

### **3. Implementation of substantive human rights provisions common to all or several treaties**

#### **F. Role of the reporting process in promoting human rights at the national level**

105. In order to produce comprehensive reports under UN human rights instruments, it is necessary to provide information from Australia's nine jurisdictions. This is a particularly resource-intensive activity at the Commonwealth and State level. Government agencies also consult widely with NGOs during the drafting and evaluation stages.

106. Preparation of the reports provides each jurisdiction with an opportunity to consider the measures it has taken to ensure that Australia's international obligations are implemented.

107. Reports prepared under the various conventions are public documents and are available on the internet and in hard copy. The reports are also tabled in Parliament. Copies of the reports are distributed to NGOs, libraries, academic institutions and Australia's overseas posts.

108. The following government agencies have responsibility for preparing reports under the major UN human rights instruments:

<b>Treaty</b>	<b>Responsible agency</b>
International Covenant on Civil and Political Rights	Attorney-General's Department
International Covenant on Economic, Social and Cultural Rights	Department of Foreign Affairs and Trade
Convention on the Elimination of All Forms of Racial Discrimination	Department of Foreign Affairs and Trade
Convention on the Elimination of Discrimination Against Women	Department of Family and Community Services and Indigenous Affairs – Office for Women
Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment	Attorney-General's Department
Convention on the Rights of the Child	Attorney-General's Department

## F. Role of the reporting process in promoting human rights at the national level

109. Following receipt of Concluding Observations of Committees, the government department responsible for the relevant report publicises the Concluding Observations through NGO channels and government websites, and ensures that all relevant federal departments and State and Territory governments receive the recommendations for review.

## G. Non-discrimination and equality

ICCPR Articles	ICESCR Articles	CAT Articles	CROC Articles	CEDAW Articles	CERD Articles
2, 3, 14, 26, 27	2, 3	12, 13	2, 9, 22, 23, 30	2, 4, 9, 10, 11, 12, 13, 14, 15, 16	1, 2, 3, 4, 5, 6, 7

110. Australia's anti-discrimination legislation is described at paragraph 68 above. A number of recent developments concerning Australia's implementation of the obligations in the articles above are outlined below.

### Non-discrimination

#### *Anti-discrimination legislation changes*

111. The Commonwealth has introduced the *Age Discrimination Act 2004* (AD Act), which prohibits age discrimination in many areas of public life. The AD Act contains exemptions which are designed to balance, to the greatest extent possible, the principle that people of all ages should be able to participate in the community with the legitimate need to take age into account in some circumstances.

112. In 2003, the SD Act was amended to make clear that it is unlawful to discriminate against women because of breast feeding and the act of expressing milk.

113. Most States and Territories have updated their anti-discrimination Acts to prohibit direct and indirect discrimination in a range of areas including employment, education, accommodation and the provision of goods and services on the basis of many attributes, including gender identity, industrial activity, HIV/AIDS status, religious belief or activity, breastfeeding, and sexual orientation.

### ***Disability Discrimination Act—Productivity Commission Review***

114. In 2003, the Australian Government initiated the first comprehensive review of the *Disability Discrimination Act 1992* (Cth) (DD Act). The review consulted with State and Territory governments, key interest groups and affected parties. The review found that the DD Act has been reasonably effective in reducing the overall levels of discrimination and raising awareness of the rights and abilities of people with disability. The review also made a number of recommendations for improving the DD Act's operation. The Australian Government's response accepts 26 of the 32 recommendations either in full, in part or in principle. Implementation of the Government Response will further enhance the benefits of the DD Act and ensure that it continues to provide net benefits to the Australian community as a whole. The Australian Government's response is available at <<http://www.ag.gov.au/PCDDA>>.

## **Equality before the law and equal protection of the law**

### ***Indigenous Australians and the law***

#### **Diversionary and preventative programs**

115. As at 30 June 2006, the age standardised rate<sup>1</sup> of Indigenous imprisonment was 1,668 per 100,000 adult Indigenous population, 13 times more than the non-Indigenous rate. Recognising the serious overrepresentation of Indigenous Australians in the criminal justice system, the Australian Government is actively exploring innovative strategies to divert Indigenous Australians from the criminal justice system through the Prevention, Diversion and Rehabilitation Program.

116. The Australian Government is also working to prevent family violence and sexual assault from occurring through the Family Violence Prevention Legal Services. In addition, as part of its \$21 million National Crime Prevention Program, the Australian Government funded a number of initiatives aimed at addressing issues affecting Indigenous peoples including Indigenous family violence and Indigenous mentoring programs. The Australian Government is also developing a National

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<sup>1</sup> Age standardisation adjusts crude rates to account for age differences between study populations. There are differences in the age distributions between Australia's Indigenous and non-Indigenous populations. In 2001, the proportion of Indigenous peoples aged 18 years and over was 54.6%, compared with 75.8% of non-Indigenous peoples (and 75.3% of the total Australian population)

Indigenous Law and Justice Strategy to recognise and address issues relating to law and justice and crime prevention in Indigenous communities at a national, State and Territory and regional level. A tender for specific Indigenous Legal Aid Services, with the aim of providing culturally inclusive and professional legal aid services to Indigenous Australians, was completed in 2006.

117. The Australian Government is also funding the development of a national study of Indigenous Night Patrols. Early indications are that night patrols play an important role in reducing crime in Indigenous communities. The project will identify models of best practice and will provide a valuable resource for community-based Indigenous organisations.

118. These strategies involve working with the States and Territories to prevent juveniles, particularly Indigenous juveniles, from entering the criminal justice system. An example of this is an agreement between the Government and the NT in 2000, under which the Australian Government provided \$20 million over four years for a juvenile pre-court diversion scheme and jointly funded an Aboriginal Interpreter Service. The Scheme provided that the Courts would only be used where offences committed are of a more serious nature or other diversion options have been tried and failed. There was a strong focus on diverting Indigenous juveniles to culturally appropriate diversion programs developed and delivered by local Indigenous community organisations. A total of 3,496 apprehension cases were dealt with in the first 29 months; of these, 63 per cent were offered diversion.

119. State and Territory governments have also developed, in consultation with Indigenous organisations, justice strategies and programs to reduce the incarceration rates for Indigenous Australians:

- In NSW, Victoria, Queensland, the ACT, and WA, circle-sentencing, *Koori Courts*, *Murri Courts* or Regional Community Conferencing programs have been established with the aim of providing more appropriate sentencing options for Aboriginal and young Aboriginal offenders, and to establish sentencing formats which allow for Aboriginal community involvement and control. A 2005 review of the Koori Courts in Victoria found they had been

## G. Non-discrimination and equality

very successful in reducing repeat offenders, with recidivism rates of 12.5 per cent and 15.5 per cent compared with the general Koori rate of 29.4 per cent.

- Victoria has introduced the *Victorian Aboriginal Justice Agreement (VAJA)*, under which six Regional Aboriginal Justice Advisory Committees meet regularly with government department representatives to discuss justice related issues impacting on the local communities. The Agreement promotes maximum Aboriginal community participation in processes for legislative, policy and program development, service delivery and monitoring and review. The Victorian Government has provided funding of \$26.1 million in the 2006/07 budget for phase two of the VAJA over the next four years.
- In Queensland, parties to the Queensland Aboriginal and Torres Strait Islander Justice Agreement have made a commitment to reduce the incarceration rate of Indigenous peoples in Queensland by 50 per cent by the year 2011. Also, the *Police Powers and Responsibilities Act 2000 (Qld)* creates an additional responsibility on police, when dealing with an Indigenous person, to notify a legal aid organisation if the Indigenous person has not already done so. Questioning must be suspended until a support person has been afforded an opportunity to speak privately with the Indigenous person, and the support person may be present during any subsequent questioning.
- The ACT Government has committed \$1.4 million over four years to establish Australia's first Aboriginal Justice Centre. The Aboriginal Justice Centre will be a community-managed facility that will provide a coordinated approach to Aboriginal and Torres Strait Islander justice programs and services in the ACT.

### **Special measures to accelerate progress towards equality**

#### ***Indigenous Australians***

120. The Australian Government is committed to reducing Indigenous disadvantage. Australian Government actions are founded on a genuine partnership with

Indigenous peoples and follow a number of key themes:

- taking a whole-of-government approach by involving all relevant portfolio Ministers and the States and Territories
- increasing the focus on individuals and their families as the foundation of functional communities
- encouraging and supporting self-reliance and independence from welfare
- strengthening leadership, capacity and governance
- addressing the debilitating effects of substance abuse and domestic violence
- increasing opportunities for local and regional decision-making by Indigenous peoples, and improving program coordination and flexibility to respond to local needs, and
- improving access to mainstream programs and services, so that Indigenous-specific resources can be better targeted to areas of greatest need, particularly to areas where mainstream services do not reach.

121. The Australian Government is committed to addressing the underlying disadvantage confronting many Indigenous peoples, and spent a record \$3.3 billion on Indigenous-specific programs in 2006–2007, with a focus on the key areas of housing, health, education and employment, and targeting resources to those Indigenous peoples in greatest need, particularly those in remote areas. These programs are in addition to other social benefits such as universal health coverage and income support, which are available to all Australians, and Indigenous programs and services funded by State and Territory governments. Information on programs to address Indigenous disadvantage is available under subject-specific parts of this document.

122. In 2006, the Council of Australian Governments (COAG) agreed to a package to address violence and child abuse in Indigenous communities. The Australian Government has committed an additional \$120 million to this package, which focuses on law and order, health, school attendance, support for victims of violence, and corporate governance. COAG also agreed that no customary law or cultural practice

excuses, justifies, authorises, requires, or lessens the seriousness of violence or sexual abuse. All jurisdictions agreed that their laws would reflect this principle.

### **Reconciliation**

123. In addition to the material below, information about other initiatives which contribute to reconciliation are outlined at paragraphs 365–368 (Indigenous family support) and paragraphs 369–76 (addressing past policies of Indigenous child removal).

124. The Australian Government is firmly committed to the ongoing process of reconciliation with Indigenous Australians and is continuing its work on both practical and symbolic measures. The Australian Government has a multifaceted approach to reconciliation and is undertaking initiatives across a broad spectrum of areas that have a positive effect on the everyday lives of Indigenous Australians. Australian Government spending on Indigenous programs has increased by one-third in real terms since 1996 and is at record levels.

125. There is clear evidence that improvements are occurring in areas such as Indigenous health, education, housing, employment and land ownership. The Australian Government is committed to ensuring these positive trends in addressing Indigenous disadvantage are built upon, and the momentum for improvement is increased through the provision of adequate resources.

126. State governments have also initiated programs focusing on reconciliation:

- The Queensland Government is implementing a Reconciliation Action Plan with the aim of removing the barriers to full social and economic participation by Aboriginal and Torres Strait Islander peoples, both practically and symbolically.
- In 2003, the enRICH program (encouraging Reconciliation through Indigenous Culture and Heritage) was introduced through the WA Department of Indigenous Affairs. The enRICH program has been designed to better inform Western Australians about Indigenous peoples, their heritage and culture and the role they play in our past and our future.

### **Native title and Indigenous land ownership**

127. Successive Australian Governments have implemented a range of initiatives in support or recognition of Aboriginal and Torres Strait Islander land rights.

Consequently, approximately 20 per cent of the Australian continent is now owned or controlled by Aboriginal and Torres Strait Islander peoples. The various measures implemented include land rights legislation (relating to rights created by the Australian Government or State and Territory governments), legislation to recognise and protect native title (being Indigenous rights or interests recognised under Australian common law), and purchases of land on behalf of Indigenous Australians.

128. Native title was first recognised in Australia by the High Court of Australia in the decision of *Mabo v Queensland (No 2)*<sup>2</sup>. The *Native Title Act 1993* (Cth) subsequently established a framework for recognising and protecting native title.

129. The Australian Government funds most components of the native title system, including the National Native Title Tribunal, the Federal Court of Australia, Indigenous bodies to represent the interests of Indigenous peoples, and non-government respondent parties, in order to achieve fair, effective and enduring outcomes. Australia's native title legislation recognises and protects Indigenous rights and interests in land or waters, based on continuity of connection with the land or waters in accordance with traditional laws and customs, and where recognition would be compatible with the common law of Australia.

### **Amendments to the Native Title Act in 1998**

130. The *Native Title Amendment Act 1998* (Cth) was the legislative response to a range of judicial decisions, including the *Wik*<sup>3</sup> decision, which accentuated the shortcomings of the original Native Title Act in dealing with rights and interests other than those held by the Crown. In *Wik*, the High Court found that native title could co-exist on pastoral leases, extending the interests able to affect and be affected by native title and thereby broadening the range of stakeholders in the native title system

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<sup>2</sup> (1992) 175 CLR 1.

<sup>3</sup> *Wik Peoples v Queensland* (1996) 187 CLR 1

beyond governments and Indigenous claimants. The relationship between the different rights of parties was left unclear by the *Wik* decision.

131. The 1998 amendments addressed these difficulties, and followed an open and participatory consultation process with all interested parties. The amended Act clarifies the relationship between native title and other rights and gives the States and Territories the capacity to better integrate native title into their existing regimes. The amendments also established a framework for consensual and binding agreements about future activity known as Indigenous Land Use Agreements or ILUAs.

132. Significant progress has been made since the 1998 amendments to the *Native Title Act*. The number of native title determinations, mostly by agreement, continues to increase. As at 30 June 2006, 87 determinations of native title had been made, with 60 of these being determinations that native title exists, and over two-thirds of these with the agreement of the parties (consent determinations). Before the 1998 amendments came into effect, only five determinations had been made (including the original *Mabo* decision).

### **Indigenous Land Use Agreements**

133. Governments or others wishing to undertake activities or development that may ‘affect’ native title can enter into an ILUA. ILUAs are voluntary (but binding) agreements about the use and management of land, made between a native title group and others and can be tailored to meet the needs of particular Indigenous communities.

134. The amended *Native Title Act* ensures that Indigenous Australians have a ‘seat at the table’ in relation to future developments to negotiate benefits for their communities, including financial benefits, employment opportunities, joint management of national parks and heritage protection. ILUAs have proved a popular option since their introduction in 1998, with 248 registered ILUAs as at 30 June 2006.

**Measures to improve the native title system**

135. In September 2005, the Australian Government announced a package of coordinated measures to improve the performance of the native title system. The proposals form part of the Australian Government's broader commitment to helping Indigenous Australians maximise benefits in relation to native title and communal land. The measures, which will comprise legislative and non-legislative initiatives, are primarily directed at improving the processes for the recognition of native title and the resolution of disputes over land which may be subject to native title. The protection of native title rights is fundamental to the reform process.

**Measures to promote Indigenous home ownership on Indigenous land**

136. On 31 May 2006, the Australian Government introduced legislative amendments to the *Aboriginal Land Rights (Northern Territory) Act 1976* into Parliament to facilitate individual, long term leasing on Indigenous held land in the Northern Territory. Home ownership is an important contributor to generating economic independence and inter-generational security and wealth.

137. Under the proposed reforms, Traditional Owners will be able to grant a 99 year head-lease over a township area. Granting a head lease will be entirely voluntary. Traditional Owners and the Land Council will negotiate the other terms and conditions of the head-lease, including any conditions on sub-leasing. Sub-leases may be issued to individual tenants, home purchasers, and business and government service providers. The underlying inalienable title will not be affected.

138. In addition to the legislative amendments, the Australian Government has committed \$104.5m over the next four years to address financial and other barriers faced by Indigenous Australians aspiring to home ownership. This funding will provide up to 460 low interest home loans, the construction of 45 new houses, and programs to build financial literacy and money management skills in Indigenous communities.

139. The Australian Government has invited States to enter into discussions on possible land tenure reform to ensure that all Indigenous Australians living on Indigenous land can access the new home ownership programs.

#### **State and Territory developments**

140. State and Territory governments have adopted a range of measures to assist in the resolution of native title claims:

- The Victorian Government's approach to resolving Native Title claims through mediation is reflected in the Victorian Guidelines for Native Title Proof, and has resulted in agreements such as those with the Wotjobaluk people in 2002 and the Yorta Yorta Nation Aboriginal Cooperation in 2004.
- In 2001, the WA Government established an Office of Native Title, which facilitates the resolution of native title applications, facilitates resolution of native title compensation applications wherever possible by agreement, and develops and implements policies, procedures and practices across Government to ensure efficiency and consistency in the administration of the future act regime.
- In 2005, the Tasmanian Government passed Legislation to transfer ownership of Cape Barren and Clarke Islands to the Aboriginal Land Council of Tasmania (ALCT). Almost 51,000 hectares of land was transferred. In February 2006, a 40 year lease was granted to the ALCT for Eddystone Point (10.5 hectares). The Tasmanian Government is continuing to provide support to allow land management and maintenance activities to be undertaken by the Aboriginal community on transferred land.

141. States and Territories have also taken action to ensure greater community involvement in the management of land and natural resources:

- NSW has developed a number of non-native title strategies including freehold grants of claimable Crown land to Aboriginal Land Councils, an Aboriginal Business Development Program, Indigenous Fishing Strategy, Aboriginal Water Trust and Aboriginal ownership of national parks.

## G. Non-discrimination and equality

- The Victorian Government has established an Aboriginal Land and Economic Development Program to support Aboriginal land initiatives, including the development of land for use by Aboriginal communities to meet cultural, social and environmental interests.
- In the NT, the Indigenous Pastoral Project (IPP) Steering Committee is a consultative group where Commonwealth and NT Government agencies meet with the mainland Land Councils to increase herd numbers on Indigenous pastoral properties and increase the number of Indigenous peoples employed in the pastoral industry in the NT, whilst ensuring that any activity undertaken on Indigenous land meets with the aspirations of the community for their land. The NT Government also provides funding and secretariat support to the Indigenous Mining and Enterprise Task Force (IMETF), a consultative group dedicated to increasing and improving Indigenous employment and contracting opportunities in industry, in particular the mining industry.

