the ALRC;
 - (c) obsolete and never-used provisions, enacted in the 1920s for the proscription of 'unlawful associations', will be repealed; and
 - (d) the Australian Government will ensure there will be an offence of 'urging violence' against a group or individual on the basis of race, religion, nationality, national origin, or political opinions. This covers situations where there is not mere vilification but rather applies to the actual urging of violence.
96. The Australian Government has indicated that it intends to prepare a discussion paper and exposure draft of the legislation for release in the first half of 2009. While these indications from the Australian Government are promising, the sedition laws continue to operate and, as discussed in the NGO Report, raise concerns in relation to Articles 19 and 20 of the *ICCPR*.

⁹⁵ ALRC, *Fighting Words: A Review of Sedition Laws in Australia*, Report No 104 (2006) available at www.austlii.edu.au/au/other/alrc/publications/reports/104/.

⁹⁶ *Australian Government response to ALRC Review of sedition laws in Australia*, December 2008, available at www.ag.gov.au/www/agd/agd.nsf/Page/Publications_AustralianGovernmentresponsetoALRCReviewofseditionlawsinAustralia-December2008.

⁹⁷ Ibid.

⁹⁸ See Attorney-General Robert McClelland, 'Comprehensive Government Response to Reviews of National Security Legislation,' (Press Release, 23 December 2008), available at <http://www.attorneygeneral.gov.au/www/ministers/RobertMc.nsf/Page/MediaReleases>.

Additional Proposed Recommendation for Concluding Observations

THAT the Australian Government immediately take all necessary steps, including legislative steps, to implement the recommendations of the Australian Law Reform Commission report, *Fighting Words: A Review of Sedition Laws in Australia*.

Articles 20 and 21 — Freedom of Assembly and Association

R. FREEDOM OF ASSEMBLY AND ASSOCIATION

R.3 Workplace Relations Laws

This section updates the information commencing at page 197 of the NGO Report.

(a) Trade Unions

97. In November 2008, the Australian Government introduced the Fair Work Bill 2008 (Cth) (**Fair Work Bill**) into Parliament. The Bill is a comprehensive reworking of the *Workplace Relations Act 1996* (Cth) and seeks to dismantle the 'Work Choices' legislation that was introduced by the former Australian Government (see page 197 of the NGO Report for further information about Work Choices).
98. The Fair Work Bill contains significant changes to Australia's industrial relations system, with collective bargaining and the expansion of unions' rights of entry at the heart of the proposed amendments. In particular, the Bill proposes to:⁹⁹
- (a) establish a body called 'Fair Work Australia', which will facilitate and approve collective bargaining agreements, adjust minimum wages and deal with unfair dismissal claims and workplace disputes;
 - (b) if an employer refuses to take part in collective bargaining, Fair Work Australia can order them to take part if it finds that a majority of employees want to bargain collectively;
 - (c) introduces ten 'National Employment Standards', which include such provisions as a 38-hour week, four weeks' annual leave and a right to request flexible working arrangements are included in the legislation;
 - (d) make all employees eligible to apply for an unfair dismissal claim (although a worker employed with a firm of less than 15 people must be employed with the firm for at least a year before they are eligible, and those who work for larger firms will be eligible after six months); and

⁹⁹ 'Gillard introduces Fair Work bill', *ABC News Online*, 25 November 2008, available at <http://www.abc.net.au/news/stories/2008/11/25/2429177.htm>.

- (e) introduce new modern awards which will begin on 1 January 2010, which also must make provision for flexible arrangements.
99. The Fair Work Bill was referred to the Senate Education, Employment and Workplace Relations Committee, which released its report in February 2008. The Australian Government is currently considering the amendments proposed by the Senate Committee.¹⁰⁰
- (b) Right to Strike**
100. Despite the current overhaul of the workplace relations system, the right to strike remains severely constrained.¹⁰¹ Under the Fair Work Bill, the Australian Government says it will impose clear, but tough, rules on industrial action. Strikes may be authorised during collective bargaining negotiations, when parties are genuinely trying to negotiate. Other circumstances where employees will have the right to strike are in response to industrial action by the employer.
101. If an employee takes unauthorised industrial action, employers may lock them out of work and withhold pay. This is similar to the consequences under the former Australian Government's Work Choices laws (see pages 197 to 200 of the NGO Report).
102. In the case of industrial action that threatens the economy or significantly affects access to services, Fair Work Australia will have the power to step in and resolve industrial disputes.

Additional Proposed Recommendation for Concluding Observations

THAT Australia enshrine the right to strike in legislation.

Article 23 — Protection of the Family

S. PROTECTION OF THE FAMILY

S.2 Paid Maternity Leave

This section updates the information commencing at page 204 of the NGO Report.

103. As identified in the NGO Report, the Australian Government asked the Productivity Commission to report on the policy options for the introduction of a paid maternity, paternity and parental leave scheme. In September 2008, the Productivity Commission released its Draft Report, 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.¹⁰²

¹⁰⁰ 'We'll consider Fair Work Bill amendments: Gillard', *ABC News Online*, 28 February 2009, available at <http://www.abc.net.au/news/stories/2009/02/28/2503858.htm>.

¹⁰¹ Australia Government Workplace Relations Fact Sheet No.10, available at http://www.workplace.gov.au/NR/rdonlyres/CA41ACAB-5AA3-40D7-9641-F8BDED16F7D4/0/WRfactsheet_10.pdf.

¹⁰² Productivity Commission, *Paid Parental Leave Draft Report*, available at http://www.pc.gov.au/_data/assets/pdf_file/0004/83425/parentalsupport.pdf.

104. While responses to the Draft Report have been mixed, unfortunately indications are that the Australian Government will be reluctant to adopt such a recommendation in light of the current economic downturn.¹⁰³ At the time of writing this update, the Productivity Commission had provided its final report to the Australian Government, however the report was not yet publicly available.

S.5 Immigration Law, Policy and Practice

This section updates the information commencing at page 207 of the NGO Report.

105. The requirement for all family members migrating to Australia to pass strict health criteria is discussed in the NGO Report, in particular at page 208. Currently, there are broad exemptions provided from the *Disability Discrimination Act 1992* (Cth) for provisions in the *Migration Act 1958* (Cth), migration regulations and for 'anything done by a person in relation to the administration of that Act or those regulations'. The Case Study below highlights the concerns with Australia's immigration and permanent residency policy and its lack of compliance with Article 23 of the *ICCPR*, together with its incompatibility with Articles 2 and 26.

Case Study: Dr Bernhard Moeller¹⁰⁴

Dr Moeller, a German migrant doctor, has been working in a Victorian country town for nearly three years as a much-needed specialist physician. Despite his service and enormous contribution to the town's population, he had twice earlier been refused permanent residency. His applications were refused because his son Lukas, aged 13, who suffers from Down's Syndrome, was considered too much of a burden on taxpayers.

In 2008, the Department of Immigration again refused the family permanent residency status and their appeal was rejected by the Migration Review Tribunal. However, in November 2008, following significant public pressure, the Minister for Immigration approved Dr Moeller's application for ministerial intervention and granted his family permanent residency status.

106. As a result of the above circumstances, the Minister for Immigration announced a review of the Australian Government's policy.¹⁰⁵

Additional Proposed Recommendation for Concluding Observations

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.

¹⁰³ Sydney Morning Herald, *Paid maternity leave put on hold*, Phillip Coorey, 7 November 2008 available at <http://www.smh.com.au/news/national/paid-maternity-leave-put-on-hold/2008/11/06/1225561044355.html>.