### **Traditional forms of economy and cultural heritage management**

142. The role of Indigenous Australians and their rights, interests and knowledge of natural resource management is recognised in the principal Commonwealth environment legislation, the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) which aims to: promote a cooperative approach to the protection and management of the environment involving governments, the community, landholders and Indigenous peoples; recognise the role of Indigenous peoples in the conservation and ecologically sustainable use of Australia's biodiversity; and promote the use of Indigenous peoples' knowledge of biodiversity, with the involvement and cooperation of the owners of the knowledge.

143. An Indigenous Advisory Committee comprising 12 members was established in July 2000 to advise the Minister for the Environment and Heritage on Indigenous issues relevant under the EPBC Act.

144. The EPBC Act also provides protection for places on the National Heritage List. The National Heritage List comprises natural, historic and Indigenous places that are of outstanding heritage value to the Australian nation. For example, one of

the first sites included on the list in 2004 was the Budj Bim National Heritage Landscape at Lake Condah in Victoria's south-west, where thousands of years ago the Gunditjmarra people built a highly sophisticated system of weirs, channels, water races and fish traps so they could grow and harvest fish.

145. The purposes of the Commonwealth *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* are the preservation and protection from injury or desecration of areas and objects in Australia and in Australian waters that are of particular significance to Aboriginals in accordance with Aboriginal tradition. The Australian Government is committed to improving this legislation, and will consult Indigenous groups to obtain their views on the proposed reforms.

146. All Australian States and Territories also have legislation which protects Indigenous archaeological sites and traditions. For example:

- Victoria introduced the *Aboriginal Heritage Act 2006* to preserve and protect Victoria's Aboriginal heritage for future generations, after the need for such legislation was identified as a priority by Aboriginal Victorians during earlier consultations.
- In the NT, the rights of Indigenous peoples to access Crown land and other land managed by the Crown for the purposes of hunting, fishing and gathering in accordance with Aboriginal tradition is preserved in a range of NT legislation. Indigenous peoples in the NT also have participatory and decision-making roles through various consultative frameworks, such as the Aboriginal Fisheries Consultative Committees, the Indigenous Mining and Enterprise Task Force, and the Indigenous Pastoral Project Steering Committee.
- In Queensland, the right of Aboriginal and Torres Strait Islander residents of Indigenous communities to take marine products or fauna by traditional means for consumption by members of the community is specifically protected by a range of legislation. Queensland Government processes also ensure that Aboriginal and Torres Strait Islander peoples, especially Traditional Owners, are consulted and their interests identified in land use and natural resource planning processes.

## G. Non-discrimination and equality

- In New South Wales, hunting, fishing and wildlife protection legislation protect traditional forms of economy by providing licensing exemptions for Aboriginal peoples.
- In WA, the *Aboriginal Heritage Act 1972* provides for the protection of any site or object recognised as possessing heritage or cultural value to Indigenous peoples. Further, the *Fish Resources Management Act 1994 (WA)* contains provisions to protect customary Indigenous fishing activities. The WA Aboriginal Fishing Strategy Working Group has also produced a comprehensive and publicly available draft *Aboriginal Fishing Strategy* to acknowledge and protect customary fishing.

### **Maintenance and promotion of Indigenous languages and records**

147. The Australian Government assists Aboriginal and Torres Strait Islander peoples to maintain and revive Indigenous languages through:

- the administration of the Maintenance of Indigenous Languages and Records (MILR) Program. In 2005–06, the MILR program provided funding assistance for over 80 activities around Australia to conduct language maintenance and revival projects; language recording; production of language materials and curricula; public awareness and advocacy, and development and maintenance of archives
- the implementation of targeted funding assistance to endangered Australian Indigenous languages to counter language loss
- support to Indigenous broadcasting services, including a focus on promoting local Indigenous languages
- the commission of a National Indigenous Language Survey, completed in 2005, to better enable the targeting of programs to address language erosion, and
- the development of State-level Indigenous language maintenance policies.

148. The NT Government established the Aboriginal Interpreter Service in April 2000. With more than 70 per cent of the Indigenous peoples in the NT speaking a

language other than English, the service is intended to meet the need for Aboriginal language interpreters, particularly in the health and criminal justice systems. Currently registered interpreters cover 104 Aboriginal languages/dialects.

**Maintenance and promotion of Indigenous arts and cultures**

149. Australian Indigenous art is the oldest ongoing tradition of art in the world. Aboriginal art has come to the forefront of Australia's national identity in recent years, celebrated by Australians and the world in the opening ceremony of the 2000 Olympic Games. Australia's Indigenous artists have had a major impact on the art world with exhibitions in major galleries around the globe, contributing to an industry that now generates around \$200 million a year nationally.

150. The Australian Government provides funding assistance to approximately 130 Indigenous cultural activities across Australia through the National Arts and Crafts Industry Support program (NACIS) and the Indigenous Culture Support program (ICS) to maintain and promote Indigenous cultures, enhancing Indigenous peoples' right to practise their own culture. Funding is provided for Indigenous art and craft centre operations, business management skills development, business plans, cultural development officers, training in visual arts and craft techniques, festivals and dance performances, exhibition development, media content, ceremonial activities and material gathering.

151. Under the auspices of the Cultural Ministers Council, the Return of Indigenous Cultural Property program plays a significant role in preserving Aboriginal and Torres Strait Islander culture through the return of Indigenous ancestral remains and secret sacred objects. The Department of Families, Community Services and Indigenous Affairs' Repatriation Program facilitates the return of Indigenous human remains held in overseas collections to their communities of origin. The program is governed by a ministerially-approved Policy and Strategy, the Australian Government Policy on the Management of Overseas Repatriation of Indigenous Human Remains and the Australian Government Strategy and Procedures on the Management of Overseas Repatriation of Indigenous Human Remains.

## **Equal rights of men and women**

### ***Mainstreaming gender issues***

152. Gender mainstreaming is an important consideration in Australian Government policy and program development and implementation. One of the important roles that the Australian Government Office for Women (OFW) undertakes is to ensure that the whole of the Australian Government continues to take gender issues into consideration when developing and implementing policies and programs. OFW works closely with other Australian Government agencies in contributing to policy development, monitoring government commitments that are relevant to and have impact on women. It provides advice and comment on the impact of policies and programs on women and highlights important issues for women that are, for example, revealed by research and consultation with non-government women's organisations.

### ***Other Initiatives***

153. The Australian Government has a range of policies, programs and strategies aimed at ensuring equality between men and women. Specific details are available in Australia's most recent report under CEDAW, and under the heading 'R. Right to marry and found a family, protection of the family, mother and children' in this document.

154. State and Territory governments have also taken various steps to promote equity, access and rights for women, including the development of action plans and directions statements to address a range of key concerns and needs for women such as rates of pay, health and well-being, violence and safety, decision-making and leadership, economic security, balancing work, family and lifestyle and justice and civil legal equality.

## H. Effective remedies

<b>ICCPR Articles</b>	<b>ICESCR Articles</b>	<b>CAT Articles</b>	<b>CROC Articles</b>	<b>CEDAW Articles</b>	<b>CERD Articles</b>
2(2) and (3)		14	39	2	6

155. Australia’s main remedies for human rights breaches are described above, under the heading ‘D. General legal framework within which human rights are protected at the national level’. Australia also provides effective remedies required under the human rights treaties in other ways. Specific issues that have received particular attention in recent years are addressed below.

### **Investigation and complaints mechanisms**

#### ***Complaints relating to the conditions of immigration detention centres***

156. The *Immigration Detention Standards* establish a complaints mechanism for people in immigration detention. The Standards require that people in immigration detention be able to comment on or complain, without hindrance or fear of reprisal:

- in the case of any matter relating to the conditions of detention, to the Services Provider, the Department of Immigration and Citizenship (DIAC), HREOC or the Commonwealth Ombudsman
- in the case of a suspected criminal offence, to the police, or
- in the case of suspected child abuse, to the relevant State/Territory welfare agency.

157. The Standards also require that people in immigration detention be informed of their rights and that material advising of the right to complain to HREOC and the Commonwealth Ombudsman be displayed prominently throughout the facilities at all times and be available to people in immigration detention on request. Adherence to these standards is monitored by DIAC staff managing immigration detention facilities.

## **Rehabilitation of victims of torture, or other cruel, inhuman or degrading treatment or punishment**

158. Torture and trauma victims in Australia are predominantly refugees and people who have entered Australia on special humanitarian grounds following their experiences overseas. Specialist torture and trauma services exist in all Australian States and Territories to assist such people. For example, NSW has two specialised services that target survivors of torture and other human rights abuses:

- the Service for the Treatment of Torture and Trauma Survivors which provides counselling and medical support to those who have been tortured or traumatised as part of a refugee experience, and
- the NSW Refugee Health Service which provides assessments and information and generally protects the health of persons with a refugee background living in New South Wales.

159. Further information is available in paragraphs 137–138 of Australia’s Combined Second and Third Reports under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

### **I. Procedural guarantees**

<b>ICCPR Articles</b>	<b>ICESCR Articles</b>	<b>CAT Articles</b>	<b>CROC Articles</b>	<b>CEDAW Articles</b>	<b>CERD Articles</b>
14, 15		12, 13, 14, 15	40		5(a)

160. The general framework in which human rights are protected in Australia is described above, under the heading D. *General legal framework within which human rights are protected at the national level.* Australia provides a range of procedural guarantees as required under the above articles. Particular developments relevant to these obligations are addressed below.

## **Prohibition of reversal of a final decision on conviction or acquittal**

161. In November 2003, Australian governments released the Model Criminal Code Officers Committee's *Discussion Paper on Issue Estoppel, Double Jeopardy and Prosecution Appeals Against Acquittals* for public consultation. The discussion paper recommended that the laws on double jeopardy be changed so that a person acquitted of an offence could be prosecuted for an administration of justice offence or the original or related offence in three circumstances:

- prosecution for an administration of justice offence connected to the original trial
- retrial of the original or similar offence where there is fresh and compelling evidence, and
- retrial of the original or similar offence where the acquittal is tainted.

162. Governments have settled model provisions and are committed to implementing nationally consistent provisions. In 2006, the Council of Australian Governments agreed that reform of the rule against double jeopardy is a priority criminal law policy reform that merits nationally-consistent treatment.

## **Mandatory sentencing regimes**

163. The NT Parliament repealed mandatory sentencing laws for property offences effective from 22 October 2001. The *Juvenile Justice Amendment Act (No 2) 2001* repealed mandatory sentencing for juvenile offenders and the *Sentencing Amendment Act (No 3) 2001* repealed mandatory sentencing for property offences for adults.

164. Mandatory sentencing laws are still in effect in WA. A review of the Western Australian mandatory sentencing provisions in *The Criminal Code (WA)* was tabled in the WA Parliament on 15 November 2001. The review concluded that the provisions have had little effect on the criminal justice system. It found that courts generally sentence adult offenders with the required offence history to periods of imprisonment greater than the minimum 12 months mandated by the legislation. The

## I. Procedural guarantees

review also confirmed the existence of a judicial discretion to impose non-custodial sentences instead of detention.

165. There are also mandatory sentencing provisions in the *Migration Act 1958* (Cth). These impose mandatory minimum prison terms for persons convicted of people smuggling offences.

## J. Participation in public life

<b>ICCPR Articles</b>	<b>ICESCR Articles</b>	<b>CAT Articles</b>	<b>CROC Articles</b>	<b>CEDAW Articles</b>	<b>CERD Articles</b>
1, 24, 25			12, 23(1)	7, 8	5(c)

166. All people in Australia have the right to participate in public affairs, and can do so in many ways. The main institutional forms of participation are described above under the heading 'B. Constitutional, political and legal structure of the State'. Australian governments also take positive action in a number of other areas to facilitate full and equal participation.

### **Citizenship promotion**

167. The Australian Government views citizenship as a cornerstone of Australia's inclusive and culturally diverse society, and a unifying focal point shared by all Australians. For this reason, the Government is promoting Australian citizenship very widely in the community.

168. The citizenship promotion campaign, which commenced in 2001, is designed to encourage those eligible to apply for Australian citizenship to do so, and to promote the value and significance of Australian citizenship with the community. Focal points of the campaign are Australian Citizenship Day celebrated on 17 September and Australia Day, 26 January. For further information see <<http://www.citizenship.gov.au>>.

169. A multimedia program, *Let's Participate: A course in Australian Citizenship*, was introduced in July 2001 to help migrants learn more about Australia's society and institutions and assist their settlement.

### **Dual citizenship**

170. Prior to 4 April 2002, Australians who became a citizen of another country by doing something (such as making an application for another citizenship) with the sole or dominant purpose of acquiring that other citizenship lost their Australian citizenship. Children under 18 of such persons also lost their citizenship, unless their other parent was an Australian. Since that date, Australian citizens are able to become a citizen of another country without losing their Australian citizenship. Those who lost their citizenship when they acquired another citizenship prior to 4 April 2002 can resume Australian citizenship, provided they apply and are eligible under certain criteria.

### **Electoral issues**

171. As noted at paragraph 25, Australia's electoral system is based upon the democratic principles of universal adult suffrage.

172. Efforts are made to encourage all eligible voters to enrol and vote, including those in traditionally low participation groups, for example remote communities, people from culturally and linguistically diverse backgrounds and young people.

173. Efforts are also made to ensure that citizens have an opportunity to engage with governments, and to encourage participation in democratic processes at both federal and State level. For example, under the NT Community Cabinet program, Cabinet Ministers and their senior executives meet local business operators, community leaders and members of the public in their home communities to listen to their ideas and proposals. In QLD, relevant strategies include a Community Cabinet; Regional Ministerial Community Forums; regional sitting of Parliament; e-democracy initiatives, including e-petitions, internet broadcasts of Parliament; and tools and resources to promote and support better community engagement across all agencies

and departments. WA also has a Community Cabinet program and has held regional sittings of Parliament.

174. Legislation passed in June 2006 provides that prisoners serving a sentence of full-time detention for an offence against a law of the Commonwealth or a State or Territory are not entitled to vote, but may remain on the roll, or if unenrolled, apply for enrolment. Those serving alternative sentences such as periodic or home detention, as well as those serving a non-custodial sentences or who have been released on parole, are eligible to both enrol and vote. Prior to this legislation, a prisoner serving a sentence of three years or more was not entitled to vote.

### **Women in political and public life**

175. The Australian Government has noted concerns of NGOs about the representation of women in government and the judiciary. Increasing women's participation in leadership and decision-making positions is a major Australian Government priority.

176. Since 1996, the Australian Government has increased its activities to maximise the number of women appointed on merit to senior positions of power and decision-making. Today there are more women than ever before in Australian politics at the national, State and local levels. In 2006, more than 28 per cent of Commonwealth parliamentarians are women – more than double the international average. Further, in September 2005 the State and Territory governments agreed to a *National Strategy for the Increased Participation of Women on Boards*. The percentage of women on Australian Government Boards continues to rise and stands at 34.3 per cent as at 30 June 2006.

177. Significant appointments of women to senior judicial positions have also recently been made, with the Hon Justice Susan Crennan appointed to the High Court of Australia in November 2005 and the Hon Chief Justice Diana Bryant appointed as the Chief Justice of the Family Court of Australia in July 2004.

## J. Participation in public life

178. The Australian Government has taken a number of initiatives directed towards advancing the participation of women in public life. They include the establishment of a Regional Women's Advisory Council and a leadership and mentoring programs for young women. It also provides funds, through the National Women's Leadership and Development Program, for activities by national non-government women's groups that strengthen the voice of women, improve the status of women and contribute to policy areas that affect women in Australia.

179. Details of specific programs and initiatives of the Australian Government to increase women's participation in political and public life are available in Australia's combined 4<sup>th</sup> and 5<sup>th</sup> report under CEDAW.

180. States and Territories in Australia have also taken a range of steps to improve women's participation in political and public life. These include:

- programs in NSW to support rural women's leadership such as workshops for older women on understanding how decisions are made within government, and a leadership training pilot program for women in isolated communities
- programs in QLD aimed at increasing representation of Indigenous women in government and community leadership positions
- direct communication between women and the Government in the NT through the Women's Advisory Council to the Chief Minister, and
- the establishment of women's registers, with the aim of increasing women's participation on government boards, committees and authorities.

### **Indigenous Australians—participation in decision-making and management**

181. Indigenous Australians have the same rights of participation in public life as all other Australians. The Australian Government recognises the cultural distinctiveness and diversity of Indigenous peoples, and acknowledges the importance of Indigenous peoples being closely involved in the development and implementation of policies and programs.

182. Indigenous Australians have decision-making roles within Indigenous specific organisations (such as Aboriginal housing authorities in the States and Territories) and within mainstream agencies, and advise governments through a range of formal bodies. Most discrete Indigenous communities live on Indigenous owned land and many manage their own local government functions. A large number of Indigenous-controlled organisations are involved in the planning and delivery of government-funded services in areas such as health, housing and employment.

183. The establishment of Regional Indigenous Engagement Arrangements provides an important mechanism for the Australian and State and Territory governments to engage with Indigenous communities about agreed priority areas for joint effort, and promotes the principles of partnership, shared responsibility, and self-reliance. Eighteen proposals have been received and two have been finalised and funded – Ngaanyatjarra Council (Western Australia) under a Regional Partnership Agreement, and Murdi Paaki Regional Assembly (MPRA) (western NSW) under a regional Shared Responsibility Agreement.

### ***The Aboriginal and Torres Strait Islander Commission (ATSIC)***

184. ATSIC was established in 1990 as a Commonwealth statutory authority which would represent and advocate on behalf of Indigenous peoples, advise government on Indigenous policy issues, and deliver a range of services to Indigenous peoples.

185. A review of ATSIC completed in November 2003 led to the Australian Government's decision to abolish ATSIC and establish more effective ways of addressing Indigenous disadvantage. The review found that ATSIC had lost touch with the concerns of Indigenous peoples and no longer had the confidence of the Indigenous community. The Review also concluded that there was an insufficient connection between the national, regional, and local levels of the organisation coupled with a lack of engagement between ATSIC and its constituents at the local level. Only one in five of those eligible to vote in the ATSIC elections did so. The proportion was even less in metropolitan areas.

### ***Establishment of a National Indigenous Council***

186. The National Indigenous Council (NIC) is an appointed advisory body to the Australian Government. Members of the NIC are Indigenous Australians chosen for their expertise and experience in a range of policy areas. The NIC is not a replacement for ATSIC and is not a representative body. While the NIC is the principal source of advice to the Australian Government on Indigenous matters, the Australian Government will also consult other Indigenous boards, committees, organisations or individuals.

187. The new approach focuses more strongly on working closely with Indigenous communities as well as with State, Territory and local governments. This gives Indigenous communities and individuals a more effective voice in the development and implementation of programs which are necessary for self-empowerment. This approach is supported by a number of NGOs.

188. As in other countries, Indigenous Australians are able to develop their own representative structures that, whilst independent of the Australian Government, have legitimacy within their own constituency.

### ***Partnerships in the States and Territories***

189. Australia's State and Territory governments also work closely with Aboriginal and Torres Strait Islander peoples and have implemented a range of measures to promote Indigenous peoples' participation in decision-making and management.

190. As part of its reconciliation framework, COAG agreed that all governments would work together to improve the social and economic well being of Indigenous peoples and communities through the establishment of eight Indigenous Communities Co-ordination Pilots throughout Australia.

191. Other measures undertaken by State and Territory governments include the following:

## J. Participation in public life

- In Victoria, the *Premier's Aboriginal Advisory Council* has been established as the State's peak Indigenous advisory body to Government, and an *Indigenous Community Capacity Building Program* helps Aboriginal community organisations to improve their organisational capacity and community leadership.
- In QLD, a 2003 report, *Hands on Parliament: a parliamentary committee inquiry into Aboriginal and Torres Strait Islander peoples' participation in Queensland's democratic processes*, made recommendations based on strategies to enhance and increase Indigenous participation in various aspects of the democratic process. The Queensland Government has supported most of these recommendations.<sup>4</sup>
- In order to increase the knowledge base surrounding effective Indigenous governance and generate practical approaches, the NT Government is a partner in the Reconciliation Australia/Centre for Aboriginal Economic Policy Research project 'Understanding and Developing Effective Governance in Indigenous Communities'.
- In WA, the *Statement of Commitment to a New and Just Relationship Between the Government of WA and Aboriginal Western Australians* (2001) provides a partnership framework that incorporates and is informed by a series of agreements across a range of key areas, for example the Aboriginal Justice Agreement, signed in 2004.
- Across a number of States and Territories, public sector employment strategies and programs have also been introduced to increase the number of Indigenous peoples in public employment.

### **Participation by children and young people in public life**

192. The Australian Government has established a National Youth Roundtable to create direct dialogue with young Australians to ensure that their views are taken into account in policy-making processes. The Roundtable is made up of young

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<sup>4</sup> A copy of the report and the Ministerial response are available at: <http://www.parliament.qld.gov.au/committees/Comdocs/LegalRev/LCARCR043.pdf>; and <http://www.parliament.qld.gov.au/committees/Comdocs/LegalRev/MinisterialResponses/Report42.pdf>.

people, aged 15 to 24, from all States and Territories, metropolitan and regional areas and from various cultural backgrounds. Roundtable members undertake a series of consultations with their peers across Australia to develop a comprehensive picture of the views and attitudes of young people, which are reported back to Government.

193. State and Territory governments have also established a range of mechanisms to enable children and young people to participate in the development of policies, programs and services affecting them.

194. For instance, in 1999 the Tasmanian Government developed a state-wide participatory mechanism through the establishment of the Tasmanian Youth Consultative Committee (TYCC). The TYCC consists of up to 15 young people between 12 and 25 years of age, from various backgrounds and regions of Tasmania. Its role is to consult with young people on a state-wide basis on issues that impact on young people in Tasmania. TYCC also works on specific projects, including a biennial youth participation conference.

### ***Children's Commissions***

195. Children's Commissions in various States in Australia also work to ensure that the views of children are respected both in their own activities and generally. NSW, Tasmania and Queensland have Children's Commissioners, and Victoria's first Child Safety Commissioner was appointed in June 2004. The WA Government introduced a Bill in 2005 which, once passed, will establish a Commissioner for Children with a broad mandate to consider all issues covering children and young people. The ACT established a Children and Young People Commissioner as part of the Human Rights Commission in 2006, and the NT is also planning to establish a children's commissioner. Children and young people play an active role in decision-making by the Commissioners, and advise the Commissions on strategic directions and activities.

### **Participation by older Australians in public life**

196. The ACT Government has developed strategies to implement the United Nations principles for Older Persons. For example, the ACT Government has

established a Ministerial Advisory Council on Ageing to assist the Government in ensuring that the needs of older Canberrans are met.

197. Tasmania provides funding to the Council on the Ageing (COTA) Tasmania, which is the peak body representing the needs and interests of older people in Tasmania. In June 2005 a Triennial Funding Agreement (2005–2008) was signed with COTA Tasmania, providing longer term funding certainty to undertake such activities as raising community awareness of issues for older people; promoting the positive contribution of older people to their own wellbeing; and effecting improvements in the provision of services for older Tasmanians, particularly in regional areas.

198. The Victorian Government's *Positive Ageing Program* promotes greater inclusion of older people in civic and public life. Specific initiatives include the *Images of Age* program which promotes non stereotypical portrayals of older people in the media, *Age Friendly Communities* which encourages greater responsiveness to the needs and participation of older people in local government; *Age Friendly Workplaces* which encourages small and medium sized employers to attract, retain and develop older workers, and initiatives that improve the access of senior Victorians to the internet and to lifelong learning.

### **Participation by people with disability in public life**

199. The Victorian State Disability Plan 2002–2012 is based on fundamental principles of human rights and social justice and takes a whole-of-government and whole-of-community approach to considering all aspects of life for people with disability. The Plan provides a strong agenda for change, reaffirming the rights of people with disability to live and participate in the community on an equal footing with other citizens of Victoria and reduce the reliance on Government funded supports.

200. The Victorian Electoral Commission (VEC) has developed a Disability Action Plan aimed at improving access to the Victorian electoral system. Further,

## J. Participation in public life

Victoria has recently passed legislation to allow for a trial of electronic voting, giving electors with vision impairment the opportunity to cast a secret vote.

## K. Right of self-determination

<b>ICCPR</b> <b>Articles</b>	<b>ICESCR</b> <b>Articles</b>	<b>CAT</b> <b>Articles</b>	<b>CROC</b> <b>Articles</b>	<b>CEDAW</b> <b>Articles</b>	<b>CERD</b> <b>Articles</b>
1	1				

201. The Australian Government's general views on self-determination are set out at pages 5–11 of Australia's Third Periodic Report under the ICCPR.

202. The Australian Government believes that individuals and groups should be consulted about decisions likely to impact on them in particular, including by giving them the opportunity to participate in the making of such decisions through the formal and informal processes of democratic government, and exercise meaningful control over their affairs. However, the Australian Government does not support an interpretation of self-determination that has the potential to undermine Australia's territorial integrity or political sovereignty.

### **Indigenous people in Australia**

203. The Australian Government recognises the cultural distinctiveness and diversity of Indigenous peoples and acknowledges the importance of Indigenous peoples being closely involved in the development and implementation of policies and programs that impact on them.

204. Indigenous participation in government decision-making and management is addressed at paragraphs 181–191 above.

205. Native Title and traditional forms of economy and cultural heritage management are discussed at paragraphs 127–146 above.

L. Right to life, right to physical and moral integrity, slavery, forced labour and traffic in persons

## **L. Right to life, right to physical and moral integrity, slavery, forced labour and traffic in persons**

<b>ICCPR Articles</b>	<b>ICESCR Articles</b>	<b>CAT Articles</b>	<b>CROC Articles</b>	<b>CEDAW Articles</b>	<b>CERD Articles</b>
6, 7, 8		1, 16	6, 11, 19, 32, 33, 34, 35, 36, 37	6	5(b)

206. Australia is committed to ensuring to people in Australia the right to life and physical and moral integrity, and protection from slavery, forced labour and trafficking in persons. Since 1997, the Australian Government has introduced a number of new laws and policies which enhance protection of these rights.

### **Criminalisation of genocide, war crimes and crimes against humanity**

207. The Rome Statute of the International Criminal Court (ICC) was ratified by Australia on 1 July 2002 and entered into force for Australia in September 2002. This followed the enactment in June 2002 of legislation to facilitate compliance with the Rome Statute.<sup>5</sup> This legislation covers the offences of genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the ICC.

208. These offences have been incorporated into Division 268 of the *Criminal Code Act 1995* with specific reference to torture and inhuman treatment where relevant. These offences operate prospectively from September 2002 and apply to conduct both within and outside Australia. All genocide offences attract life imprisonment. Penalties for crimes against humanity range from 17 years to life imprisonment and war crimes offences attract penalties ranging from 10 years to life imprisonment.

### **Institutions and mechanisms to prevent torture**

209. Acts constituting torture and other cruel, inhuman or degrading treatment or punishment are a criminal offence and/or civil wrong in all Australian jurisdictions. For example, Queensland passed an offence of torture (*Criminal Code* section 320A)

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<sup>5</sup> The *International Criminal Court Act 2002* can be accessed at: [http://www.austlii.edu.au/au/legis/cth/consol\\_act/icca2002303/](http://www.austlii.edu.au/au/legis/cth/consol_act/icca2002303/). The *International Criminal Court (Consequential Amendments) Act 2002* can be accessed at: [http://www.austlii.edu.au/au/legis/cth/consol\\_act/iccaa2002543/sch1.html](http://www.austlii.edu.au/au/legis/cth/consol_act/iccaa2002543/sch1.html)

L. Right to life, right to physical and moral integrity, slavery, forced labour and traffic in persons

in 1997 and criminalised female genital mutilation (*Criminal Code* sections 323A and 323B) in 2000. Further information on the range of legislation criminalising torture and inhuman treatment is available in Australia's most recent report under the CAT.

## **Sexual assault**

210. The Australian Government has implemented several initiatives over recent years under the *National Initiative to Combat Sexual Assault* and the *Partnerships Against Domestic Violence* programs. These programs ended on 30 June 2005 and were replaced by the *Women's Safety Agenda*. Announced in May 2005, this four year program addresses four broad themes: prevention, health, justice and services. The program aims to decrease the impacts of domestic and family violence and sexual assault on the community.

211. In Victoria, the *Crimes (Sexual Offences) Act 2006* aims to reduce the further trauma experienced by children and people with a cognitive impairment by making it easier for them to give evidence in the prosecution of sexual offences. The legislation introduces fairer tests to assess the competence of young children to give evidence and allow evidence of complaints about the alleged abuse made to third parties in certain circumstances. The Victorian Government has also committed significant financial resources to support victims of sexual assault and child witnesses, providing extra prosecution resources, new female forensic nurses and more health and counselling services.

## **Slavery, sexual servitude, trafficking**

### ***Slavery***

212. Under section 270.3 of the *Criminal Code*, it is an offence to possess a slave or exercise over a person any of the powers attaching to the right of ownership, to engage in slave trading, or to enter into any commercial transaction involving a slave. It is also an offence to exercise control or direction over, or to provide finance for, slave trading or a commercial transaction involving a slave. The maximum penalty for these offences is 25 years imprisonment.

### ***Sexual servitude***

L. Right to life, right to physical and moral integrity, slavery, forced labour and traffic in persons

213. Under section 270.6 of the *Criminal Code*, it is an offence for a person to cause another person to enter into or remain in sexual servitude, where the person intends to cause, or is reckless as to causing, that sexual servitude. The offence is punishable by a maximum penalty of 15 years imprisonment. Where the offence is committed against a person under 18, the maximum penalty is 20 years imprisonment.

214. Six of the eight States and Territories (NSW, Victoria, WA, SA, ACT and NT) now also have offences criminalising sexual servitude, including conducting a business involving sexual servitude. The two jurisdictions without specific sexual servitude laws have other criminal offences that could be used to prosecute incidents of trafficking in persons.

215. In 2005, Tasmania introduced the *Sex Industry Offences Act 2005* which provides for an offence (among other things) where a person, for the purpose of inducing any person to provide or continue to provide sexual services in a sexual services business, intimidates, assaults, or threatens to assault any person; or threatens to cause a person to be deported.

### ***Deceptive recruiting***

216. Under section 270.7 of the *Criminal Code*, it is an offence for a person to deceive a second person about the fact that their employment or other engagement will involve the provision of sexual services, where the first person intends to induce that second person into an engagement to provide sexual services. This offence is punishable by a maximum penalty of seven years imprisonment. Where the offence is committed against a person under 18, the maximum penalty is nine years imprisonment.

217. Most States and Territories also have offences which target deceptive recruiting for sexual services.

### ***People smuggling aggravated by exploitation***

L. Right to life, right to physical and moral integrity, slavery, forced labour and traffic in persons

218. Section 73.2 of the *Criminal Code*, which came into force in 2002, criminalises people smuggling aggravated by exploitation where persons are smuggled into a foreign country (whether or not via Australia). Where the conduct occurs wholly outside Australia, this offence only applies to Australian citizens and residents. This offence carries a maximum penalty of 20 years imprisonment.

### ***Trafficking in persons***

219. The *Criminal Code Amendment (Trafficking in Persons Offences) Act 2005* created new and revised trafficking in persons offences in the *Criminal Code*. This comprehensively criminalises trafficking in persons activity, fulfilling Australia's obligations under the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* supplementing the *United Nations Convention Against Transnational Organized Crime*.

### **Bridging Visa**

220. The Australian Government has amended Australia's migration regulations to create a new class of bridging visa. The Bridging F Visa came into effect on 1 January 2004 and allows peoples who could assist Australian authorities investigating peoples trafficking to remain in Australia for up to 30 days.

221. If a person is assessed as being able and willing to assist Australian authorities in pursuing the prosecution of a trafficking offence, a Criminal Justice Stay Visa may be granted to cover the period for which their assistance is required. Additionally, victims who, as a result of their contribution to an investigation of the prosecution of people-trafficking offenders, are deemed at risk of harm if they return to their home country may be eligible for a temporary or permanent Witness Protection (Trafficking) Visa.

### **Support for victims of trafficking**

222. Since 1 January 2004, a comprehensive support package has been in place in Australia for victims of trafficking. Suspected victims who are granted a Bridging F Visa (described above) receive intensive support for the period of the Visa's validity or until they wish to leave Australia, whichever occurs first. A range of services is

L. Right to life, right to physical and moral integrity, slavery, forced labour and traffic in persons

available including \$300 for the purchase of immediate essentials such as clothing and toiletries, secure temporary accommodation, living and food allowances, access to Medicare and the Pharmaceutical Benefits Scheme, and access to legal services. Victims who are subsequently granted a Criminal Justice Stay Visa can continue to receive support including Special Benefit and Rent Assistance, assistance with securing long-term accommodation (provision for bond and rent advance), \$700 for the purchase of essential furniture, continuing access to the Medicare and Pharmaceutical Benefits Scheme, access to legal services and access to employment and training opportunities (English language skills, budgeting skills and vocational training).

223. The Australian Government is also implementing a re-integration assistance project for victims of trafficking who return to their country of origin, and is working together with the International Organization for Migration on this project.

#### **Community awareness**

224. The Australian Government has a community awareness strategy to prevent trafficking. The strategy targets victims of trafficking who are working in the sex industry, as well as others who are likely to come into contact with these people – for example, other sex workers, clients, brothel owners and managers, brothel regulators, migration agents, sex worker outreach organisations, and providers of sexual health services.

#### **Law enforcement**

225. In October 2003, the Australian Government established a 23-member Transnational and Trafficking Strike Team within the Australian Federal Police (AFP). The Team brings together investigators and specialist analysts to tackle people trafficking and sexual exploitation. The AFP has undertaken over 100 investigations into sexual servitude and slavery-related offences since these offences were introduced in 1999, and over 50 since 1 January 2004.

#### **Australia's overseas aid program**

L. Right to life, right to physical and moral integrity, slavery, forced labour and traffic in persons

226. Australia's international aid program provides support to help 'source' countries tackle primary causes of trafficking and sexual exploitation and better assist victims. Australia supports six anti-trafficking projects in South East Asia as part of a broader package of Australian development assistance worth approximately \$24 million over six years.

## **Forced labour**

### ***Minimum age for employment of children***

227. Most Australian governments have not found it necessary to further legislate for a general minimum age for employment as current law and practice is sufficient to protect children from harmful or exploitative forms of child labour. Most Australian children who work do so at weekends and during school holidays in order to supplement allowances from parents, or to help pay their education expenses. This work also provides important life skills. Australia's sophisticated system of industrial regulation provides a safety net of minimum employment conditions, including health and safety standards.