¹⁰⁴ Senator Evans, 'Statement on Dr Bernhard Moeller' (Press Release, 26 November 2008), available at <http://www.minister.immi.gov.au/media/media-releases/2008/ce08113.htm>.

¹⁰⁵ Senator Evans, 'Parliamentary Committee to investigate migration and disability' (Press Release, 26 November 2008), available at <http://www.minister.immi.gov.au/media/media-releases/2008/ce08115.htm>.

Article 24 — Protection of Children

T. PROTECTION OF CHILDREN

T.3 Children in Immigration Detention

This section updates the information commencing at page 216 of the NGO Report.

107. Despite the Australian Government promising an end to the immigration detention of children (see the section on Recent Changes in Policy starting at page 126 of the NGO Report), Human Rights Commissioner, Graeme Innes, has recently repeated his concern that, although children are no longer held in immigration detention centres, they are held in other closed detention facilities on the Australian mainland and on Christmas Island. Mr Innes has called for the Australian Government to amend Australia's immigration laws 'to ensure they comply with the Convention on the Rights of the Child.'¹⁰⁶

T.5 Education

This section updates the information commencing at page 218 of the NGO Report.

108. In December 2008, the United Nations Children's Fund (UNICEF) ranked Australia's childcare system the third worst in the developed world.¹⁰⁷ The UNICEF report found that Australia barely satisfies two of the standard benchmarks for assessing child care services:

Australia is one of the few countries where there is not yet a national plan on early childhood education and care that may clarify the vision of the government for investment in early years, and what is the funding that may be required to make sure that process moves forward in the right manner.

109. In mid-2008, Australia's largest child care provider, ABC Learning Centres, went into receivership. The private child care provider had built up an empire, owning over 1,000 child care centres across Australia. As a result of the company's financial troubles, over 100 child care centres have closed, with predictions of more closures to follow. The Australian Government was forced to spend \$22 million to prop up vital child care services. In December 2008, the Australian Government announced an additional \$34 million to keep ABC Learning Centres 'alive' at least until March 2009.¹⁰⁸
110. In addition to the UNICEF report, in 2006 the Organisation for Economic Cooperation and Development (OECD) released a report that highlighted the very low levels of investment in

¹⁰⁶ Asia Pacific Forum, *Australia: Ongoing Problems in Immigration Detention* (2009), available at <http://www.asiapacificforum.net/news/australia-ongoing-problems-in-immigration-detention.html>.

¹⁰⁷ 'Australia Third Bottom in UNICEF Childcare Table' ABC News Online, 12 December 2008, available at <http://www.abc.net.au/news/stories/2008/12/12/2444436.htm>.

¹⁰⁸ Annie Guest, 'Fifty-five ABC Learning Centres to Close' *ABC Radio National*, 10 December 2008, available at <http://www.abc.net.au/pm/content/2008/s2443085.htm>.

quality early childhood services in Australia.¹⁰⁹ The OECD report, *Starting Strong II*, focused on the early childhood policies and government spending on early childhood education of 20 countries. The report shows that the Australian Government contributes to just 68 per cent of spending on early education, well below the OECD average of 80 per cent. Australia also spends less than any other first-world country on preschool, and kindergarten teachers are the worst paid and least trained of any first world country.¹¹⁰

T.6 Indigenous Children

This section updates the information commencing at page 220 of the NGO Report.

111. A recent report released by the Australian Human Rights Commission's Indigenous and Torres Strait Islander Social Justice Commissioner, Tom Calma, calls for programs that divert young people from incarceration. The '*Preventing crime and promoting rights for Indigenous young people with cognitive disabilities and mental health issues*' report outlines the disturbing fact that young Indigenous people in juvenile justice were at least four times more likely to have an intellectual disability than the general population.¹¹¹ It is clear that the Australian Government must take further steps to divert young Indigenous people away from the criminal justice system in order to ensure compliance with Article 24 of the *ICCPR*.

T.9 Care and Protection

This section updates the information commencing at page 226 of the NGO Report.

112. In January 2009, the Australian Institute of Health and Welfare released its *Child Protection Australia 2007-08 Report*, which revealed that the number of children in out-of-home care in Australia has risen by almost 115 per cent over the last decade – from around 14,500 children in 1998 to 31,166 children in 2008.¹¹²
113. The Australian Government is currently working with all levels of government and non-government groups on a National Child Protection Framework,¹¹³ which will outline a strategic approach to better protect children including:
- (a) a new approach to improving the safety and wellbeing of children, which does not focus solely on statutory child protection systems;
 - (b) addressing child abuse and neglect via a public health model approach, placing a stronger emphasis on the role of universal services; and

¹⁰⁹ Organisation for Economic Co-operation and Development (OECD), *Starting Strong II: Early Childhood Education and Care* (2006), available at http://www.oecd.org/document/63/0,3343,en_2649_39263231_37416703_1_1_1_1.00.html.

¹¹⁰ Ibid.

¹¹¹ Australian Human Rights Commission, 'Report Calls for Programs that Divert Young People from Incarceration' (Press Release, 14 November 2008), available at http://www.hreoc.gov.au/about/media/media_releases/2008/124_08.html.

¹¹² Australian Institute of Health and Welfare, *Child Protection Australia 2007-2008* (2009), available at <http://www.aihw.gov.au/publications/index.cfm/title/10687>.

¹¹³ National Child Protection Clearinghouse, *Protecting Australian Children* (2008), Australian Institute of Family Studies, available at <http://www.childsafety.qld.gov.au/child-protection/documents/national-approach-for-child-protection-factsheet.pdf>.

- (c) early intervention services to prevent child abuse and neglect, and better support vulnerable families.
114. 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. 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.

Additional Proposed Recommendation for Concluding Observations

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

Article 27 — Minority Rights

V. MINORITY RIGHTS

V.3 African Communities

This section updates the information commencing at page 240 of the NGO Report.

115. In December 2008, the Victorian Equal Opportunity and Human Rights Commission released a report on the experiences of young people in the Australian-Sudanese community in Melbourne.¹¹⁴ The 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.

¹¹⁴ Victorian Equal Opportunity and Human Rights Commission, *The experiences of Australian-Sudanese young people*, available at http://www.humanrightscommission.vic.gov.au/pdf/rights_of_passage.pdf.

Case Study 1¹¹⁵

A young Sudanese person was in a local mall with his girlfriend when approached by a police officer yelling at him that he had failed to attend a court case. The young person was extremely humiliated and was taken to the police station to clarify the situation. The police officer read out the paper work and then realised it was the wrong person. The police officer said he looked like another Sudanese person. No apology was received. The young person was too scared to make a complaint.

Case Study 2¹¹⁶

One youth worker who approached a school to accept an Australian-Sudanese client was asked by a teacher at the school: 'Is he going to be a lot of trouble like the other Sudanese young people? I don't think we are equipped to cater for him, why don't you try another school?'

116. Another major area of concern is the limited access to employment opportunities of Sudanese young people who reported many experiences of discrimination in this area. Employment provides important social and economic participation in the community. Unemployment and underemployment as a result of discrimination are compromising the Sudanese community's social integration into Australian society.
117. The Commission's report makes a number of recommendations — in the areas of health, education, services, employment, accommodation, sport and recreation, and policing — that seek to develop a targeted approach to improve the situation and treatment of the Sudanese community.¹¹⁷
118. The ongoing experience of Sudanese and other African communities requires urgent attention and action from governments at both federal and state and territory levels in order to ensure Australia's compliance with Articles 2, 26 and 27 of the *ICCPR*.

¹¹⁵ Ibid.

¹¹⁶ Ibid, 44.

¹¹⁷ Ibid.

Appendix 1 — Executive Summary (UPDATED)

119. Fundamental human rights issues have been at the core of national political and social policy and debate in Australia in the last decade. This submission documents areas in which Australia is falling short of its obligations under the *ICCPR* and focuses on areas that have been the subject of extensive NGO activity and research in Australia.
120. This Executive Summary sets out:
- (a) key developments in the promotion of the *ICCPR* rights since the lodgement of the Common Core Document in July 2007; and
 - (b) key concerns in relation to *ICCPR* breaches and implementation failures in Australia's Fifth Report under the *ICCPR*.

RECENT KEY DEVELOPMENTS IN THE PROMOTION OF *ICCPR* RIGHTS

121. Since its election in November 2007, the current Australian Government has taken a number of significant steps towards the realisation of *ICCPR* 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) issuing a formal parliamentary 'apology' to the Indigenous Stolen Generations;
 - (c) ratifying the *Convention on the Rights of Persons with Disabilities*;
 - (d) acceding to the *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*;
 - (e) indicating an intention to accede to the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment*;
 - (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) 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;
 - (h) reconsidering the former Australian Government's opposition to the UN Declaration on the Rights of Indigenous Peoples;
 - (i) 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;

- (j) 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;
- (k) reforming and repealing certain aspects of the Northern Territory Intervention;
- (l) reforming and repealing certain aspects of Australia's industrial relations system known as 'Work Choices';
- (m) directing the Productivity Commission to undertake an inquiry into the establishment of a national paid parental leave scheme;
- (n) amending federal laws relating to same-sex couples and financial and related benefits;
- (o) committing to 'overhaul' the Indigenous native title system to make it fairer and more efficient; and
- (p) 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.

SIGNIFICANT CONCERNS REGARDING THE REALISATION OF *ICCPR* RIGHTS

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

Article 1 — Right of Self-Determination

- 123. Indigenous Australians continue not to be afforded the right of self-determination and are inadequately politically represented. The Aboriginal and Torres Strait Islander Commission, the only national representative body for Indigenous Australians, was abolished in 2004.
- 124. Without national or regional Indigenous-controlled representative organisations, the ability of Indigenous people to contribute to the formulation of Indigenous policy is extremely limited.
- 125. There are currently no Indigenous representatives in the Australian Parliament.
- 126. 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.
- 127. Australia was one of only four countries (along with the United States, Canada and New Zealand) to oppose the Declaration on the Rights of Indigenous Peoples when it was adopted by the UN General Assembly in September 2007. Since gaining office, the current Australian Government has consulted with Indigenous stakeholders about reversing Australia's opposition to the Declaration. Endorsement of the Declaration would improve engagement between government and Indigenous Australians and would provide a framework for the future recognition and protection of the civil, political, economic, social and cultural rights of Indigenous Australians, particularly the right to self-determination.

128. Although the current Australian Government has recently issued an ‘Apology’ to the ‘Stolen Generations’ (Indigenous children forcibly removed from their families during the 20th century), it has not committed to making adequate reparations for the harm and suffering caused by previous government policies and programs.
129. The current ‘Emergency Intervention’ into the Northern Territory violates the right of Indigenous self-determination through measures including the compulsory acquisition of land, the suspension and direction of representative community councils, and the quarantining of social security payments. 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 blanket and draconian measures.
130. The former Australian Government consistently rejected calls to entrench any form of constitutional rights protection for Indigenous Australians, taking the position that there is already sufficient rights protection in Australia. This is despite the fact that the ‘race power’ in the Australian Constitution has been held by the High Court of Australia to permit the Australian Government to pass both beneficial *and* detrimental legislation in relation to persons of a particular race.
131. Access to and control over traditional lands continues to be a major human rights issue for Indigenous Australians. The *Native Title Act 1993* (Cth) establishes an onerous standard and burden on Indigenous people seeking to gain recognition and protection of their native title. The current Australian Government is seeking to ‘overhaul’ the native title system to provide a flexible and less technical approach to native title.
132. Changes to the education policy in the Northern Territory have the potential to seriously threaten the existence of many Indigenous languages.

Articles 2 and 26 — Treaty Entrenchment and Non-Discrimination

133. The *ICCPR* is not incorporated into Australian domestic law and is not directly justiciable or enforceable in Australia. Australia remains the only developed state in the world without a national bill or charter of rights.
134. The current Australian Government has announced a national public consultation regarding the legal recognition and protection of human rights and responsibilities in Australia, however the terms of reference for the consultation rule out the option of a constitutional ‘bill of rights’ and do not commit the Australian Government to any further legislative measures to protect human rights.
135. Australia is a party to the First Optional Protocol to the *ICCPR*. However, the Human Rights Committee’s Views are not directly enforceable or justiciable under Australian law and no effective domestic mechanisms have been established to promote and monitor implementation of, and compliance with, the Human Rights Committee’s Views. The former Australian Government considered the Human Rights Committee’s Views to be non-binding and frequently rejected them outright.

136. While the death penalty is not currently available in any Australian state or territory (as a result of local legislation), or for federal crimes, the failure of the Australian Government to incorporate the Second Optional Protocol to the *ICCPR* into domestic law means that the reintroduction of capital punishment in Australia under state laws remains a possibility.
137. There are significant regulatory gaps in the human rights obligations of Australian corporations, particularly in respect of activities outside Australia.
138. Australia has yet to formulate a National Action Plan for human rights education. No formalised human rights education exists in any state or territory.
139. The right to non-discrimination is protected in a piecemeal way and Australian equal opportunity and anti-discrimination laws do not cover all areas outlined in Article 2 of the *ICCPR*. Furthermore, the laws fail to adequately address the issues of substantive equality, direct discrimination and systemic discrimination, and provide for numerous exceptions and exemptions that are inconsistent with the *ICCPR*.
140. There are a number of communities and groups that do not enjoy *ICCPR* rights on an equal basis in Australia, including particularly:
- Indigenous Australians;
 - women;
 - people with disability;
 - people from non-English speaking backgrounds;
 - homeless people;
 - gay, lesbian, bisexual, transgender and intersex people;
 - children and young people;
 - diverse religious communities; and
 - older persons.

Article 3 — Equal Rights of Men and Women

141. Australian women remain significantly under-represented in many aspects of political and public life and at managerial and executive levels of business.
142. Women remain significantly disadvantaged compared to men in relation to key indicators of well-being, including income, access to health, education, housing and political representation. Indigenous women, women from non-English speaking backgrounds and women with disability are particularly disadvantaged.
143. Violence against women continues to occur at appalling levels in Australia. While the Australian Government has implemented a 'Women's Safety Agenda' initiative, the resources allocated to both prevention of violence and assistance for women and children who experience violence are inadequate.

Article 4 — Permissible Derogations in Time of Public Emergency

144. Aspects of the Northern Territory Intervention and Australia's counter-terrorism laws substantially limit *ICCPR* rights, including non-derogable rights. These limitations have been justified by reference to an 'emergency' in Northern Territory Indigenous communities and the 'War on Terrorism' respectively. However, Australia has not complied with the requirements of Article 4, which provides for permissible derogations in times of public emergency.