228. Although the ACT does not legislate for a minimum age of employment, its *Children and Young People Act 1999* does not permit an employer to employ a child under school leaving age (15 years) for more than 10 hours per week. In WA, the *Children and Community Services Act 2004* prohibits, with limited exceptions, children under 15 years of age from being employed. In Victoria, the combined effect of the *Child Employment Act 2003*, the *Community Services Act 1970* and the *Education Act 1958* prevents children from entering into general employment before school leaving age (currently 15 years). Children, generally between the ages of 13–15 years, may engage in 'light work' subject to authorisation through a child employment permit. Applications for permits are assessed individually, taking account of the suitability of the employer and any other direct supervisor, nature of the work, types of activities, and hours of work. Employment is prohibited during school hours unless a Ministerial exemption from school attendance has been obtained. The legislation limits hours that may be worked during school terms, outside school terms and starting and finishing times.

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229. Legislation in all States and Territories prohibits employment of children under the school leaving age during school hours. The school leaving age is defined by law as 16 in Tasmania, WA and SA, and 15 years in all other States and Territories. From 1 January 2008, WA will make it compulsory for all children to attend school until the end of the year in which they turn 17 years. Victoria has legislated a new school leaving age of 16 years, due to come into effect by 31 December 2007.

### ***Compensation for historical labour injustices towards Indigenous people***

230. The Queensland Government is addressing injustices arising from historical controls exercised by the Queensland Government over the labour of Aboriginal and Torres Strait Islander peoples by establishing administrative processes to provide:

- monetary compensation up to a total of approximately \$40 million to Aboriginal and Torres Strait Islander peoples who worked on Government-run communities between 1975 and 1986, and who were not paid Award Wages for work that they performed, and
- reparations payments to people who were required to work and had their wages compulsorily managed by the Queensland Government in the period prior to 1976—\$55.4 million has been allocated for this process.

### **M. Right to liberty and security of the person**

<b>ICCPR Articles</b>	<b>ICESCR Articles</b>	<b>CAT Articles</b>	<b>CROC Articles</b>	<b>CEDAW Articles</b>	<b>CERD Articles</b>
9, 10, 11			37 (b), (c) and (d)		5(b)

231. All people in Australia have the right to liberty and security of the person in accordance with the above articles. Several developments are relevant to these rights, including new security measures following 11 September 2001, changes to immigration detention arrangements, and developments within the criminal justice system at the State and Territory level.

## **Security measures since 11 September 2001**

232. Australia has taken steps to enhance the capacity of its domestic law to respond to the new security environment following the terrorist attacks in the United States in September 2001 and London in July 2005.

### ***Counter-radicalisation measures***

233. Australia's counter-terrorism strategy recognises that targeting the early stages of radicalisation is an effective means of reducing the threat of home-grown terrorism. Radicalisation processes do not merely exacerbate the terrorist threat in the short term; they also jeopardise social cohesion and harmony, and in the long term threaten the democratic order. The Australian Government adopts whole-of-government strategies that both counter extremism and discrimination while affirming the value of a shared democratic legal order.

234. Violent radical Islam is a thoroughly contemporary phenomenon and has nothing to do with a traditional Islam which forms the belief system of the vast majority of Muslim Australians. As a result, the Australian Government is committed to ensuring that its counter-terrorism strategies reflect the input and concerns of Muslim Australians obtained through community engagement and is not used as a pretext for targeting Muslims or Islam itself.

235. Following the terrorist attacks in London of 7 July 2005, the Prime Minister met with leaders of Australia's Muslim community on 23 August 2005. The meeting issued an important 'Statement of Principles' that commits all Australians to work together to protect Australia from intolerance and extremism and promote harmony and understanding.

236. At its September 2005 special meeting, the COAG requested that the Ministerial Council on Immigration and Multicultural Affairs (MCIMA) develop a National Action Plan for Commonwealth, State and Territory governments based on the Statement of Principles. The National Action Plan to Build on Social Cohesion, Harmony and Security seeks to address the underlying causes of terrorism, including

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the social and economic factors that encourage radicalisation and motivate extremist behaviours, as a wide-ranging preventative approach to counter-terrorism.

237. The Australian Government committed \$5.9 million in 2005–2006 to DIAC to develop the National Action Plan and coordinate related work. In mid 2006 the Australian Government announced a further commitment of \$35 million over four years to continue to address the risk of extremism developing in Australia, and to work against the promotion of violence and intolerance in Australian society.

***Legislative developments***

238. Summaries of and links to Australian laws to combat terrorism are available at  
<<http://www.nationalsecurity.gov.au/agd/www/nationalsecurity.nsf/AllDocs/826190776D49EA90CA256FAB001BA5EA?OpenDocument>>.

239. In July 2002, the Australian Government introduced a package of six pieces of counter-terrorism legislation. The legislation aimed to address critical aspects of the terrorist threat and to create a legal framework to enable the detection and effective prosecution of perpetrators of terrorist activity.

240. HREOC's comments on the 2002 counter-terrorism bills are available at  
<[http://www.humanrights.gov.au/human\\_rights/terrorism\\_sub/asio\\_asis\\_dsd.html](http://www.humanrights.gov.au/human_rights/terrorism_sub/asio_asis_dsd.html)>.

241. In October 2005, the Australian Government introduced a further package of counter-terrorism legislation in the form of the *Anti-Terrorism Act (No 2) 2005* (Cth) which came into force on 28 December 2005. The legislation is aimed at preventing a terrorist attack from occurring and also allowing for evidence to be preserved if a terrorist attack takes place. The Act provides for an expanded definition of a terrorist organisation to include advocating terrorism, new offences of financing terrorist organisations, the power to make control orders and order preventative detention, the power to stop, question and search persons in relation to terrorist offences, the power to obtain information and documents, new and updated offences of sedition, the use of optical surveillance devices in airports and on board aircrafts, amendments to the

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*Financial Transaction Reports Act 1988* in relation to money laundering and terrorist organisations, and amendments to ASIO (Australian Security Intelligence Organisation) warrant powers.

242. HREOC's comments on the 2005 Anti-Terrorism Bill (which was subsequently amended after a Senate Constitutional and Legal Committee review) are available at [http://www.aph.gov.au/Senate/committee/legcon\\_ctte/terrorism/submissions/sub158.pdf](http://www.aph.gov.au/Senate/committee/legcon_ctte/terrorism/submissions/sub158.pdf).

The Australian Government's submission to that Committee is available at [http://www.aph.gov.au/senate/committee/legcon\\_ctte/terrorism/submissions/sub290a\\_att\\_a.pdf](http://www.aph.gov.au/senate/committee/legcon_ctte/terrorism/submissions/sub290a_att_a.pdf).

***Amendments to the Australian Security Intelligence Organisation Act 1979 (Cth)***

243. The *Australian Security Intelligence Organisation Act 1979* (the ASIO Act) was amended in July 2003 to empower ASIO to seek a warrant to question, and in limited circumstances detain, a person who may have information relevant to a terrorism offence. The ASIO Act was also amended in December 2003 in response to practical issues identified by ASIO in the planning and execution of warrants under this regime.

244. There are rigorous requirements and safeguards to ensure that the new powers are exercised reasonably. These include:

- the 'issuing authority' of a warrant to question a person must be a federal judge, federal magistrate or another authority prescribed in regulations, and that questioning under a warrant can only take place before a 'prescribed authority', who must have certain judicial experience
- the issuing authority and the Attorney-General must be satisfied that there are reasonable grounds for believing that issuing the warrant will substantially assist the collection of intelligence that is important in relation to a terrorist offence, and the Attorney-General must also be satisfied that relying on other methods of collecting that intelligence would be ineffective

#### M. Right to liberty and security of the person

- if the warrant is to authorise a person's detention, the Attorney-General must also be satisfied of the need for the person to be brought into custody immediately
- questioning periods limited to a total of 24 hours (48 hours if an interpreter is present) and, if permitted by the warrant, detention periods to a total of 168 hours
- access to a lawyer of choice at all times and a requirement that the subject of a warrant be treated with humanity and with respect for human dignity
- provision for the subject of a warrant to seek a remedy in a federal court in relation to the warrant or the subject's treatment under the warrant, or to make a complaint to the Inspector-General of Intelligence and Security or to the Commonwealth Ombudsman
- that the subject of a warrant must be at least 16 years of age to be questioned or detained, and a special regime with additional safeguards for young persons between 16 and 18 years of age, and
- offences with a penalty of up to two years imprisonment for officials who contravene safeguards.

#### ***Bail presumptions***

245. The *Anti-Terrorism Act 2004* inserted new provision 15AA into the *Crimes Act 1914*. This section provides for a presumption against the granting of bail to persons charged with or convicted of terrorism offences, unless exceptional circumstances justifying bail can be established.

246. Bail is a complex area where courts have traditionally had considerable discretion. The provision is faithful to this approach, preserving judicial discretion by leaving it to the courts to determine what 'exceptional circumstances' means in each case.

#### ***Investigating terrorism offences***

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247. The *Crimes Act 1914* was amended to extend the fixed-time for questioning arrested suspects from a total of 12 hours up to 24 hours.

248. The automatic initial investigation period for ‘terrorism offences’ remains at the same level as for all other offences, namely four hours (or two hours for minors and Aboriginals and Torres Strait Islander Australians). However, investigating officials may now apply to a judicial officer for an extension of the investigation period for a further 20 hours. If the full amount of time is judicially authorised in any particular case, the maximum amount of time an arrested person can be detained and questioned would be 24 hours – four hours initially and another 20 hours via a single or multiple extension(s).

249. An extension can only be granted if a judicial officer is satisfied of a number of matters, including that further detention is necessary to preserve or obtain evidence or complete the investigation and the investigation is being conducted properly and without delay. The suspect or his or her legal representative must also be given an opportunity to make representations about the extension application. If a magistrate or other judicial officer decides an extension should be authorised, that extension does not have to be for the full 20 hours—it can be for any amount of time less than 20 hours.

***Preventative detention under the Anti-Terrorism Act (No 2) 2005 (Cth)***

250. The *Criminal Code (Cth)* has been amended to provide for the power for AFP officers to preventatively detain a person who it is suspected, on reasonable grounds, will engage in a terrorist act, or possesses a thing connected with the preparation for or engagement in a terrorist act, or has done an act in preparation for a terrorist act, and making the order will substantially assist in preventing a terrorist act from occurring. A preventative detention order will only be made where it is reasonably necessary to detain the person to prevent the terrorist act.

251. Initial orders under the Commonwealth legislation may be made for a maximum period of 24 hours, including any extensions. They may be continued for up to a further 24 hours, but the total period of detention must be no more than 48 hours after the person is first taken into custody.

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252. An initial order will be able to be made by a senior member of the AFP. A continuing order will only be able to be made by a judge, a Federal Magistrate, a former judicial officer or Deputy President of the Administrative Appeals Tribunal (who is a legal practitioner). The President of the AAT, who will also be able to issue a continuing order, must be a Judge of the Federal Court. In both cases the person making the order must be satisfied that there are reasonable grounds to suspect that making the order would substantially assist in preventing an imminent terrorist act from occurring or preserve evidence of a recent terrorist attack.

253. There is provision for some contact with family members and others while detained. A detainee may telephone a family member and an employer or employee to inform them that he or she is safe. A detainee over 16 but under 18 can also have contact of two hours at a time with both of his or her parents or guardians unless one of those people is subject to a prohibited contact order. A prohibited contact order means that the AFP has determined that a person with whom the detainee would normally be allowed contact presents a risk to action being taken to prevent a terrorist act occurring or to preserve evidence, or for the safety of other people, amongst other things.

254. A person may also have contact with a lawyer to discuss bringing a complaint to the Ombudsman, a complaint in relation to the conduct of a police officer under relevant legislation, proceedings in a Federal Court to challenge the lawfulness of the preventative detention, or a challenge to the decision to make a preventative detention order in the AAT.

255. Further information about Australia's national security legislation is available at: <<http://www.nationalsecurity.gov.au/>>.

256. Information on legislation introducing control orders is located below at paragraphs 296–298 concerning freedom of movement, and sedition offences are addressed at paragraphs 322–324 in relation to freedom of opinion and expression.

***State and Territories counter-terrorism legislation and preventative detention***

M. Right to liberty and security of the person

257. In September 2005, COAG agreed to develop nationally consistent legislation to facilitate the investigation by Australian law enforcement agencies of terrorist conduct.

258. Following the COAG decision, in addition to the Commonwealth enacting preventative detention legislation (paragraphs 250–256 refer), the States and Territories developed legislation for preventative detention for up to 14 days.

259. The relevant State and Territory legislation is listed below:

- *Terrorism (Police Powers) Act 2002 (NSW)*
- *Terrorism (Community Protection) Act 2003 (VIC)*
- *Terrorism (Preventative Detention) Act 2005 (Qld)*
- *Terrorism (Preventative Detention) Act 2006 (WA)*
- *Terrorism (Preventative Detention) Act 2005 (SA)*
- *Terrorism (Preventative Detention) Act 2005 (TAS)*
- *Terrorism (Extraordinary Temporary Powers) Act 2006 (ACT)*, and
- *Terrorism (Emergency Powers) Act (NT)*

260. In addition, the States and Territories amended their existing legislation in order to improve law enforcement agencies' ability to combat the threat of terrorism by providing stop and search powers and the authority to enter and search, move vehicles, cordon designated areas and give directions to public bodies. The State and Territory legislation contains numerous and robust safeguards, similar to those contained in the Commonwealth legislation.

## **Immigration detention**

261. It is the fundamental right of each country to determine which non-citizens are admitted to its territory and the conditions under which they are permitted to remain.

262. The *Migration Act 1958* requires that all unlawful non-citizens who are in the Australian migration zone must be detained and, unless they are granted permission to remain in Australia, must be removed as soon as practicable. Those detained include people who have:

- arrived in Australia without a visa
- overstayed their visa, or
- had their visa cancelled, as may be the case where a visa holder has breached their visa conditions or has failed to satisfy the character test.

In so doing, Australia fully complies with its obligations under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.

263. People being held in immigration detention have broken Australian laws, either by seeking to enter Australia without authority or, having entered legally, failing to comply with their visa conditions. Detention provides the Australian Government with effective access to unlawful non-citizens so as to process their claims to remain in Australia (including protection claims) and, if those claims are unsuccessful, to remove such persons as soon as reasonably practicable. Australia does not have a policy of detaining people because they are seeking refugee status. Some of the people taken into immigration detention choose to lodge claims for refugee status after they are detained and, of this group, those who are found to be refugees are, subject to health and character checks, released immediately. Only about 15 per cent of people taken into immigration detention seek refugee status and the vast majority of people claiming such status are not detained while their claims are processed.

264. Amendments made to the Migration Act in June 2005 ensure that families with children in detention are placed in the community, under community detention arrangements, with conditions set to meet their individual needs. These amendments:

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- state that the Parliament of Australia affirms as a principle that a minor shall only be detained as a measure of last resort
- provide a non-compellable power for the Minister to specify alternative arrangements for a person's detention and to impose conditions to apply to the detention of that person
- provide a non-compellable power for the Minister to grant a visa to a person who is in detention; and
- require the Secretary of DIAC to report to the Commonwealth Ombudsman on persons who have been detained for two years or more, and for the Ombudsman to provide assessments and recommendations relating to those persons to the Minister, including statements to be tabled.

265. Further amendments to the Migration Act announced in June 2005 require the Department of Immigration and Citizenship to make a decision on an application for a protection visa within 90 days of application. Likewise, reviews by the Refugee Review Tribunal must occur within 90 days. Cases where time limits are not met are the subject of periodic reports to the Parliament of Australia.

***Access to legal advice***

266. Pursuant to section 256 of the Migration Act, where a person is in immigration detention, the person responsible for his or her immigration detention shall, at the request of the person in immigration detention, afford him or her all reasonable facilities for obtaining legal advice or taking legal proceedings in relation to his or her immigration detention. Upon arrival at an immigration detention centre detainees are informed, as part of the induction process, of their right to receive visits from their legal representatives, contact them by phone and to receive and send material to them via fax or post.

267. DIAC encourages legal representatives to make appropriate arrangements prior to visiting clients in an immigration detention facility. This ensures that an appropriate meeting room is available and the detainee client is aware of the appointment. The Department also facilitates access through the provision of mail, telephone and fax services.

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268. The *Immigration Advice and Application Assistance Scheme* (IAAAS) provides free advice and assistance to asylum seekers, including unaccompanied minors, who are in immigration detention. The service includes assistance with the preparation, lodgement and presentation of applications for visas through the primary decision and merits review stages. The service also includes the assistance of interpreters, if required.

***Length of detention***

269. In 2004, the High Court of Australia confirmed that it is constitutional and lawful under the *Migration Act* to keep a person in detention where it may not be practical to remove the person for some time (*Minister for Immigration & Multicultural & Indigenous Affairs v Al Khafaji* [2004] HCA 38 and *Al-Kateb v Godwin* [2004] HCA 37). Nevertheless, the Australian Government seeks to minimise the period of time people remain in immigration detention. A person who is granted a visa becomes a lawful non-citizen, and is released from immigration detention.

270. In June 2005, the Australian Government announced several changes to the *Migration Act*, which have had a significant impact on the issue of lengthy detention in Australia: Parliament has declared detention of children and families is a last resort; all primary protection visa decisions and reviews by the Refugee Review Tribunal (RRT) need to occur within 90 days of application; and where a person has been in detention for two years or more there is a requirement for DIAC to report every six months to the Ombudsman. The Ombudsman assesses that report and provides his assessment to the Minister for Immigration and Citizenship who must then table the assessment in Parliament.