Article 6 — Right to Life

145. The state of Indigenous health in Australia results from and represents serious human rights breaches. Indigenous Australians do not have an equal opportunity to be as healthy as non-Indigenous Australians. Many Indigenous Australians do not have the benefit of equal access to primary health care and many Indigenous communities lack basic determinants of the right to life, such as adequate housing, safe drinking water, electricity and effective sewerage systems. Average life expectancy for Indigenous Australians is 17 years shorter than that of non-Indigenous Australians.
146. The death of Indigenous Australians in custody continues to be of serious concern, despite the recommendations of the Royal Commission into Aboriginal Deaths in Custody over 15 years ago. In 2003, 75 per cent of deaths in custody were of Indigenous Australians detained for minor infractions, such as public order offences.
147. In recent years, Australia has weakened its opposition to the death penalty in the Asia-Pacific region, including in relation to Australian citizens, taking the position that it is inappropriate to intervene in the internal affairs of a foreign country. The arrests and subsequent convictions of nine Australians for drug trafficking in Bali resulted from the provision of agency-to-agency assistance, intelligence and evidence by the Australian Federal Police (**AFP**). Three of the 'Bali Nine' currently face the death penalty in Indonesia.
148. Climate change is a significant threat to human rights, including the right to life, in Australia and the Asia-Pacific. Australia's response to climate change focuses primarily on the economic aspects of the threat and inadequately references the human rights issues and obligations, including particularly with respect to people displaced by climate change.
149. At least 100,000 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.

Articles 7 and 10 — Freedom from Torture and Other Cruel Treatment

150. There are insufficient safeguards in Australia's counter-terrorism laws to ensure compliance with the *ICCPR*. Since the events of 11 September 2001, the Australian Government has introduced nearly 50 pieces of 'anti-terrorism' legislation. In the absence of a federal charter of rights, these laws have not been adequately assessed against, or counterbalanced by, human rights. Provisions that permit or enable prolonged solitary confinement and incommunicado detention — including orders that may prohibit and prevent a detainee from

- contacting *anyone* at *any time* while in custody — raise serious concerns under the prohibition against torture and ill-treatment.
151. The conditions of detention of a number of individuals charged with various offences under Australia's counter-terrorism laws raise serious issues with respect to humane treatment in detention. Of particular concern are the restrictiveness and austerity of the conditions of detention of terrorist accused, the reversed burden of proof in bail applications and the very limited circumstances in which bail can be granted.
152. Contrary to the absolute prohibition against torture, Australian law contains a number of exceptions permitting evidence obtained contrary to that prohibition to be used in a proceeding.
153. The Australian Government has refused to thoroughly investigate serious allegations of the torture of Australian citizens, including Mamdouh Habib and David Hicks. The Australian Government has adopted this position notwithstanding substantial evidence that, at least in the case of Mr Habib, Australian officials were consulted about Mr Habib's treatment by authorities after his arrest in Pakistan and his proposed rendition to Egypt by the United States.
154. From 1992 until July 2008, Australia maintained a policy of indefinite mandatory detention of asylum seekers. While the current Australian Government has recently outlined proposed reforms to Australia's asylum seeker policy, including an end to the policy of mandatory immigration detention, the *Migration Act 1958* (Cth) (***Migration Act***) has not yet been amended and continues to provide for mandatory immigration detention.
155. Aspects of immigration detention raise serious concerns relevant to the prohibition against torture and ill-treatment, including the prolonged and indeterminate period of detention, detainees' lack of access to legal advice and information, overcrowding, separation of families, deleterious mental health effects and lack of access to adequate health care.
156. The fundamental principle of non-return to face torture or death has not yet been enacted in Australian domestic law. For example, the *Migration Act* does not prohibit the return of a non-citizen to a place where that person would be at risk of torture or ill-treatment. This is of particular concern given that:
- the Australian Government has repeatedly disclaimed any responsibility for the subsequent torture or cruel treatment of persons who are removed; and
 - there is substantial evidence that asylum-seekers who have been returned by Australia to their country of origin have been tortured and even killed.
157. Immigration officials exercise extraordinary powers, often without adequate training, management or oversight.
158. Unacceptable conditions in Australian prisons, including overcrowding and lack of access to adequate health care treatment, raise issues in relation to the prohibition against torture and may constitute cruel, inhuman or degrading treatment or punishment.

159. In most Australian jurisdictions, there are no, or inadequate, independent prison inspectorates. In many states and territories, the correctional inspectorates are part of, and report to, the government departments responsible for prison administration and do not publish their reports or recommendations.
160. Prisoners as a group are characterised by significant social and psychological disadvantage. They 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 programmes.
161. There is significant evidence that mental health care in Australian prisons is manifestly inadequate and may amount to a level of neglect that constitutes degrading treatment or punishment.
162. The widespread use of solitary confinement (or 'segregation' as it is also known) as a management tool for people incarcerated in Australian prisons is an issue of significant concern, particularly in regard to those incarcerated who are also suffering from a mental illness.
163. Women in prison present with significant and inadequately addressed health needs and face systemic and structural discrimination, including with respect to invasive and routine strip searches and oppressive disciplinary regimes.
164. Indigenous peoples in Australia are among the most highly incarcerated peoples in the world. Despite Indigenous Australians representing approximately two per cent of the Australian population, they comprise around 24 per cent of the prison population.
165. The number of police shootings is concerning, particularly in situations where death may have been avoidable through adequate legislation regarding the use of firearms and adequate education and training of police officers.
166. Tasers guns have been deployed for use by officers of the Australian Federal Police and the Western Australian, New South Wales, Queensland and South Australian police forces.
167. A number of deaths involving public hospital mismanagement and negligence raise concerns with the obligations of the Australian Government to take positive steps to ensure the provision of adequate health care.

Article 8 — Freedom from Slavery, Servitude and Forced Labour

168. Australia has not formulated a comprehensive, effective strategy to combat the trafficking of women and children and to address exploitation resulting from sexual servitude or 'debt bondage'.
169. 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.
170. Prisoners are not fairly remunerated for their work and are often penalised through loss of other opportunities or privileges for refusing to undertake paid work. They are not provided with adequate opportunities to acquire vocational skills to assist them to find post-release

employment and are not equally protected in relation to workplace injury as compared with other workers.

Article 9 — Freedom from Arbitrary Detention

171. From 1992 to July 2008, successive Australian Governments maintained a policy of mandatory immigration detention. This regime was manifestly arbitrary in that: there was no consideration of the particular circumstances of each detainee's case; detention was not demonstrated or evidenced to be the least invasive means of achieving the government's policy objectives; the detention was indefinite and often prolonged; and substantive judicial review of the lawfulness of detention was non-existent or inadequate.
172. In July 2008, the Australian Government outlined proposed reforms to Australia's immigration detention scheme. While these reforms signal a significant and positive departure from the previous government's immigration detention policies, three groups will continue to be subject to mandatory detention: all unauthorised arrivals, for management of health, identity and security risks to the community; unlawful non-citizens who present unacceptable risks to the community; and unlawful non-citizens who have repeatedly refused to comply with their visa conditions.
173. The *Migration Act* continues to provide that a stateless asylum seeker who cannot be removed from Australia despite cooperating with authorities may be kept in immigration detention for the rest of their life.
174. The Australian Government has re-opened immigration detention centres on Christmas Island, including a new detention centre that 'looks and feels like a high-security prison'.
175. Many aspects of Australia's counter-terrorism measures raise serious concerns in relation to Article 9 of the *ICCPR*, in particular the regimes relating to preventative detention and control orders. Under the preventative detention regime, an individual can be held for up to 14 days on the basis of information that has been virtually untested, with limited contact with the outside world and no ability to appeal or challenge their detention.
176. Indigenous Australians continue to be disproportionately affected by mandatory sentencing legislation. Mandatory sentencing laws also continue to disproportionately affect children and young people.
177. Many disadvantaged and vulnerable groups experience being targeted by law enforcement officials. For example, in the Northern Territory, a significant proportion of policing targets Indigenous Australians for minor offences. Other groups targeted by police include recently arrived migrants, homeless people and people with disability.