271. A range of factors contribute to extended detention periods including difficulties involved in returning people to a number of countries. These difficulties may relate to:

- circumstances which are not conducive to a safe and orderly return – eg a state of warfare or civil unrest

M. Right to liberty and security of the person

- difficulty confirming identity and related problems in obtaining travel documentation
- ongoing litigation relating to immigration and visa issues
- the absence of any agreed protocols for return, and
- difficulties in effecting transit through third countries.

272. Another important change introduced effective from 11 May 2005 was the new Removal Pending Bridging Visa (RPBV) which provides greater flexibility to release from immigration detention a small number of people who have spent an extended period in detention. The RPBV is part of the Australian Government's commitment to constantly review the detention caseload to identify cases where alternative arrangements could be considered. The visa is aimed at those detainees who, for a variety of reasons outside of their own control, cannot be removed in the near future. Other alternatives which may be appropriate include Immigration Residential Housing and care arrangements with State agencies.

***Conditions in immigration detention centres***

273. The Australian Government has a strong commitment to responding to the needs of people who are placed in immigration detention. The Australian Government's commitment to ensure that detainees receive appropriate care is evidenced through the detention services provider's adherence to a contracted schedule of Immigration Detention Standards (IDS), which outline the quality of life expected in immigration detention facilities. These standards take into consideration individual needs such as gender, culture and the age of detainees.

274. Immigration detention facilities are managed in accordance with the following Core Operational Principles:

- Immigration detention is mandatory 'administrative detention', it is not indefinite or correctional detention.
- People in immigration detention must be treated fairly and reasonably within the law.
- Detention service policies and practices are founded in the principle of duty of care.

#### M. Right to liberty and security of the person

- Families with children will be placed in facility-based detention only as a last resort.
- People in facility-based immigration detention are to be provided with timely access to quality accommodation, health services, food and other necessary services.
- People are detained for the shortest practicable time, especially in facility-based immigration detention.
- People are carefully and regularly case-managed as to where they are to be located in the detention services network and the services they require.
- The assessment of risk factors underpins operational decision making.
- Detention service operations are subject to continuous improvement and sound governance.

275. Qualified medical personnel identify the health care needs of all people as soon as possible after they are taken into immigration detention. Medical treatment is provided onsite at immigration detention centres by qualified doctors and registered nurses to support the health needs of each individual and if clinically required, people are referred for hospital or specialist care provided in the community. An enhanced mental health service has been implemented in immigration detention centres which includes formal mental health screening of all people on arrival at the centre, referral to a multidisciplinary mental health team for diagnosis, development of a specific mental health care plan and ongoing care. Mental health reassessment is undertaken periodically or at the request of the individual or another party. All centres have a visiting psychiatrist attend on a regular basis. If clinically required, a person in immigration detention can be referred to hospital or to a specialist offsite in the community for mental health treatment.

276. The Detention Health Advisory Group was established in March 2006 and plays a major role in providing DIAC with advice regarding the design, implementation and monitoring of improvements in health care for people in immigration detention. The Group is made up of expert representation from organisations that include psychiatry, psychology, public health, dentistry, refugees, nursing, general practice and the Ombudsman's Office, which has observer status.

277. A number of programs are run within the immigration detention facilities that contribute to detainee development and quality of life, in accordance with the IDS. These include education services such as English language instruction, cultural classes and sporting activities. All people in immigration detention are free to practise their religion of choice, and religious services are conducted within the centres on special observance days.

278. The conditions of detention for immigration purposes are subject to administrative review. In February 2001, an Immigration Detention Advisory Group was established to provide advice to the Minister on the appropriateness and adequacy of services, accommodation and facilities at immigration detention facilities. The group is comprised of individuals selected for expertise on immigration and humanitarian issues. The group has unfettered access to all Australian immigration detention centres. Since its formation, the Group has visited all Australian immigration detention centres collectively and/or individually at least once per year.

279. Additionally, a permanent working party of senior departmental officers meets regularly to undertake an administrative review of all detention cases.

### ***Release of children from immigration detention***

280. The CROC has welcomed changes to the Migration Act made in June 2005<sup>6</sup>, which now states that ‘the Parliament affirms as a principle that a minor child shall only be detained as a measure of last resort’ (section 4AA). The amendment indicates that the principle relates to the holding of children in traditional detention arrangements. The principle would indicate that, where detention of a child is required under the Act, it should, when and wherever possible, take place in the community, under a residence determination arrangement (now known as Community Detention).

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<sup>6</sup> Committee on the Rights of the Child, Concluding Observations on Australia’s Second and Third Reports under the Convention on the Rights of the Child, 2005.

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281. The Minister for Immigration and Citizenship now has an additional non-compellable, non-delegable power to specify alternative detention arrangements for a person and the conditions which will apply to that person's detention. The objective of these amendments is to ensure that families with children in immigration detention will be placed in the community, under flexible community detention arrangements, with conditions set to meet their individual circumstances.

282. On 29 July 2005, all families with children were released from immigration detention facilities into community detention. All families with children who now enter into immigration detention will be placed in the community under Community Detention arrangements as soon as possible, following a decision by the Minister for Immigration and Citizenship. All families with children who are placed in Immigration Residential Housing or alternative temporary detention in the community will be referred to the Minister for Immigration and Citizenship for a decision of possible placement in Community Detention .

283. The Australian Government works with NGOs to make sure that, when a person is placed in Community Detention, they are properly supported. The NGOs are funded by the Australian Government to source housing for these persons and allow payment of their bills and other living expenses. The NGOs also provide case officers to assist people in Community Detention and to ensure they have access to the relevant services and social support networks. Community Detention is a community based detention option granted by the Minister for Immigration and Citizenship. Although it is a non-compellable and non-delegable power, where families with children are detained, the Prime Minister has indicated that decisions regarding placements under Community Detention should be made within four weeks. The department has developed guidelines and procedures to support this timeframe for families. The department has published a fact sheet on Community Detention (previously known as Residence Determination) which is currently available on DIAC's website: <<http://www.immi.gov.au>>.

284. When families are first detained they may initially be placed in Immigration Residential Housing Centre (IRH) while their primary processing is completed and assessments take place on their prospect for removal and while the Minister considers

placing the family into the community under Community Detention arrangements. IRH clients are provided with housing style accommodation in a community setting, with the opportunity to live a more self-sufficient lifestyle while they remain formally in immigration detention.

### **Aboriginal deaths in custody**

285. Of the total of 54 deaths in prison and police custody in Australia in 2005, 15 deaths were of Indigenous people, which is the equal lowest number recorded by the Australian Institute of Criminology since 1996.

286. While rates for both Indigenous and non-Indigenous deaths in prison custody have fluctuated between one and six deaths per 1000 prisoners since 1982, the rates for both Indigenous and non-Indigenous deaths have become more similar since 1999 and both have begun to trend downward since that time. In 2005, the rate of Indigenous deaths in prison custody was 1.2 per 1,000 Indigenous prisoners, compared with 1.4 per 1,000 non-Indigenous prisoners. There were no deaths of Indigenous prisoners from apparent unnatural causes in 2005–06.

287. However, Indigenous Australians remain overrepresented in the criminal justice system. Indigenous prisoners represented 24 per cent of the total prisoner population at 30 June 2006, the highest proportion at 30 June since 1996. As at 30 June 2006, the age standardised rate of Indigenous imprisonment was 1,668 per 100,000 adult Indigenous population, 13 times more than the non-Indigenous rate.

288. Despite a young and fast growing Indigenous population, rates of detention for Indigenous young people aged 10–17 have been in decline in the last decade (in 2005 down by 25 per cent compared to 1994 figures). Yet the over-representation of Indigenous young people in detention using the rate ratio (Indigenous rate divided by the non-Indigenous rate) remains high and has not decreased since 1994. At 30 June 2005, Indigenous young people were 23 times more likely than non-Indigenous young people to be in juvenile detention.

289. For more information on Indigenous imprisonment issues, see Annex 1: Statistical data and human rights indicators.

### **Deprivation of liberty and prison conditions**

290. A number of changes have occurred in the laws of States and Territories relating to deprivation of liberty in the criminal justice system:

- In Queensland, the *Dangerous Prisoners (Sexual Offenders) Act 2003* allows for supervised release or preventive detention of certain prisoners beyond the term previously imposed on them by a court as punishment for their offences. The Supreme Court must be satisfied, after considering psychiatric assessments of the level of risk that the prisoner will commit another serious sexual offence if released, that the prisoner would be a serious danger to the community unless a continuing detention order or supervision order is made. A prisoner's continued detention is subject to regular annual review by the Supreme Court and is appealable to the Court of Appeal.
- In WA, the *Dangerous Sexual Offenders Act 2006* provides that the Director of Public Prosecutions can apply to the Supreme Court for a continuing detention order or a continuing supervision order for serious sexual offenders who are under a sentence of imprisonment for a serious sexual offence and who continue to present a serious risk to the safety of the community. The Court must have regard to psychiatric reports, other psychiatric, medical or psychological assessments, the success of the person's rehabilitation, the likelihood of the person re-offending, and the need to protect members of the community from the risk of the person re-offending. The Act sets out the conditions of the supervision order, and provides for appeals and amendments to the supervision orders.
- In Victoria and the NT, the common law defence of insanity has been replaced with a statutory defence of mental impairment, with release now determined by the courts according to criteria prescribed under law, rather than at the Executive's discretion.

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291. A number of developments at State and Territory level have also occurred in relation to conditions in detention:

- In NSW, Custody Managers have been appointed to all Police stations to educate other police officers and to ensure that the human rights of all persons detained are upheld.
- In Victoria, an independent Corrections Inspectorate was created in 2003 to monitor correctional services. A purpose built, 600-bed Remand Centre was opened in April 2006, which maximises the separation of unsentenced prisoners from sentenced prisoners, and includes a Young Adults Unit to separately house more vulnerable prisoners, including younger prisoners. Further, a purpose built, 300-bed correctional programs centre was also opened in early 2006, which provides an intensive level of treatment and offender management activity, including sex offender treatment programs, drug and alcohol treatment programs, violent offender treatment programs, and vocational services programs for prisoners.
- A new pre-release centre for women prisoners was opened in WA in June 2004. Services for women prisoners allow infants to stay with their mothers where this is in the child's best interest and can be managed within the prison. Children up to the age of four years are allowed to live with their mothers, and extended visits with older children are also allowed.

### **Young offenders and detention**

292. A range of initiatives have been taken by governments across Australia to improve the juvenile justice system and to ensure that children in detention are treated with dignity and respect for their rights. These include diversionary programs, reforms to regulation of juvenile detention facilities and the development of new facilities. Specific details of programs are available in Australia's most recent report under CROC.

## **N. Right to freedom of movement, right of access to any public place, expulsion and extradition**

<b>ICCPR Articles</b>	<b>ICESCR Articles</b>	<b>CAT Articles</b>	<b>CROC Articles</b>	<b>CEDAW Articles</b>	<b>CERD Articles</b>
12, 13		3	10	15(4)	5(d-i), (d-ii) and (f)

293. Australia respects the rights of people in Australia under the above articles.

The following relevant developments have occurred in recent years:

### **Measures under the *Anti-Terrorism Act (No 2) 2005***

#### ***Powers to stop, question and search persons in relation to a terrorist act***

294. Under the new Anti-Terrorism legislation referred to above at paragraphs 239–256, the police may stop a person who is in a Commonwealth place (an area about which the Commonwealth Government may make laws to ensure the peace, order and good government of the Commonwealth under the Constitution), or in a Commonwealth place in a prescribed security zone (so prescribed by the Attorney-General for 28 days) to search for a thing related to a terrorist act or to prevent a terrorist act from occurring.

295. A police officer may stop and detain a person under this Act only for as long as it takes to reasonably search a person under the section. A police officer may search or frisk a person, search anything under his or her immediate control, any vehicle or anything which the police officer suspects on reasonable grounds that the person brought into the Commonwealth place, and may confiscate any object that the officer suspects has a terrorist purpose. A person should not be subjected to greater indignity than is reasonable and necessary to conduct the search and may request that the object seized be returned within 90 days.

#### ***Control orders***

296. A control order can be made to last for up to twelve months (three months for persons between the ages of 16–18) and places certain restrictions on the person against whom the order is made. Such restrictions include, amongst others, a

N. Right to freedom of movement, right of access to any public place, expulsion and extradition

prohibition or restriction on the person being at specified areas or places; a requirement that the person remain at specified premises between specified times each day, or on specified days; a requirement that the person wear a tracking device; a prohibition or restriction on the person accessing or using specified forms of telecommunication or other technology (including the Internet); a requirement that the person report to specified persons at specified times and places; a requirement that the person allow impressions of his or her fingerprints to be taken; and a requirement that the person participate in counselling or education if he or she so consents.

297. A control order is made by a court on the application of the AFP with the consent of the Attorney-General. Control orders must be issued by a court, which makes an interim control order only if it is satisfied on the balance of probabilities that making the order would substantially assist in preventing a terrorist act; or that the person has provided training to, or received training from, a listed terrorist organisation. The Court also has to be satisfied on the balance of probabilities that each of the obligations, prohibitions and restrictions to be imposed on the person by the order is reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the public from a terrorist act.

298. The AFP can seek to confirm an 'interim' control order. If they decide to do this, they must notify the issuing court and the person who is the subject of the interim control order. That person will be given a summary of the grounds on which the orders were made along with the interim control order, all the documents that were provided to the Attorney-General and the court in the application process for the interim order on the person, and any details that are necessary to ensure the person can understand and respond to the substance of those facts. The person and their legal representative may attend the court and make submissions as to why there are no grounds to make and confirm the order when the court decides whether to confirm the order.

## **Refoulement and expulsion**

299. Asylum seekers in Australia have access to merits review by an independent Tribunal if their visa application is refused. They also have access to

judicial review of the Tribunal's decision in the case of legal error. Section 417 of the Migration Act provides the Minister with a non-delegable, non-compellable power to substitute a decision of the Refugee Review Tribunal that an applicant is not a person to whom Australia has protection obligations under the Refugees Convention with a more favourable decision if the Minister considers it in the public interest to do so. There are similar powers that can be used to substitute the decisions of other relevant Tribunals. Ministerial Guidelines introduced in 1999 establish a framework to assist departmental officers to identify the circumstances in which cases are to be referred to the Minister for possible use of his public interest powers under the Migration Act.<sup>7</sup> The guidelines provide the policy framework for assessing cases for any unique or exceptional circumstances where it may be in the public interest for the Minister to intervene to grant a visa. Most notably, they refer to Australia's international obligations under the CAT, the CROC, and the ICCPR as relevant considerations in making this determination.

300. Where people found not to be refugees remain in Australia awaiting removal, DIAC closely monitors developments in relation to their case in order to raise with the Minister any cases which may warrant a fresh assessment. Since September 2005, this process has been further strengthened by the development of a pre-removal checking process, which requires a review of the case prior to removal, including assessment of Australia's international obligations and review of any new country information not previously considered. In cases where the applicant is subject to removal, section 417 of the Migration Act provides an additional mechanism to ensure Australia's compliance with its *non-refoulement* obligations under the CAT and the ICCPR.

301. Similarly, visa cancellation procedures also take account of obligations under the CAT, ICCPR and the CROC.

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<sup>7</sup> The Ministerial guidelines for the identification of unique or exceptional cases where it may be in the public interest to substitute a more favourable decision under s345/351/391/417/454/501J of the Migration Act 1958. The Guidelines were signed by the Minister on 31 March 1999 and have effect from that date. These guidelines elaborated on previous guidelines and were reissued in 2003

## **Disability access**

302. The *Disability Discrimination Act 1992* (Cth) (DD Act) seeks to eliminate, as far as possible, discrimination against people on the basis of disability in a range of areas, including in employment, education, accommodation, the administration of Commonwealth laws and programs, and access to public premises and provision of goods and services.

303. Section 31(1) of the DD Act enables the Attorney-General to formulate disability standards in relation to a range of areas covered by the DD Act. To date, the Attorney-General has formulated two disability standards that apply throughout Australia.

304. The *Disability Standards for Accessible Public Transport* (Transport Standards) commenced on 23 October 2002. The Transport Standards specify how the objects of the DD Act are to be achieved in the provision of access to public transport. The Transport Standards establish minimum accessibility requirements to be met by providers and operators of public transport conveyances, infrastructure and premises, in accordance with a compliance timetable specified in the Standards.

305. The *Disability Standards for Education* (Education Standards) came into effect on 18 August 2005. The Education Standards clarify and elaborate the existing obligations of education providers under the DD Act in six key areas: enrolment; participation; curriculum development, accreditation and delivery; student support services; and elimination of harassment and victimisation.

306. The Australian Government is undertaking work on a possible Disability Standard on Access to Premises, to better align building regulation with existing DD Act obligations.

307. Specific initiatives are also in place with respect to telecommunications:

- The Australian Communications and Media Authority (ACMA) has the power to make standards relating to specified customer equipment designed to cater

for people with disabilities—Standard AS/ACIF S040:2001 (*Requirements for Customer Equipment for use with the Standard Telephone Service—Features for special needs of persons with disabilities*) was issued on 15 March 2002.

- Obligations fall on telecommunications carriers and other service providers with respect to the provision of specialty equipment to people with disabilities.
- The National Relay Service (NRS) is a telephone relay service that allows Australians who are deaf, or who have a hearing, speech or communication impairment, to communicate with anyone who uses a standard telephone. The NRS is an Australian Government initiative provided under contracts and is funded by a levy on eligible telecommunications carriers.