Article 12 — Freedom of Movement

178. Control orders and preventative detention orders, particularly under Australia's counter-terrorism legislation, may subject a person to a wide range of restrictions of liberty, movement and association. Of particular concern is the fact that such orders are often administrative in nature and not the result of any court ruling.
179. Freedom of movement for people with disability is still, in some cases, restricted by many barriers to the built environment and various transportation methods.

Article 13 — Procedural Rights against Expulsion

180. Pursuant to section 501 of the *Migration Act*, the Minister for Immigration may remove from Australia people who do not meet the ‘character test’, including long-term permanent residents. In 2006, a Commonwealth Ombudsman’s investigation into the cancellation of long-term permanent residents’ visas under section 501 identified significant errors, omissions and inaccuracies in the application of the test.
181. Under section 16 of the *Migration Act*, a foreign visitor to Australia can have their visa cancelled if they are assessed by the Australian Security Intelligence Organisation (**ASIO**) to be a risk to Australian national security. ASIO conducts security assessments in private and does not disclose reasons for, or information considered in making, a security assessment. Further, an independent merits review of an adverse security assessment by ASIO is not available to visa holders.

Article 14 — Right to a Fair Trial

182. In Australia, legal advice and representation for marginalised and disadvantaged groups is provided primarily by legal aid commissions and community legal centres. Current legal aid funding arrangements, together with manifestly inadequate funding for community legal centres, constitute significant impediments to access to, and the administration of, justice.
183. Inadequate funding of legal aid commissions has led to a significant raising of applicant eligibility criteria, meaning that legal aid is, practically, only available to the very poor and predominantly in relation to criminal matters. Minimal assistance is available with respect to civil and administrative law matters, even where they pertain to fundamental human rights.
184. There are many aspects of Australia’s counter-terrorism measures that raise concerns in relation to the right to a fair hearing and the rule of law, including particularly in respect of control orders, preventative detention orders, and questioning by ASIO.
185. A number of Australian jurisdictions have abolished the rule against double jeopardy.
186. Under Australian law, there is no enforceable right to compensation for unlawful arrest, conviction or detention. Contrary to expert recommendations, the Australian Government has not established an independent body to investigate, correct and compensate wrongful arrest, conviction and detention.
187. Prisoners are increasingly subject to restrictions and conditions that impair and interfere with their rights to a fair hearing and to access to justice, including with respect to judicial oversight of the conditions of detention, access to legal resources and access to legal representation.
188. Many Indigenous Australians who come into contact with the justice system have little comprehension of what is happening and how the legal system operates. This is compounded by the under-funding of Aboriginal and Torres Strait Islander Legal Services and lack of access to Indigenous interpreters.

Article 15 — Prohibition of Retroactive Criminal Laws

189. Legislation in a number of Australian jurisdictions provides for the continued detention and supervision of certain prisoners beyond their sentence, including in circumstances where the legislation was not in force at the time of the conviction.
190. In New South Wales, a series of legislative amendments has resulted in the retrospective application of effective life sentences for certain offenders who were sentenced when they were juveniles.

Article 17 — Right to Privacy

191. The legal safeguards of privacy in Australia remain limited. Neither the Australian Constitution nor any state or territory constitutions contain any express provisions relating to privacy.
192. The unauthorised collection and disclosure of information privacy is protected in a limited way by legislation and the common law.
193. A recent Australian Law Reform Commission report on privacy recommends 295 changes to privacy laws and practice and identifies 10 key areas of concern, including: children and young people; credit reporting; health; data breach notification (fraud and identity theft); emerging technologies; and creating a statutory action for serious invasion of privacy.
194. Proposals for a national ‘access’ (or identity) card contain inadequate privacy protections and would impact detrimentally on certain marginalised groups, including homeless people.
195. The use of closed circuit television cameras (**CCTV**) by both public authorities and private organisations is increasing. The use of CCTV in public places raises significant privacy issues and impacts disproportionately on homeless people, young people and other groups reliant on public space. There are significant gaps in the legislative framework regarding video surveillance in public places.
196. Police ‘stop and search’ powers are overly broad and inadequately regulated, resulting in disproportionate interferences with the right to privacy and alleged victimisation of groups such as Indigenous Australians, Muslims and African migrants.
197. Prisoners are subject to significant interferences with their right to privacy beyond those that are necessary by consequence of incarceration, including with respect to their bodily integrity, correspondence, and access to family and friends.
198. In a number of Australian jurisdictions, landlords may summarily evict tenants, including public housing tenants, without providing any reason for the eviction or attempting to assist the tenant to find alternative accommodation.

Article 18 — Freedom of Thought, Conscience and Religion

199. Australian legislation inadequately prohibits discrimination or vilification on the ground of religion.
200. Many aspects of Australia’s counter-terrorism measures raise concerns in relation to Article 18 of the *ICCPR* and, in practice, impact disproportionately and detrimentally on Australia’s Muslim and Arab population.

201. Following the events of 11 September 2001, anti-Muslim and anti-Arab prejudice has increased and Australia's Muslim and Arab community has reported 'a substantial increase in fear, a growing sense of alienation from the wider community and an increasing distrust of authority'.

Articles 19 and 20 — Freedom of Expression

202. The right to freedom of expression is not comprehensively protected under Australian law. Although the High Court of Australia has found an implied 'freedom of political communication' in the Australian Constitution, this is limited in its protection to communications pertaining to Australia's system of representative and responsible government.
203. A recent independent audit of the state of free speech in Australia disclosed that, in the absence of comprehensive constitutional or legislative protection of freedom of expression, free speech has been significantly eroded in Australia over the last 10 years.
204. While NGOs play an important role in the promotion and protection of human rights, including through advocacy and political activities, government funding programs and taxation laws operate to 'silence dissent', and substantially fetter the ability of NGOs to engage in lobbying and advocacy for human rights.
205. While anti-vilification legislation has been enacted in most Australian jurisdictions, there remain significant gaps and inconsistencies. Significantly, there is no federal prohibition against religious vilification.
206. Many of Australia's counter-terrorism measures, including the law of sedition and the overly broad definitions of 'terrorist acts' and 'terrorist organisations', interfere arbitrarily and disproportionately with the right to freedom of opinion and expression.
207. Many people with disability in Australia, including deaf and blind people and those with a hearing or vision impairment, do not enjoy the freedom to seek, receive and impart information and ideas on an equal basis with others.
208. In recent years, in some Australian jurisdictions, prisoners' access to certain publications and media has been arbitrarily and disproportionately limited.

Articles 21 and 22 — Freedom of Assembly and Association

209. Provisions of Australia's counter-terrorism laws are overly broad and criminalise mere association rather than conduct. The power of the Australian Government to proscribe or ban organisations under counter-terrorism laws is inadequately regulated.
210. A legislative practice has arisen, most recently and strikingly in New South Wales, by which the rights of freedom of assembly and association, together with freedom of expression, have been limited for the duration of major public events, and in the areas in which those events have been situated. Recent examples include the 2007 meeting of the Asia Pacific Economic Council, and the 2008 hosting of World Youth Day, both of which took place predominantly in Sydney, New South Wales.