### ***Initiatives of States and Territories***

308. Anti-discrimination legislation and policies, including disability discrimination provisions, also exist in all States and Territories. For example, the Tasmanian Government's *Disability Framework for Action (2005–2010)* includes undertakings to ensure that Government establishes inclusive and consultative relationships with people with disability (in developing, implementing and evaluating services), and through the establishment of the Premier's Disability Advisory Council, which provides a forum for ongoing consultation on whole-of-government disability issues.

309. Part 5 of the Western Australian *Disability Services Act 1993* requires public authorities to develop and implement Disability Access and Inclusion Plans (DAIPs). This regime is unique to WA and is considered highly innovative in the rest of the world. DAIPs, through six desired outcome areas, aim to ensure that people with disability can access public authorities' services, facilities and programs.

## O. Right to privacy, right to freedom of thought, conscience and religion

ICCPR Articles	ICESCR Articles	CAT Articles	CROC Articles	CEDAW Articles	CERD Articles
17,18			14, 16		5(d)(vii)

310. The right to privacy and freedom of thought, conscience and religion are strongly upheld in Australia. Recent developments which relate to Australia's obligations under the above articles are detailed below.

### Privacy

#### *Public sector*

311. Since 1997, five Australian jurisdictions, apart from the Commonwealth, have introduced privacy legislation for the protection of personal information held by the public sector at the State level. The remaining States have administrative schemes in place. These legislative and administrative schemes reflect the existing Commonwealth Information Privacy Principles set out in the *Privacy Act 1988 (Cth)* (the Privacy Act).

#### *Private sector*

312. Since 2001, the Privacy Act has regulated the handling of personal information by private sector organisations through the introduction of the National Privacy Principles (NPPs). The NPPs prescribe minimum standards for the collection, holding, use, disclosure and transfer of personal information by private sector organisations. The NPPs are intended to ensure Australians can be confident that information held about them by private sector organisations will be stored, used and disclosed in a fair and appropriate way. Under the Privacy Act business and industry may choose to be bound by the NPPs as described in the Privacy Act, or incorporate them directly into a binding business or industry-wide privacy code. As at July 2006, two industry based privacy codes had been approved by the Privacy Commissioner, with another five being drafted for consideration.

O. Right to privacy, right to freedom of thought, conscience and religion

### ***Protection of human genetic information***

313. The Australian Law Reform Commission (ALRC) and the Australian Health Ethics Committee of the National Health and Medical Research Council undertook an Inquiry into the Protection of Human Genetic Information in Australia from 2001 to 2003, and reported to Parliament in May 2003 (ALRC 96 *Essentially Yours*). The report, available at <<http://www.alrc.gov.au>>, surveys the existing law and practice in Australia, and contains the results of the extensive consultations held throughout the inquiry, and final recommendations for change to law and practice. The Australian Government response, which adopted many of the Report's recommendations, is available at <<http://www.ag.gov.au>>.

### **Freedom of thought, conscience and religion**

314. As mentioned above at paragraph 52, religious freedom is protected under the Constitution. The Australian Government has also undertaken a number of initiatives to support harmonious relationships between people of different cultures and religious backgrounds in Australia, in order to promote and protect the freedom of thought, conscience and religion. For example, the Joint Standing Committee on Foreign Affairs, Defence and Trade's Report, *Conviction with Compassion: A Report on Freedom of Religion and Belief*, was tabled in Parliament on 27 November 2000 and is available at

<<http://www.aph.gov.au/house/committee/jfadt/Religion/Relindex.htm>>.

The Australian Government's response is available at

<<http://www.aph.gov.au/house/committee/jfadt/Religion/RelResponse.pdf>>.

315. During 2003 and 2004, HREOC undertook the project *Ismaξ—Listen: National consultations on eliminating prejudice against Arab and Muslim Australians*, with the aim of exploring whether Arab and Muslim Australians were experiencing discrimination and vilification post September 11.

316. As discussed at paragraphs 236–237, the Australian Government has, together with the Muslim Community Reference Group, developed a National Action

O. Right to privacy, right to freedom of thought, conscience and religion

Plan to Build on Social Cohesion, Harmony and Security. The Australian Government is funding a range of initiatives under the Plan to address extremism and intolerance in the Australian community. These initiatives will promote greater understanding and tolerance in the wider community in relation to different religions and beliefs.

317. The Australian Government is spending some \$20.5 million over the next four years on the refocused *Living in Harmony* program to enhance mutual respect between Australians and promote community participation. The program does this through four components:

- Funding for local community projects that develop activities at the local level.
- A partnerships program which works with major organisations and peak bodies on projects of national and strategic significance.
- Ad hoc grants that respond to crisis and emerging issues.
- A public information strategy that includes the annual celebration of Harmony Day on 21 March which coincides with the UN International Day for the Elimination of Racial Discrimination.

## P. Freedom of opinion and expression

ICCPR Articles	ICESCR Articles	CAT Articles	CROC Articles	CEDAW Articles	CERD Articles
19, 20			12, 13		4(a) and (c), 5(d)(viii)

318. In accordance with Australia's obligations under the above articles, all Australians are free to express themselves, subject only to appropriate limitations as provided for under these Articles. Recent developments concerning these rights are outlined below.

### Prohibition of incitement to discrimination, hostility or violence

319. Some NGOs have raised concerns about the role of the internet in promoting racial and religious hatred.

320. The *Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Act (No 2) 2004* introduced an offence dealing with the use of a carriage service in a way which is intentionally menacing, harassing or offensive. This offence applies to both the use of a carriage service in a menacing, harassing or offensive way, and to the use of a carriage service to communicate content which is menacing, harassing or offensive. The offence provides that *reasonable persons* must regard the use of the carriage service, given all the circumstances, as menacing, harassing or offensive. This allows community standards and common sense to determine whether the conduct is in fact menacing, harassing or offensive.

321. Examples of the type of use of a carriage service the proposed offence may cover include usage that would make another person apprehensive as to their safety or well-being or the safety of their property, usage that encourages or incites violence, and usage that vilifies persons on the basis of their race or religion. The offence does not capture internet material advertising or advocating peaceful protest action.

### **Sedition offences under the *Anti-Terrorism Act (No 2) 2005***

322. The new Commonwealth Anti-Terrorism legislation referred to above has updated outmoded offences of sedition to make it an offence to, amongst other offences, urge violence against the community on the basis of race, religion, nationality or political opinion; urge a person to assist an enemy of Australia; or urge a person to engage in armed conflict against Australia with seditious intent. The offences do not apply to anyone who tries in good faith to show that the Sovereign, the Governor-General, the Governor of a State, the Administrator of a Territory or an advisor of any of these people are mistaken in any of his or her counsels, policies or actions. Nor do they apply to someone who points out in good faith errors or defects of the Australian Government, the Constitution or legislation, with a view to reforming those errors or defects, or urges in good faith another person to attempt to lawfully procure a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country. They also do not apply to a person who points out in good faith any matters that are producing, or have a tendency to produce, feelings of ill-will or hostility between different groups in order to bring about the removal of those matters, does anything in good faith in connection

## P. Freedom of opinion and expression

with an industrial dispute or an industrial matter, or publishes in good faith a report or commentary about a matter of public interest.

323. The right to freedom of expression under article 19(2) of the ICCPR may be subject to restrictions provided by law, and that are necessary for the protection of national security and public order. The Australian Government is satisfied that restrictions on communication imposed by the measures outlined above are necessary for the protection of national security. The Australian Government is also satisfied that the defence of “good faith” will adequately ensure that people who make comments without seeking to incite violence or hatred will not be deprived of the freedom of speech. Indeed, subsection 80.2(5) is in part implementation of article 20 of the ICCPR which requires State parties to prohibit advocacy that incites violence, discrimination or hostility.

324. An independent review of the offence of sedition has been conducted by the Australian Law Reform Commission. Information on the inquiry is available at <http://www.alrc.gov.au/inquiries/current/sedition/about.html>.

## Q. Right to peaceful assembly and association

ICCPR Articles	ICESCR Articles	CAT Articles	CROC Articles	CEDAW Articles	CERD Articles
21, 22	8		15		4(b), 5(d)(ix)

325. In accordance with Australia’s obligations under the above articles, all people in Australia have the right to participate in peaceful assembly and association and are free to do so in a variety of ways, subject to appropriate limitations recognised by these articles. Recent developments relevant to these rights include:

### **New Commonwealth offence of associating with a member of a terrorist organisation**

326. Some NGOs have raised concerns about the new Commonwealth offence of associating with a member of a terrorist organisation. This was introduced in the

Q. Right to peaceful assembly and association

*Anti-Terrorism Act (No 2) 2005* as an offence under section 102.8 of the *Criminal Code Act 1995*. HREOC's submissions on the Bill enacting this offence are available at <http://www.humanrights.gov.au/legal/submissions/terrorism.html>.

327. However, the ICCPR provides for restrictions on the freedom of association where those restrictions are prescribed by law and where they are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals and the protection of the rights and freedoms of others. The association offence would only restrict association where that association provides support to a terrorist organisation and the person *intends* that the support assist the terrorist organisation to expand or to continue to exist. This restriction is a reasonable one in relation to the legitimate purpose of disrupting mechanisms which support the existence or expansion of terrorist organisations, and necessary for national security and public safety.

### **Children and public space**

328. Some NGOs have expressed concern that the rights of young people from CALD backgrounds to peaceful assembly are often compromised through being constantly 'moved on' by police. They have suggested that 'moving on' laws restrict young peoples' opportunity to have a safe and open space to develop their own networks with their peers.

329. Any legal restrictions placed on children's right to associate freely and peacefully assemble are designed to ensure public safety and order, including the safety of children, as well as to prevent children from becoming involved in the criminal justice system.

330. As an example, the Young People in Northbridge policy was introduced in WA in 2003 to address the growing problem of young, unsupervised and often vulnerable children roaming the streets of Perth's main adult entertainment district, Northbridge, at night. The policy applies to primary school aged children during hours of darkness, and young people aged 13 to 15 after 10pm on Thursday, Friday and Saturday nights. The policy does not apply to those children and young people

#### Q. Right to peaceful assembly and association

who have legitimate reasons for being in Northbridge or are under the immediate care of a parent or a responsible adult. Since the introduction of the policy there are fewer unsupervised children and young people on the streets of Northbridge at night, and fewer children and young people have been apprehended by the police. Thirty five children who are regularly picked up have had access to assistance, along with their families, through a case management system which integrates several government departments including the Community Development, Education and Training, Justice, Housing, and Health Departments.

#### R. Right to marry and found a family, protection of the family, mother and children

ICCPR Articles	ICESCR Articles	CAT Articles	CROC Articles	CEDAW Articles	CERD Articles
23, 24	10		18, 19, 20, 22, 23, 33, 34, 36, 38	4, 5, 11, 12, 13(a), 16	5(d)(iv)

331. The Australian Government supports and respects choices made by Australians in defining their own families, and provides protection to families, women and children in accordance with the articles above. It recognises the many ways in which families create and conduct their lives, inclusively honouring differences of race, ethnicity, culture and religion, and promoting self-sufficiency and social responsibility.

332. Australian legislation provides protection and support for various types of families and households, and, in general, they have access to a wide range of financial and other forms of assistance.

#### Developments in family law

333. On 10 May 2005, the Australian Government announced major changes to the family law system, and a package of Budget measures costing \$397 million over four years. This was in response to the report *Every Picture Tells a Story*, from the House of Representatives Standing Committee on Family and Community Affairs' Inquiry into child custody arrangements in the event of family separation.

334. The Australian Government is determined to help children to have a meaningful relationship with both parents, reduce the impact of conflict on children, and reduce the emotional and financial costs of family separation on families and the community. The reforms include a network of 65 Family Relationship Centres across Australia, a major increase in funding to services to assist families, and legislative changes to the Family Law Act. A presumption of joint parental responsibility has been introduced to promote parents consulting together on important parenting decisions such as where a child goes to school or major health issues, however the presumption will not apply in cases of family violence or child abuse.

### ***Definition of marriage***

335. The Australian Government believes that same sex relationships should not be given the same legal status as marriage. The Australian Government believes overwhelmingly in the institution of marriage and, in 2004, acted to define in legislation the common understanding in our community of marriage which is ‘the union of a man and a woman, to the exclusion of all others, voluntarily entered into for life’. Accordingly amendments were made to the formal definition of marriage in the *Marriage Act 1961* and were passed with bi-partisan support in 2004. The amendments also confirm that Australia will not recognise as valid same-sex marriages entered into in another country. In 2006, the Australian Government took action to disallow the ACT *Civil Unions Act 2006*, which it believed compromised the unique status of marriage.

### ***State and Territory initiatives***

336. States and Territories have taken steps to provide greater protection and equality for families. For example, in Victoria, Queensland, ACT and the NT, amendments have been introduced to remove or modify distinctions based on a person’s gender, sexuality or de facto relationship.

### **Parenting support services**

337. The Australian Government is committed to a national approach to parenting and childhood. It funds initiatives to support and strengthen parenting roles and

contribute to the development and well-being of children in their early years. Major initiatives and funding programs include the *Stronger Families and Communities Strategy*, which was allocated \$240 million across four years up until June 2004 and additional funding of \$490 million for the next phase of the Strategy to 2009.

Specific initiatives include:

- *Communities for Children*, a whole of community approach to early childhood development in 45 community sites around Australia;
- *Early Childhood—Invest to Grow*, which funds resources such as the Australian parenting website and the Longitudinal Study of Australian Children and early childhood programs which aim to build the Australian evidence base in early childhood intervention and prevention;
- *Local Answers*, which funds local, small-scale projects that help communities build skills and capacity; and
- *Choice and Flexibility in Child Care*, which provides Australian parents with flexible and innovative child care solutions.

338. The Strategy is underpinned by a new comprehensive policy for children, the *National Agenda for Early Childhood*. This framework focuses on prevention and early intervention for children 0–8 years but has a long-term vision to improve outcomes for children into adolescence and beyond. The *National Agenda for Early Childhood* was endorsed by the Australian Government in December 2005 and now guides all Australian Government early childhood policy and program development.

339. State and Territory governments have also established a number of new parenting support services. For example, a confidential telephone information and counselling service to parents and primary care givers on child or youth health, parenting, development or behaviour is available in NSW, Victoria, Queensland, SA, and the ACT. The Victorian Government also provides funding for universal and targeted parenting education for parents and caregivers of children aged 0–18 years.

## **Balancing work and family**

340. Balancing work and family has become an area of increasing policy interest to the Commonwealth, State and Territory governments, as well as within the

community more generally. A range of policy approaches, such as the provision of quality child care options, increased family benefits and other support for parents are facilitating choice for parents.

341. Major developments have also occurred in this area as a result of amendments to the Commonwealth *Workplace Relations Act 1996* (WR Act). The WR Act mandates minimum pay and conditions of employment under the Australian Fair Pay and Conditions standard, including entitlements to parental leave, personal/carer's leave and ordinary hours of work. The legislation facilitates negotiation between employers and employees of family-friendly provisions over and above the Standard in collective and individual agreements. The WR Act also prohibits termination of an employee's employment on the basis of family responsibilities.

342. The Victorian Government has signed a *Charter for Work and Family Balance* and an *Action Agenda for Work and Family Balance* to assist in implementing the Charter, setting out a number of initiatives to enhance issues of work and family balance.

343. The OECD undertook an analysis of Australia's work and family policies in the first volume of *Babies and Bosses: Reconciling work and family life* in 2002. The OECD noted that Australia promotes choice for parents over how they meet their work and care arrangements and also encourages employer provided family friendly arrangements as agreed at workplace level.

### ***Family benefits***

344. In July 2000, the Australian Government simplified ways of paying family assistance through the Family Tax Benefit (FTB). FTB Part A is designed to assist families with the day-to-day costs of children, and is paid per child and assessed on combined family income. FTB Part B provides extra assistance to families with one main income, including sole parents, and is paid per family with a higher rate for families with a youngest child aged under five.

345. Around 2.2 million families with 4.2 million children benefit from FTB. This represents the vast majority of Australian families with dependent children, although

it is not possible to measure the exact take-up of FTB. The average payment of FTB is around \$7,900 per year.

346. Changes announced for 2006–07 increased the FTB Part A maximum rate threshold to \$40,000 allowing families to keep more of each dollar they earn before their family payments are affected. The taper rate has been reduced to 20 per cent resulting in improvements in Effective Marginal Tax Rates faced by families.

347. In 2002, the Australian Government introduced the *Baby Bonus*. The Bonus was a payment of \$500 per year for up to five years to assist families with the cost of raising children. From 1 July 2004, a universal lump sum Maternity Payment of \$3,000 replaced the Maternity Allowance and the Baby Bonus. The Maternity Payment increased to \$4,000 from 1 July 2006 and will increase to \$5,000 from 1 July 2008. The Maternity Payment recognises the extra costs associated with the birth or adoption of a child, including the loss of income while on unpaid maternity leave.

348. Other recent Australian Government initiatives include:

- a one-off lump sum Maternity Immunisation Allowance of \$222.30, which is paid for children aged 18–24 months who are fully immunised or where an approved immunisation exemption has been obtained, and
- the extension of the Large Family Supplement of \$255.50 per year to families with three or more children.

### ***Child care***

349. Child care is an essential element in helping families to balance their work and parenting roles, and provides a stimulating and nurturing environment for children. The Australian Government has a strong commitment to supporting families with access to quality child care and assisting families with the cost of that care. The Australian Government has spent over \$10 billion on child care since the introduction of Child Care Benefit in July 2000.

350. Through the Child Care Support Program, the Australian Government also provides operational support subsidies to some child care services, promoting greater flexibility and access in the sector in areas of high need. This includes operational

support funding, which is a contribution to service providers' administrative costs and sustainability assistance funding. This assists eligible services in rural, remote, or inner or outer regional areas that may have small or fluctuating numbers of children in care.

351. Government funding is also provided to assist children with special needs, those from diverse cultural and linguistic backgrounds, Indigenous children and South Sea Islander children, to access and participate in child care.

352. In addition to the Commonwealth's Child Care Benefit scheme, some States and Territories have introduced their own initiatives, for example, a NT Government subsidy to all licensed child care services.

### **Domestic violence**

353. Reflecting the seriousness with which the Australian Government takes domestic violence, the *Australia Says NO* campaign was launched in June 2004. The \$20 million national campaign reinforced the message that violence against women is totally unacceptable and was disseminated to all households through a broad cross-section of media. It also established a 24-hour Australian Government-funded confidential helpline, which provides immediate assistance by experienced counsellors.

354. Between 1997 and June 2005, the Australian Government also committed \$50 million to the *Partnerships Against Domestic Violence Program (PADV)*. PADV aimed to reduce domestic violence and violence perpetrated against children. An evaluation of the first phase of PADV found that children suffer great harm from living in violent households with effects similar to those from child abuse and akin to post-traumatic stress disorder. It is estimated that child abuse and domestic violence co-exist in between 30 per cent and 60 per cent of cases and that greater integration and collaboration between the justice sector and children's, men's and women's services improves women's and children's safety, makes better use of resources and increases prosecution rates. Priority areas for this initiative included children at risk, Indigenous family violence, work with perpetrators and community education.

355. PADV was replaced in May 2005 by the new *Women's Safety Agenda*, to which the Australian Government has committed \$75.7 million over four years to address family violence and sexual assault. It addresses four broad themes: prevention; health; justice and services.

356. Through its commitment to the *Supported Accommodation Assistance Program* (SAAP), Australia's primary service response to homelessness, the Australian Government provides substantial assistance to women escaping domestic violence. Domestic violence is a major factor in contributing to homelessness in Australia, particularly for women. In 2003–04, it is estimated that 33 per cent (32,700) of the 100,200 clients accessing SAAP were women escaping domestic violence. In addition, 66 per cent (34,700) of the 52,700 accompanying children in SAAP were children who accompanied a female parent or guardian escaping domestic violence.

357. States and Territories have also taken steps to help reduce domestic violence and assist victims, introducing or strengthening the provision of information and counselling for women and men, and undertaking a range of legislative action and law enforcement measures to combat domestic violence. Initiatives include:

- grants to assist victims
- improved law and processes relating to Apprehended Violence Orders in NSW, and in SA, where defendants must now obtain leave of the Court before applying for a variation or revocation of a restraining order
- specialised training of police, appointment of a dedicated Family Violence Prosecutor and Family Violence Magistrate, and a mandated perpetrator education program in ACT
- training for NSW and QLD health and community workers in responding to abuse of older people, people with disability and carers
- improved law and processes for Family Violence Orders in Tasmania, through the establishment of the *Family Violence Act 2004*, strong public awareness campaigns, recruitment and training of prosecutors and other police officers, and improved support services

R. Right to marry and found a family, protection of the family, mother and children

- a strong crime prevention policy framework in NT, encompassing Police Domestic Violence Units, safe houses and safe rooms, night patrols and training for workers in this field
- provision of a Witness Assistance Service in NSW, which assists domestic violence victims and prosecution witnesses, and includes an Indigenous Project Officer to raise cultural awareness and address needs of Indigenous victims and witnesses
- amendments to the WA restraining order regime to provide specific improvements in relation to family and domestic violence, including a power for Police to issue 72-hour interim orders and a broadening of the definition of family and domestic violence to include non-physical violence, and
- implementation of a new, integrated approach to family violence in Victoria that includes a strengthened police response (through the implementation of a new code of practice), enhanced justice responses, 24-hour referral and support for victims of family violence, improved case management, additional counselling and support programs, perpetrator programs and the provision of a range of accommodation options.

358. The level of family violence in Australia's Indigenous communities remains disproportionately high. The victims of family violence are usually women and children. The Australian Institute of Health and Welfare found that in 2003 Indigenous women were 28 times more likely than non-Indigenous women to be victims of family violence and other assaults.

359. The Australian Government is taking a leadership role in developing a strong collaborative approach between governments and Indigenous communities to address family violence. The National Framework on Indigenous Family Violence and Child Protection provides a national platform for addressing levels of family violence in Indigenous communities. In addition, an Intergovernmental Summit on Violence and Child Abuse in Indigenous Communities, involving Ministers from the Australian Government and all States and Territories, agreed to a *National Action Strategy* on 26 June 2006. The Australian Government offered a package of \$130 million over four years to combat violence and sexual abuse as part of its commitment to the *National*

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*Action Strategy.* A key element of the strategy is the establishment of a National Indigenous Violence and Child Abuse Intelligence Task Force. This is resourced by the Commonwealth, States and Territories with involvement from the Australian Federal Police, State and Territory police forces and other agencies, to provide a whole of government response to address violence and child abuse in Indigenous communities and monitor organised criminal activity relating to drugs, alcohol, pornography and fraud.

360. States and Territories have also strongly committed to reduce the incidence of Indigenous family violence by working in partnership with Indigenous communities, with a range of programs and strategies to address this issue being developed and implemented.

361. The ACT Government has undertaken preliminary work on developing a whole-of-government Indigenous Family Violence Policy Framework. It is acknowledged that this is a complex issue and needs a broad approach—through prevention and early intervention strategies including education; maternal health support and programs to address unemployment and substance abuse; and at the same time addressing the impacts of family violence through family support services and the justice system.

362. The ACT has also established an Aboriginal and Torres Strait Islander Unit within the Office for Children, Youth and Family Support that provides support services to families ‘at risk’ and works closely with the Indigenous community to ensure more intensive and appropriate services.

363. Victoria’s Family Violence Court Division provides an outreach support service for Indigenous peoples. Additionally, the Male Adolescents at Risk Project has been established to provide early intervention programs to young adolescent males who have come to the attention of the justice system for exhibiting aggressive or violent behaviour. The Program will implement a strategy specifically targeting Koori adolescent males.

364. The Queensland Government has developed the Safe Haven initiative in partnership with the Commonwealth Government. Safe Haven service models are being developed in four Indigenous communities in Queensland (Cherbourg, Coen, Palm Island and Mornington Island). These models aim to reduce the impact of domestic and family violence on children and young people. Services proposed include an integrated case management approach to deal with complex needs, an approach which builds community capacity to manage family violence, and improved coordination across the service system for better outcomes.

### **Indigenous family support**

365. Australian governments recognise that Indigenous families need support, particularly given the large numbers of Indigenous children that are placed in care. All jurisdictions in Australia recognise the Aboriginal Child Placement Principle, that is, where possible, Indigenous children in substitutive care should be cared for within their community or by another Indigenous family or community.

366. In addition to projects specifically targeted at Indigenous families and communities funded under the *Stronger Families and Communities Strategy*, the Australian Government has funded the following programs and initiatives:

- Children and family centres which are being developed in remote Indigenous communities to provide stability for the social, educational and cultural well-being of children by identifying children at risk and providing support for early and appropriate intervention to prevent/minimise long term disadvantages
- *Waltja Tjutangku Palyapayi* (meaning ‘doing good work for families’), a community based organisation working with Indigenous families in remote Central Australia to develop culturally appropriate children’s services based on Indigenous child rearing and parenting practices for children up to four years of age
- *Indigenous Children Program* (ICP) which aims to improve access to support services and encourage Aboriginal and Torres Strait Islander families to engage with their community through partnership approaches. It is about building stronger and more sustainable Aboriginal and Torres Strait Islander

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families and communities. ICP emphasises the early intervention and prevention approach in the delivery of services targeted at improving outcomes for Indigenous children and families, particularly those at risk of neglect or abuse.

367. The Commonwealth, State and Territory governments have also developed an *Action Plan for Advancing the Reconciliation Process*. A priority of the Plan is to develop strategies to address the disproportionate number of Indigenous children in institutions.

368. Examples of State and Territory initiatives to provide support to Indigenous families include:

- the Victorian *Aboriginal Family Decision-Making* program, which enables extended family and respected community elders to participate in decision making about the care and protection of the children and young people in their community who have been notified to child protection, and
- the establishment in 2001 by the WA Government of an *Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities* (Gordon Inquiry), and the Government's subsequent response to the Inquiry, which included significantly increasing the number of staff employed for the protection and support of Aboriginal children and their families.

***Addressing past policies of Indigenous child removal***

369. In May 1997, the Human Rights and Equal Opportunity Commission released its *Bringing Them Home* Report in relation to the past policy of separating Indigenous children from their families under the child welfare and protection laws at that time. In December 1997, the Australian Government responded to the Report with a range of initiatives. The Australian Government's response to the Report has focused on the Report's central finding that 'assisting family reunions is the most significant and urgent need of separated families'.

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370. The Australian Government has allocated approximately \$120 million to measures such as:

- a national network of family Link Up services to trace and re-unite separated families. Over 1,147 clients have been reunited between the 1998–99 and 2003–04 financial years. A total of 26,661 people have been assisted under the program during this time
- over 106 Bringing Them Home Counsellors in Aboriginal Community Controlled Health Services nationally to provide counselling to individuals, families and communities
- fifteen social and emotional well-being regional centres to provide training, support and planning assistance to Bringing Them Home Counsellors, Link Up staff and other specialist staff, including allied health professionals
- a records preservation project to enable Indigenous peoples to access historical information about themselves and their families
- a national oral history project to record people's stories of family separation
- programs to enhance the development of Indigenous parenting and family well-being, and
- a range of programs to preserve, revive and develop Indigenous culture and languages.

371. The Prime Minister has expressed his personal sorrow in regard to past practices and, in 1999, the Australian Parliament passed a Motion of Reconciliation. This Motion expressed 'deep and sincere regret that Indigenous Australians suffered injustices under the practices of past generations, and for the hurt and trauma that many Indigenous people continue to feel as a consequence of those practices'.

372. The book, *Many Voices: Reflections on experiences of Indigenous child separation* was launched in late 2002. This marked the culmination of a highly successful oral history project that was commenced in response to the *Bringing Them Home* Report. The project, undertaken by the National Library, included 340 recorded and transcribed interviews bringing together testimonies from different perspectives.

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373. The Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) Family History Unit was established as part of the Recommendations from the *Bringing Them Home* Report and is funded by the Office of Aboriginal and Torres Strait Islander Health. The Unit specifically assists Link-Up caseworkers in family tracing and reunion for members of the Stolen Generations. The Unit can also assist anyone of Indigenous heritage with their family history research. The Unit maintains an Aboriginal and Torres Strait Islander Biographical Index which contains over 50,000 records, and is also a useful resource for historical research.

374. The Australian Government has allocated funding for separated children's artwork at Reconciliation Place in Canberra. Reconciliation Place was designed as a symbol of the nation's commitment to reconciliation with Aboriginal and Torres Strait Islander peoples.

375. As part of National Sorry Day 2004, the Australian Government dedicated a memorial to Indigenous children forcibly removed from their families at Reconciliation Place following consultations conducted by the National Sorry Day Committee. The memorial commemorates 'all those Indigenous and non-Indigenous, whose genuine care softened the impact of what are now recognised as cruel and misguided policies'.

376. Australia's States and Territories have also developed a range of important strategies to address the continuing impact of past policies of child removal. These include improving access to government records, providing culturally specific services to help members of the Stolen Generations and their families to deal with the complex social, cultural and health related needs arising from past child removal policies, increasing the availability and quality of out-of-home care placements for Aboriginal children, and increasing support in communities to reduce the need for out-of-home care placement of Aboriginal children.

## **Protection of the mother**

### ***Pregnancy discrimination***

377. The *Workplace Relations Act 1996* (WR Act) provides measures to eliminate discrimination on a range of grounds, including on the basis of pregnancy and family responsibilities. A range of content is prohibited from being included in workplace agreements and awards, such as content which is discriminatory on the grounds of pregnancy. Employers face a range of penalties if they include prohibited content in new workplace agreements.

378. It is unlawful for an employer to terminate an employee's employment on discriminatory grounds. Employees can apply to the Australian Industrial Relations Committee (AIRC) if they believe their employment was terminated for an unlawful reason, such as pregnancy, family responsibilities and absence from work during maternity leave or other parental leave. Employees who believe they have been unlawfully terminated may be eligible to receive up to \$4,000 of independent legal advice, based on the merits of their claim.

379. The *Sex Discrimination Act 1984* (SD Act) prohibits discrimination against an employee on the basis of sex, pregnancy, potential pregnancy or because the employee is breastfeeding. The SD Act makes it unlawful for employers or potential employers to question employees about current or future pregnancies and to use medical information collected from pregnant women for discriminatory purposes.

### ***Parental leave***

380. Parental leave and its related entitlements are set out in Australian legislation. The parental leave provisions apply to permanent full-time and part-time employees and eligible casual employees who have had at least 12 months of continuous service with their current employer. The parental leave provisions include:

- up to 52 weeks of unpaid parental leave (including maternity, paternity and adoption leave)
- special maternity leave for a pregnancy related illness or in the event that the pregnancy ends other than by a live birth
- the right to transfer to a safe job if a female employee is unable to continue in her present position because of illness or risks arising out of her pregnancy or hazards connected with that position

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- up to two days of unpaid pre-adoption leave to attend any interviews or examinations required to obtain approval for the adoption, and
- the right to return to the position the employee held immediately before the start of parental leave or a position that has the same terms and conditions of employment as the former position.

381. Some employees, including Commonwealth and State and Territory government employees, and some private sector employees, have access to paid maternity leave as a condition of their employment. The latest Australian Bureau of Statistics data shows that 41 per cent of female employees in Australia are entitled to paid maternity leave.<sup>8</sup> In current federal certified agreements, 50 per cent of female employees are entitled to paid maternity leave of an average duration of 8.7 weeks.<sup>9</sup>

382. The Committee on Economic, Cultural and Social Rights has recommended that the Australian Government consider enacting legislation on paid maternity leave and ratifying ILO Convention No 103 (C 103) concerning maternity protection.<sup>10</sup> The Australian Government does not intend to ratify C 103, or ILO Convention 183 *Maternity Protection*, 2000, which has revised C 103. These conventions require the payment of cash benefits sufficient for the full and healthy maintenance of a woman taking maternity leave and her child in accordance with a suitable standard of living, for a minimum period. The WR Act provides for direct negotiations between employers and employees regarding workplace issues, including the provision of paid maternity leave, through agreement making, but does not require paid maternity leave. The Act provides for 52 weeks' unpaid parental leave for eligible employees under the Australian Fair Pay and Conditions Standard.

383. A range of similar parental leave protections are also in place at State and Territory level. Other initiatives have also been taken to promote paid maternity leave—for example, the Victorian Government initiated a payroll tax exemption in 2003 as an incentive for employers to pay maternity leave voluntarily to their

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<sup>8</sup> ABS Employee Earnings, Benefits and Trade Union Membership (EEBTUM) Survey, August 2005.

<sup>9</sup> Workplace Agreements Database, Department of Employment and Workplace Relations, June 2006.

<sup>10</sup> Committee on Economic, Social and Cultural Rights, Concluding Observations, Australia 08/09/2000, E/C.12/1/Add.50, paragraph 28.

employees. The exemption applies to wages paid or payable for maternity and adoption leave which are paid in addition to an employee's normal leave entitlements. Additionally, the *Labour Relations Legislative Amendments Act*, recently passed by the Western Australian Parliament, includes improvements to statutory entitlements such as carer's leave and parental leave for employees with family responsibilities.

## **Protection of children and young people**

### ***Child abuse and neglect***

384. Despite the ongoing efforts of governments and NGOs, child abuse remains a major concern in the Australian community. Indigenous children remain significantly overrepresented in the child protection system.

385. Australian governments have greatly increased the real recurrent expenditure on child protection and out-of-home care services. In 2004–05 Australian governments spent over \$1,230.8 million on child protection and out-of-home care services, up from \$1,083.7 million in 2003–04, a real increase of 13.6 per cent.

386. The Australian Government values the important role played by foster, relative and kinship carers, including those in Aboriginal and Torres Strait Islander Communities, in raising children and young people when their parents are unable to do so. The Australian Government funds various initiatives under the *National Plan for Foster Children, Young People and Their Carers 2004–2006* (more commonly referred to as the National Plan). These include two publications to assist foster, relative and kinship carers, and research projects that support the National Plan. The Australian Government has also introduced a number of specific measures to assist grandparent and relative carers.