211. While the former Australian Government's industrial relations policy, 'Work Choices', protected the right of workers to join trade unions, it substantially limited the right to freedom of association, including by denying employees the right to engage in collective bargaining or the right to be represented by their union in negotiations.
212. The right to strike is not protected by Australian law and is denied to many workers in many situations.

Article 23 — Protection of the Family

213. Recent amendments to the *Family Law Act 1975* (Cth) concerning the care of children following family separation prioritise parents' claims to equal custody at the expense of the principle that the best interests of the child are paramount in deciding where a child will live and with whom the child will spend time.
214. Australia remains one of only two OECD countries without a national paid maternity leave scheme.
215. The Attorney-General's Department has identified at least 100 Australian laws that discriminate against same-sex couples and their families and have committed to make changes to ensure equality.
216. Australian immigration law, policy and practice may interfere substantially with the right to family, particularly in cases where:
- there are moves to deport a non-citizen family member;
 - a family member is denied the ability to bring family members to Australia; or
 - entry is denied to an individual seeking to join family members already residing in Australia.
217. Indigenous parents and parents with disability are disproportionately likely to have their children removed by child-protection services.
218. Australian prisoners frequently report difficulties in maintaining a relationship with their families and children.

Article 24 — Protection of Children

219. A major report by the Australian Law Reform Commission and the Human Rights and Equal Opportunity Commission, *Seen and Heard: Priority for Children in the Legal Process*, identified significant gaps in the legal rights and protection of children and young people in the legal system. The recommendations of this report have been inadequately enacted.
220. Mandatory sentencing laws have a particular impact on young people and disproportionately affect young Indigenous Australians, leading to a racially discriminatory impact on their rate of incarceration.
221. Other areas of the juvenile criminal justice system that do not adequately protect the rights of children include the availability and conditions of bail, the detention of juveniles in adult facilities, the public identification of children in criminal proceedings and the use of curfews and 'move on' laws.

222. Aspects of Australia's counter-terrorism laws do not adequately protect the rights or interests of children, and permit juveniles to be detained and questioned for up to seven days without charge.
223. While recent reforms to Australia's immigration policy are significant and positive, refugee and asylum seeker children and families remain inadequately protected. In particular, the non-detention of children is not legislatively guaranteed.
224. Australia's childcare system is the third worst in the developed world and Australian Government spending on early childhood education is the worst in the developed world.
225. A range of groups confront significant barriers to education and do not have equal access to educational opportunities, including children with disability, Indigenous children, children from low income families, and children from rural and remote areas.
226. Further strategies and resources are required to address the issues of bullying, truancy and exclusion from schools.
227. The level of support provided for children with disabilities to attend mainstream schools is manifestly inadequate, resulting in much lower levels of secondary school completion.
228. Indigenous children and young people experience significant disadvantage in the substantive protection and realisation of their rights, including with respect to health, the criminal justice system and education.

Article 25 — Rights of Political Participation

229. Women, Indigenous Australians and people with disability are significantly under-represented in many aspects of public and political affairs.
230. The right to vote is not explicitly protected in the Australian Constitution or by any federal legislation. In 2006, amendments were made to the *Commonwealth Electoral Act 1918* (Cth) which further disenfranchise young people, homeless people, people with disability and prisoners.
231. Successive Australian governments, both federal and state and territory, and agencies have not taken adequate steps or measures to ensure practical realisation of the right to vote for certain vulnerable groups, including in particular homeless people and people with disability.
232. The current regulation of political funding in Australia is inadequate to ensure that the democratic process is accessible and accountable to the degree required by Article 25 of the *ICCPR*.

Article 27 — Minority Rights

233. A significant gap exists between Indigenous and non-Indigenous Australians relating to, among other things, standards of living and health, political participation, the right of self-determination, the administration of justice, land rights, access to adequate housing and education.
234. There is no prohibition of discrimination or vilification on the ground of religion at a federal level.

235. It has been reported that as a consequence of increasing anti-Muslim and anti-Arab prejudice, many Muslim and Arab communities feel alienated from the wider community and public authorities.
236. The former Australian Government made a number of negative and critical statements about the Sudanese community and the alleged inability of the community to integrate into mainstream Australian society. This has led to a culture of fear, poor integration and system racism against the Sudanese community in Australia.

Article 50 — Federalism

237. The legislative protection, enforceability and justiciability of *ICCPR* rights varies significantly across the Commonwealth and Australian states and territories.
238. The Australian Parliament has the constitutional power to give legislative effect to the *ICCPR* across the Commonwealth and all states and territories.
239. The State of Victoria and the Australian Capital Territory have each recently enacted legislation to give effect to many of the human rights contained in the *ICCPR*.
240. In the States of Tasmania and Western Australia, independent consultative committees, appointed by government, have recommended the enactment of specific human rights legislation. To date, however, neither the Tasmanian nor Western Australian governments have implemented these recommendations.
241. At the national level, the Australian Government has committed to a national public consultation regarding the legal recognition and protection of human rights and responsibilities in Australia. The timing, scope and parameters of this proposed consultation have not yet been announced.

Appendix 2 — Proposed Recommendations for Concluding Observations (UPDATED)

Article 1 — Right of Self-Determination

THAT the recent formal apology to Indigenous Australians be congratulated.

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 repeal those aspects of the Northern Territory Intervention legislation that are incompatible with domestic and international human rights standards and fully reinstate the operation of the *Racial Discrimination Act 1975* (Cth).

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 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 the Australian Government positively consider endorsing the Declaration on the Rights of Indigenous Peoples.

THAT the Australian Constitution be amended to enshrine the prohibition against racial discrimination and to provide that the 'Race Power' may only be used to the benefit, and not to the detriment, of persons of a particular race.

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.

Articles 2 and 26 — Treaty Entrenchment and Non-Discrimination

THAT Australia incorporate comprehensive legislative protection of the rights contained in the *ICCPR* and ensure that Covenant rights are applicable, enforceable and justiciable in domestic courts.

THAT the Australian Government establish effective domestic mechanisms to ensure and monitor implementation of and compliance with Views under the First Optional Protocol to the *ICCPR* and *Concluding Observations of the Human Rights Committee*.

THAT the Australian Government legislate to ensure that Australian corporations respect human rights, including in respect of their extraterritorial activities.

THAT the Australian Government immediately reinstate the operation of the *Racial Discrimination Act* in respect of all aspects of the Northern Territory Intervention.

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, 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 enacting:

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

The Australian Government should implement the recommendations of the Australian Citizenship Test Review Committee as a matter of priority.

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 accede to the *Optional Protocol to the Convention on the Rights of Persons with Disabilities*.

THAT all Australian jurisdictions enact legislation to prohibit vilification on the ground of disability or impairment.

THAT the Australian Government legislate to comprehensively prohibit discrimination on the grounds of sexual orientation and gender identity, and THAT Australia implement the recommendations of the Human Rights and Equal Opportunity Commission's *Same-Sex: Same Entitlements* report.

THAT the Australian Government legislate to provide for a legal right to equality, as required by Article 26 of the *ICCPR*.

THAT the Australian Government legislate to address issues of substantive inequality, direct discrimination and systemic discrimination against vulnerable communities and groups.

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

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.

THAT the Australian Government enact legislation to prohibit religious discrimination or vilification.

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 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 Life

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 take immediate steps to review, update and implement the recommendations of the Royal Commission into Aboriginal Deaths in Custody and substantially reduce the incidence of Indigenous deaths in prison.

THAT the Australian Government comprehensively legislate, at the national level, to prevent the introduction of the death penalty in any Australian state or territory, or for federal crimes.

THAT Australia desist from cooperating with or assisting with the investigation, prosecution or punishment of an offence in respect of which the death penalty may be imposed or which may result in a person being subject to cruel, inhuman or degrading treatment or punishment.

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 climate affected refugees.

THAT the Australian Government's policy and practice in response to homelessness ensure that people are able to live with dignity and realise all of their civil, political, economic, social and cultural rights.

THAT police in all states and territories be provided with comprehensive and ongoing, non-violent negotiation and dispute resolution education and training.

THAT legislation be enacted at the Commonwealth level and in all states and territories to codify that firearms may only be used by police in the following circumstances:

- (a) where there is an imminent and grave threat to life or likelihood of serious injury; *and*
- (b) as a last resort; *and*
- (c) after providing a clear warning of the intention to use lethal force if the act or omission does not stop; *and*
- (d) after sufficient time for the warning to be observed; *and*
- (e) where the use of the firearm it is proportionate to the risk or threat posed.

Articles 7 and 10 — Freedom from Torture and Other Cruel Treatment

THAT Australia comprehensively review all counter-terrorism laws and practices and take all necessary steps and measures, including legislative measures, to ensure that such laws and practices are compatible with human rights, including particularly the absolute prohibition against torture and other forms of cruel treatment.

THAT Australia comprehensively legislate to absolutely prohibit the use of evidence that has been obtained as a result of torture or other cruel, inhuman or degrading treatment or punishment other than for the purpose of establishing such treatment or punishment.

THAT Australia take all necessary steps and measures, including legislative measures, to ensure that allegations of torture and other forms of cruel, inhuman or degrading treatment or punishment, including by Australian agents abroad or in respect of Australian citizens abroad, be fully investigated and that appropriate reparations be made where such conduct is found to have occurred.

THAT Australia immediately repeal section 189 of the *Migration Act 1958* (Cth) and legislatively abolish its policy of mandatory immigration detention.

THAT, as a matter of priority, Australia ensure that all asylum-seekers who have been detained are provided with adequate physical and mental health care, including routine assessments.

THAT Australia amend both the *Migration Act 1958* (Cth) and the *Extradition Act 1988* (Cth) to comprehensively prohibit the refoulement, extradition or expulsion of a person from Australia in circumstances where they may be exposed to a risk of torture or other cruel, inhuman or degrading treatment or punishment.

THAT Australian law be amended to provide that, under no circumstances, will the Australian Government resort to diplomatic assurances as a safeguard against torture or ill-treatment where there are substantial grounds for believing that a person would be in danger of being subjected to torture or ill-treatment upon return.

THAT all persons involved in the management and administration of the immigration system receive human rights training and that all immigration laws, policies and practices be comprehensively reviewed to ensure that they are compatible with human rights.

THAT Australia enshrine in legislation and practice the principle that prisoners are not to be subject to any deprivations of rights or freedoms that are not a necessary consequence of the deprivation of liberty itself.

THAT Australia take further steps and measures to address overcrowding in prisons.

THAT Australia ensure that all prisoners have adequate access to health care, including mental health care, consistent with the human right to the highest attainable standard of physical and mental health.

THAT Australia develop and implement drug harm prevention and minimization programs in prison, including condom and needle and syringe exchange programs.

THAT Australia ensure that persons with mental illness are not subject to solitary confinement and are provided with access to appropriate treatment in a therapeutic environment.

THAT Australia take immediate steps to ensure that women in prison are not subject to any direct or systemic discrimination, or substantive inequality relative to male prisoners.

THAT all Australian jurisdictions establish independent, effective, publicly accountable and adequately resourced prison inspectorates.

THAT Australia continue its efforts to address the socio-economic disadvantage that, inter alia, leads to a disproportionate number of Indigenous Australians coming into contact with the criminal justice system.

THAT Australia review all mandatory sentencing legislation and take all necessary steps and measures to ensure that such legislation does not adversely impact on disadvantaged groups, particularly Indigenous people, in a manner that is disproportionate or discriminatory.

THAT Australia takes steps, including legislative, budgetary and programmatic measures, to review and implement the recommendations of the Senate Select Committee on Mental Health in *A National Approach to Mental Health – from Crisis to Community*.

THAT Australia relinquish the use of ‘Tasers’ and other weapons that cause severe pain, sometimes constituting a form of torture, and in some cases even death.

THAT all Australian jurisdictions implement comprehensive drug harm prevention and minimisation strategies in prison, including through the provision of condoms and needle and syringe exchange programs.

Article 8 — Freedom from Slavery, Servitude and Forced Labour

THAT Australia formulate a comprehensive strategy to combat the trafficking of women and exploitation resulting from prostitution.

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 9 — Freedom from Arbitrary Detention

THAT Australia immediately repeal section 189 of the *Migration Act 1958* (Cth) and legislatively abolish its policy of mandatory immigration detention.

THAT Australia legislate to require that every decision to keep a person in detention be periodically reviewed so that the grounds justifying the detention can be assessed and THAT full rights of judicial review be reinstated in the migration jurisdiction.

THAT Australia legislate to address the decision of the High Court in *Al-Kateb v Godwin*, which permits the indefinite detention of a stateless person, potentially for life.

THAT Australia comprehensively review all counter-terrorism laws and practices and take all necessary steps and measures, including legislative measures, to ensure that such laws and practices are compatible with human rights, including particularly the right to freedom from arbitrary detention.

THAT Australia review all mandatory sentencing legislation and take all necessary steps and measures to ensure that such legislation does not adversely impact on disadvantaged groups, particularly Indigenous people, in a manner that is disproportionate or discriminatory.

THAT Australia takes steps, including legislative measures, to review and implement the recommendations of the Senate Select Committee on Mental Health in *A National Approach to Mental Health – from Crisis to Community* with respect to Advance Directives.

THAT all Australian jurisdictions ensure that, consistently with the *United Nations Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care*, initial involuntary admission shall be for a 'short period' pending external review and that the review shall take place 'as soon as possible' and certainly within six weeks.

THAT all Australian jurisdictions review the current police complaints mechanisms to ensure that:

- (a) there are robust complaints mechanisms that require an independent body to properly investigate complaints involving police brutality and criminality; and
- (b) there is effective disciplining of police and enforcement of the findings of the independent bodies.

THAT all Australian states and territories ensure that police officers are provided with comprehensive, ongoing education and training to equip them to interact and engage appropriately and sensitively with disadvantaged and vulnerable individuals and groups.

THAT all Australian states and territories develop policies and programs to reduce the use of criminal justice responses and interventions against vulnerable individuals and groups, including through the development of cautionary, diversionary and referral programs.

THAT all Australian states and territories legislate to ensure that any pre-charge detention be for the shortest period possible and, under no circumstances, exceed 24 hours.

THAT all Australian states and territories legislate to ensure that conditions of bail do not place any limits on the human rights of the accused, including in relation to freedom of movement and association, other than so far as is demonstrably justifiable, strictly necessary and proportionate.

Article 12 — Freedom of Movement

THAT Australia legislate to provide that control orders and preventative detention orders may only be made by a court and must be subject to frequent and periodic substantive judicial review.

THAT the Australian Government adopt and strengthen standards pertaining to access to premises and to transportation for people with disability.

THAT the Australian Government review the operation of section 501 of the *Migration Act 1958* (Cth) as a matter of priority and that long-term and permanent residents be excluded from the operation of section 501.

Article 13 — Procedural Rights against Expulsion

THAT section 501 of the *Migration Act* be amended and applied in a manner consistent with the *ICCPR*, including particularly Articles 12, 13, 14, 17, 23 and 24.

THAT Australia amend the *Migration Act 1958* (Cth) to provide that reasons for an adverse security assessment and visa cancellation under section 16 should be disclosed to the person the subject of the assessment, or his or her legal representative and THAT an independent merits review of adverse security assessments by ASIO be available to visa holders.

THAT the Australian Government implement the recommendations of the *Clarke Inquiry into the Case of Dr Mohamed Haneef* as a matter of priority.

Article 14 — Right to a Fair Trial

THAT Australia take steps to ensure greater fairness and equality in access to justice, including by:

- (a) increasing funding to legal aid, community legal centres and impecunious and disadvantaged litigants, particularly for pre-litigation advice to prospective litigants;
- (b) increasing accessibility to courts by simplifying rules of procedure and reducing barriers such as costs and fees;
- (c) providing adequate services to assist individuals in accessing the justice system, including legal aid and free interpreters;
- (d) establishing a disbursements fund to aid pro bono, human rights and public interest matters; and
- (e) establishing model guidelines for government regarding costs in pro bono, human rights and public interest proceedings.

THAT Australia's counter-terrorism law, policy and practice, particularly with respect to control orders, preventative detention orders and questioning by ASIO, be reviewed and reformed to ensure compliance with the right to a fair hearing.

THAT all Australian jurisdictions reinstate the rule against double jeopardy.

THAT Australian law be amended to provide for a right to compensation for unlawful arrest, conviction or detention and THAT Australia establish an independent body to investigate, correct and compensate wrongful arrest, conviction and detention.

THAT Australia ensure that, consistent with the right to a fair hearing and equality before the law, prisoners have adequate access to legal advice and representation, legal resources, and judicial review of conditions of detention.

THAT Australia ensure that the free assistance of interpreters, including particularly Indigenous interpreters, is guaranteed in criminal proceedings and, where necessary for a fair hearing, in civil matters.

Article 15 — Prohibition of Retroactive Criminal Laws

THAT the *Sentencing Act* be amended to ensure that no person shall be subject to a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed.

Article 17 — Right to Privacy

THAT Australia develop legislation to ensure that the conduct and use of video and mass surveillance in public places is consistent with the right to privacy.

THAT Australia enact legislation requiring that police powers to stop and search persons are exercised consistently with human rights, including particularly the right to privacy.

THAT Australia enshrine in legislation and practice the principle that prisoners are not to be subject to any deprivations of rights or freedoms that are not a necessary consequence of the deprivation of liberty itself, including particularly with respect to the right to privacy.

THAT all Australian jurisdictions amend residential tenancy legislation to require that reasons be provided to a tenant for any proposed eviction.

THAT relevant public tenancy laws, policies and practices be amended to require that public authorities assist public tenants to find alternative suitable accommodation prior to any eviction from public housing AND that any such eviction be reasonable, necessary and proportionate.

Article 18 — Freedom of Thought, Conscience and Religion

THAT Australia implement the recommendations of HREOC's *Ismael — Listen* report, to address the issue of discrimination against and vilification of Arab and Muslim Australians.

THAT the Australian Government enact legislation to prohibit religious discrimination and vilification.

Articles 19 and 20 — Freedom of Expression

THAT Australia enact comprehensive constitutional or legislative protection of the right to freedom of expression.

THAT the Australian Government remove any restrictions on public funding to NGOs which may fetter freedom of expression, particularly with respect to the promotion and protection of human rights.

THAT the Australian Government amend the *Income Tax Assessment Act*, and other legislation as appropriate, to recognise 'the advancement of human rights' as a charitable purpose and to increase the ability of NGOs to engage in lobbying and advocacy to promote human rights.

THAT the Australian Government enact legislation to prohibit religious vilification.

THAT Australia undertake a comprehensive review and reform of counter-terrorism laws, including the law of sedition, to ensure that such laws are compatible with the right to freedom of expression.

THAT Australia take steps, including legislative and budgetary steps, to ensure that people with disability in Australia, including deaf and blind people and those with a vision or hearing impairment, enjoy the freedom to seek, receive and impart information and ideas on an equal basis with others.

THAT the Australian Government immediately take all necessary steps, including legislative steps, to implement the recommendations of the Australian Law Reform Commission report, *Fighting Words: A Review of Sedition Laws in Australia*.

Articles 21 and 22 — Freedom of Assembly and Association

THAT Australia undertake a comprehensive review and reform of counter-terrorism laws, including particularly the *Criminal Code*, to ensure that such laws are compatible with the right to freedom of assembly and association.

THAT Australia ensure that industrial relations laws and practices adequately reflect the principle of freedom of association embodied in Article 22.

THAT Australia enshrine the right to strike in legislation.

THAT all Australian jurisdictions undertake a comprehensive review and reform of public space and assembly laws to ensure that such laws are compatible with the right to freedom of assembly and association.

Article 23 — Protection of the Family

THAT Australia ensure children and their families are safe following separation and throughout the family law process by reviewing the effect of family law on their safety, and by committing to implement and resource necessary changes to legislation and policy.

THAT Australia implement a comprehensive national paid parental leave scheme, including compulsory paid maternity leave, consistent 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 *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 same-sex and mixed-sex couples, on terms of equality.

THAT Australia legislate to remove discrimination against same-sex couples and their families, including by implementing the recommendations contained in the Human Rights and Equal Opportunity Commission's report on *Same-Sex: Same Entitlements*.

THAT Australia take immediate steps to ensure minimum entitlements such as personal/carer's leave, compassionate leave and parental leave are afforded to all employees regardless of sexual orientation.

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.

Article 24 — Protection of Children

THAT the Australian Government take immediate steps to review, update and implement the recommendations of the joint report by the Australian Law Reform Commission and the Human Rights and Equal Opportunity Commission, *Seen and Heard: Priority for Children in the Legal Process*.

THAT Australia review all mandatory sentencing legislation and take all necessary steps and measures to ensure that such legislation does not adversely impact on disadvantaged groups, particularly young people and Indigenous people, in a manner that is disproportionate or discriminatory.

THAT Australia undertake a comprehensive review and reform of counter-terrorism laws, including to ensure that such laws are compatible with the rights of children.

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 Convention 138 Concerning the Minimum Age for Admission to Employment* and *ILO Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*.

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.

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

Article 25 — Rights of Political Participation

THAT Australia take immediate and targeted steps, including legislative, administrative and budgetary steps, to ensure practical realisation of the right to vote for all Australians, including particularly young people, homeless people, people with disability and prisoners.

THAT the Australian Government ensure that the current process of electoral reform be directed, inter alia, toward the full realisation of Article 25 of the *ICCPR*.

Article 27 — Minority Rights

THAT Australia take all necessary steps, including legislative, administrative and budgetary steps, to enable and maintain Indigenous culture, language and customs.

THAT the Australian Government enact legislation to prohibit religious discrimination and vilification.

Article 50 – Federalism

THAT Australia enact comprehensive legislative protection of the rights contained in the *ICCPR* and ensure that the rights are applied across all levels and arms of government.

THAT Australia take steps to ensure that all state and territory governments enact legislation to comprehensively recognise and protect human rights.

THAT Australia develop ongoing dialogue at a federal and state level to ensure that lessons learnt in relation to the methods of legislative protection of human rights are shared between both levels of government.