387. In recent years, Australian governments have also investigated ways of improving the operation of the child protection system. At State and Territory level, reviews of child protection services have been undertaken and inquiries held into the abuse of children, resulting in the implementation of many new initiatives in response to their findings:

R. Right to marry and found a family, protection of the family, mother and children

- In Queensland, three major inquiries into the abuse of children whilst in institutional care have been conducted. These have resulted in the establishment of the Department of Child Safety, the appointment of Child Safety Directors in departments with child protection responsibilities; the extension of the powers of the Commissioner for Children and Young People to monitor systems, policies and practices of service providers which affect children in the child safety system and the establishment of legislative and committee review mechanisms for cases of child death following contact with the Department of Child Safety.
- The WA Government is implementing a range of recommendations arising from the *Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities* (Gordon Inquiry), including an expansion of the Child Protection Unit at WA's children's hospital, the establishment of two inter-jurisdiction Police facilities with the NT, the employment of an additional 23 Child Protection Workers and 14 Aboriginal Support Workers, and the recruitment of an additional 50 police officers with over 30 of those located in regional WA.
- WA has also introduced legislative amendments that make violence in the presence of children a circumstance of aggravation in relation to assault.
- The ACT has implemented recommendations from two 2004 reviews into child protection. The *Children and Young People Amendment Act 2006* was passed by the ACT Legislative Assembly on 9 March 2006. The amendment Act focuses on children and young people 'at risk' of abuse and neglect, introduces cultural plans for Indigenous children and young people and provides for greater participation by children, young people and their families.
- Victoria has passed new child protection legislation, the *Children, Youth and Families Act 2005*, which focuses on the needs of vulnerable children and young people. It does this through the articulation of a range of best interests and decision-making principles.

388. The Victorian, Queensland, WA, SA, ACT and NT Governments have all implemented agreements for the efficient transfer of child protection orders and

proceedings for children who cross State or Territory borders. The new arrangements allow for the interstate registration and transfer of child protection orders so that a child may be protected if the child moves to another jurisdiction.

389. In addition to these initiatives, the Family Court has trialled innovative projects, namely the *Magellan Project* in Victoria and the *Columbus Project* in WA, to improve the processes for family law cases involving physical and/or sexual child abuse. An evaluation of *Magellan* has found that the project was successful in reducing the time taken for the cases and the number of hearings required, reducing the breakdown rate of final orders and reducing the incidence of child distress (from 28 per cent to 4 per cent).

### ***Sexual exploitation of children***

390. In recent years, the Australian Government has supported a wide range of initiatives to protect children's human rights and prevent their sexual exploitation. For example, in 2000, Australia developed a national action plan to combat the commercial sexual exploitation of children. Australia also actively participated in the negotiation of the Optional Protocol to the CROC on the Sale of Children, Child Prostitution and Child Pornography, which it has now ratified.

391. The *Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Act (No 2) 2004* introduced new offences covering the use of the internet to access, transmit and make available child pornography, or to 'groom' or procure children with the intention of engaging in sexual activity with them. Child pornography offences are punishable by 10 years imprisonment, procuring offences by 15 years imprisonment, and 'grooming' offences by 12 years imprisonment.

392. In September 2004, the Australian Government launched the Australian National Child Offender Register to track child sex offenders, and others who commit serious offences against children. Under the Register, anyone convicted of sexual or other serious offences against children will be legally obliged to notify police of their address, places they frequent, car registration and other personal details. The Register

will be a police-only information tool to which only designated officers will have access.

393. State and Territory governments have also taken steps to combat the sexual exploitation of children:

- In the ACT, legislation has been strengthened against the commercial exploitation of children, with the introduction of new or broadened offences.
- The NT has also strengthened its laws protecting children by increasing penalties and creating new offences relating to ‘carnal knowledge’ offences; eliminating gender related discrimination by removing the different age of consent provisions and differing offences and penalty provisions; and removing traditional marriage as a defence to the offence of sexual intercourse with a child under the age of 16 years so that all NT children are now equally protected against sexual exploitation, sexual abuse or otherwise potentially harmful sexual relationships irrespective of their racial or ethnic origins.
- Victoria has established a legislative regime, through the *Sex Offenders Registration Act 2004*, requiring persons who commit certain sexual offences against children to be placed on a Sex Offender Register maintained by police. The Register is aimed at reducing the likelihood that a ‘registrable offender’ will re-offend and to facilitate the investigation and prosecution of any future offences that he or she may commit, thereby enhancing community protection, particularly in relation to children.

### ***Child witnesses***

394. Western Australia has made special legislative provision for child witnesses in criminal proceedings. The legislation ensures they are entitled to support and assistance before and while in court, prevents direct cross-examination by the accused (cross-examination must be through the judge), provides for the video-taping of a child’s evidence and its admission in court, and provides that the court may order special hearings including children giving evidence in a separate room.

R. Right to marry and found a family, protection of the family, mother and children

395. The Victorian Government has also committed significant financial resources to support child witnesses. The funding will establish Victoria's first specialist child witness service, providing a specialist team of support workers to help prepare child witnesses for court and support them during and after the case, providing a link with police, prosecutors and victims services.

### ***Petrol sniffing***

396. The Australian Government is continuing its efforts to combat petrol sniffing which has been a health issue affecting small numbers of Indigenous peoples in remote communities in central and northern Australia.

397. The Australian Government has undertaken a comprehensive regional strategy in conjunction with State and Territory Governments to reduce the extent and effects of petrol sniffing through:

- consistent substance abuse legislation, and appropriate levels of policing including cross-border coordination of policing activities
- supply reduction through the substitution of petrol with non-sniffable *Opal* fuel through the *Petrol Sniffing Prevention Program*
- alternative activities for young people, such as sport and recreation programs
- treatment and respite activities
- communication and education strategies, and
- strengthening and supporting communities.

The rates of petrol sniffing have been dramatically reduced where non-sniffable *Opal* fuel has been provided in communities. Recent evidence from northern SA indicates that *Opal* has helped reduce petrol sniffing by 80 per cent, with similar results reported in the NT.

## S. Right to work

ICCPR Articles	ICESCR Articles	CAT Articles	CROC Articles	CEDAW Articles	CERD Articles
	6, 7			11	5 (e)(i)

### Reducing unemployment

398. The Australian Government's employment policy objective is that everyone who wants to work has the opportunity to do so. This is demonstrated by the Australian Government's commitment to reducing unemployment and giving working age Australians the best chance of getting a job. The best way to achieve this is through promoting economic growth so that Australian businesses will be in a position to create new, sustainable jobs. To this end the Australian Government has pursued sound macro economic policies, together with micro economic reforms that help Australian businesses create new jobs. The success of the Australian Government's policies is evidenced by the reduction in the unemployment rate. In the period March 1996 to June 2006, the unemployment rate in Australia fell from 8.2 per cent to 4.9 per cent, its equal lowest level since August 1976. During this period over 1.8 million jobs have been created.

399. Based on the *2004–05 National Aboriginal and Torres Strait Islander Health Survey* (NATSIHS), the unemployment rate for working age Indigenous Australians is 15.4 per cent. According to Australian Bureau of Statistics (ABS) *Labour Force Survey* data, the rate is 16.4 per cent.

400. The methodology underlying NATSIHS is better suited to providing estimates of labour force status for the Indigenous population than the *Labour Force Survey*. The *Labour Force Survey* is designed to provide consistent estimates of labour force status at the national level, and to a lesser extent, the State and Territory level and is not designed for producing consistent estimates for sub-populations, such as Indigenous Australians.

***Employment services, vocational education and training for employment***

401. In 1998, the Australian Government established a system of free public employment agencies—the Job Network. The Job Network is a diverse national network of private and community organisations contracted by the Australian Government to deliver employment services and get unemployed people into jobs through a flexible system that delivers employment services tailored to the needs of individual job seekers.

402. The system is underpinned by the Australian JobSearch web site (<http://www.jobsearch.gov.au>) which provides a national database of job vacancies and an automatic job matching and notification system. The web site contains comprehensive information and resources to assist in finding work. Recent reforms to Job Network include introduction of Welfare to Work measures from 1 July 2006. The measures were announced by the Australian Government as part of the 2005–6 Budget and broader Welfare to Work reforms. The Welfare to Work reforms (<http://www.workplace.gov.au/workplace/Category/SchemesInitiatives/MovingIntoWork/AboutWelfaretoWorkreforms.htm>) are aimed at making Australia's welfare system more sustainable while retaining a strong safety net. This will be achieved by encouraging increased workforce participation for those with a capacity to work.

403. The reforms focus on four priority groups, people with a disability, parents, mature age people and the very long-term unemployed. Welfare to Work also includes strategies to work with, and assist employers in encouraging flexible working arrangements and employment of people from the priority groups.

**Protection of vulnerable workers**

404. A broad range of initiatives have been implemented to support and educate vulnerable employees on the new federal workplace relations arrangements enacted under the Work Choices Act. This includes seminars, information products, the Work Choices internet site and the Work Choices Infoline. Specifically targeted services and products are available for employees with special needs and those in a disadvantaged bargaining position. Activities to date include translating Work Choices material into 13 community languages and specialist strategies and products

## S. Right to work

for Indigenous employees. To supplement these activities, there are Workplace Advisors located in every capital city. Advisors visit a range of organisations and special interest groups so that they can assist and educate their members in relation to Work Choices. There is a particular focus on needs-based groups including organisations that represent or service migrant workers, women, youth, Indigenous workers, people with a disability, regional and rural workers and apprentices and trainees.

### **Employment services for Indigenous Australians**

405. The Australian Government introduced the Indigenous Employment Policy (IEP) in 1999 in response to the continuing high unemployment rates among Indigenous Australians and a demographic profile which indicated that the labour market disadvantages of Indigenous peoples would, in all likelihood, increase further unless special efforts were made. The IEP has three main elements:

- Indigenous specific programs
- intensive employment assistance through Job Network services, and
- an Indigenous Small Business Fund to support both employers and Indigenous peoples looking for work.

406. The Community Development Employment Projects (CDEP) program is an Australian Government funded initiative for unemployed Indigenous Australians providing activities which develop participants' skills and improve their employability in order to assist them move into employment outside the CDEP and to meet community needs.

407. The circumstances of Indigenous Australians will be improved through the implementation of the Indigenous Economic Development Strategy, which is aimed at supporting Indigenous Australians to achieve economic independence in the areas of employment, home ownership and business development. This initiative involves the Australian Government working closely with Indigenous Australians and Indigenous communities to assist in reducing welfare dependency and stimulate employment and economic development.

## S. Right to work

408. The following progress has been made in respect of Indigenous unemployment through services provided by the Australian Government:

- A total of 3,505 employment and/or training placements were achieved through Structured Training and Employment Projects in the 2005–06 financial year with 265 new projects approved.
- A total of 145 Indigenous Small Business Fund Projects, which aim to foster the development of businesses owned and run by Indigenous peoples and promote lasting employment outcomes, were approved during 2005–06. During 2005–06, 3,704 Indigenous peoples moved out of CDEP into open employment, an increase of over 135 per cent over the previous 12 months.
- Job Network placed over 44,500 Indigenous job seekers in work in the 12 months to end of June 2006, a 14 per cent increase on the previous twelve months.

### ***Vocational and Technical Education***

409. Vocational and Technical Education (VTE) is an area of shared responsibility between the Australian Government and the States and Territories. The States and Territories have primary responsibility for VTE: they provide two-thirds of the funding and have all of the regulatory responsibility for the sector.

410. The Australian Government in its role leading the national training system has focussed increasingly on promoting national quality, consistency and coherence in the provision of VTE. A key element in this agenda has been the introduction of competency-based Training Packages, an integrated set of national Australian Qualification Framework qualifications, competency standards, and assessment guidelines for a specific industry, industry sector or enterprise.

411. The *Skilling Australia's Workforce Act 2005* is the vehicle for the new National Training Arrangements for the funding period 1 July 2005 – 31 December 2008. A key feature of the Skilling Australia's Workforce Act is the strengthening of the funding framework, which links funding for the States and Territories to a range of conditions and targets for training outcomes. These targets include increasing the number of training places for people with a disability, Indigenous Australians in

## S. Right to work

regional and remote locations, and increasing the overall participation of Indigenous Australians at higher qualification levels specifically at Certificate III and above. These will drive quality improvement and increased flexibility in the vocational education and training sector.

412. Australia's national training system is industry-led, competency-based, nationally consistent and quality assured. In November 2003, Ministers for vocational education and training across Australia endorsed Australia's National Strategy for Vocational and Technical Education 2004–2010—*Shaping Our Future*—which represents a commitment by the Australian and State and Territory governments to continue to work in partnership with industry, providers and other stakeholders to develop the national VTE system.

### **VTE for Indigenous Australians**

413. Indigenous Australians have a high rate of participation in the Australian training system. While around 2.4 per cent of the Australian population is Indigenous, in 2005 they comprised around 3.8 per cent of the total students participating in VTE.<sup>11</sup> Between 2001 and 2005, the number of Indigenous Australians commencing Australian Apprenticeships increased 53 percent from 5,860 in 2001 to 8,950 in 2005.

414. A Strategy and Blueprint, *Partners in a Learning Culture*, to improve opportunities for Indigenous Australians in VTE was agreed by Australian, State and Territory training authorities in 2000. A revised Blueprint, published in 2005, focuses activity at the national level on priority activities, including building the capacity of the VTE sector through Indigenous involvement, creating more pathways for Indigenous Australians, ensuring the development of culturally appropriate products and delivery, and improving links to employment.

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<sup>11</sup> See Table 25, Statistical Annex.

### **Australian Apprenticeships**

415. Since the 1998 introduction of the Australian Apprenticeships (formerly *New Apprenticeships*) system, major trends include a broadening of the range of national industry and occupational qualifications covered to more than 1,500, increased take-up of Australian Apprenticeships by both new and existing (including mature aged) workers and a greater use of flexible training/employment arrangements including full-time, part-time and Australian School-based Apprenticeships. There were 389,000 Australian Apprentices in training on 31 December 2005—a 151 per cent increase from the 154,800 Australian Apprentices in training in March 1996.

### **Youth services**

416. Youth Pathways, which replaced the Jobs Pathway Program (JPP) from 1 January 2006, assists those young people who are most at risk of disengaging from education. It complements the broader *Careers Advice Australia* initiative by providing intensive individualised assistance and support to those young people identified as being the most at risk of not making a successful transition from school to further education, training or work. Each young person who participates in Youth Pathways receives:

- an assessment that determines their needs and barriers
- individualised case management and intensive contact to address the needs and barriers, and
- regular contact until the end of the calendar year to ensure he/she remains on track

417. In May 2001, the Australian Government released the Prime Minister's Youth Pathways Action Plan Taskforce *Footprints to the Future* report, which outlined ways young people and their families can be better supported during the transitional period from school to further education, training and employment.

418. Other initiatives of the Australian Government are set out below:

- The Partnership Outreach Education Model (POEM) Pilot, established in 2002, provides an education and personal development program targeting

## S. Right to work

young people (aged 13 to 19 years) who are disconnected from mainstream schooling. POEM offers flexible accredited education and training options delivered in supported community settings.

- The Australian Government has a range of career programs and policies to ensure that all Australians, particularly young people, have access to services through and beyond school which assist them to make informed choices about education and training options, career choices and pathways to employment.
- myfuture (<<http://www.myfuture.edu.au>>) is Australia's national online career information and exploration service aimed at all Australians, and especially students, wishing to explore their career options. It was developed with the goal of providing a single, comprehensive and effective career information and exploration service in Australia.
- The Professional Standards for Careers Practitioners were released in April 2006, and act as a mechanism for consistency in the delivery of Australian career development services. The Standards provide for a minimum entry level qualification, which will be enforceable by 2012.

## T. Right to just and favourable conditions of work

ICCPR Articles	ICESCR Articles	CAT Articles	CROC Articles	CEDAW Articles	CERD Articles
	7			11	5 (e)(i)

### Fair and equal remuneration, and equal opportunity

419. Prior to 2006, the Australian Industrial Relations Commission (AIRC) was required under the *Workplace Relations Act 1996* (WR Act) to 'ensure the maintenance of an effective award safety net of fair and enforceable minimum wages and conditions of employment'. In June 2005, the AIRC handed down the Safety Net Review 2005, which provided scope for the Federal Minimum Wage to increase from \$467.40 to \$484.40 per week. This increase applies proportionately to junior, part-time and casual employees. At the time of the decision, the pay increase only applied to workers covered by the awards specified in the case. State industrial tribunals

T. Right to just and favourable conditions of work

conduct their own State wage cases, but usually have regard to the national wage decision.

420. Under the *Workplace Relations Amendment (Work Choices) Act 2005* (the Work Choices Act) (enacted on 27 March 2006) the Australian Government established the Australian Fair Pay Commission to review and set minimum wages for employees in corporations. Under section 23 of the WR Act, in performing its wage setting function, the objective of the Fair Pay Commission is to promote the economic prosperity of the people of Australia, having regard to:

- the capacity for the unemployed and the low paid to obtain and remain in employment
- employment and competitiveness across the economy
- providing a safety net for the low paid, and
- providing minimum wages for junior employees, employees to whom training arrangements apply and employees with a disability that ensure those employees are competitive in the labour market.

421. Under the Work Choices Act, the Fair Pay Commission is required, when setting and adjusting wages to apply the principle that men and women should be paid equal remuneration for work of equal value. In addition, the Australian Industrial Relations Commission continues to be able to make equal remuneration orders in relation to residual award matters and agreements. These orders can not cover rates of pay set by the Australian Fair Pay Commission because it is separately bound by the same principle. Revised provisions also explicitly state that an employer cannot dismiss or otherwise cause detriment to any of his or her employees as a result of their involvement in an equal remuneration proceeding. Moreover, clauses in awards and agreements that discriminate on the basis of sex or other grounds are prohibited content in workplace agreements as specified in the *Workplace Relations Regulations 2006*. These clauses are void and subject to removal by the Employment Advocate.

422. With the implementation of the Work Choices amendments, the Australian Government is moving towards a unified national workplace relations system. The equal remuneration provisions of the WR Act will 'cover the field' in this regard and

## T. Right to just and favourable conditions of work

will extend to all employees whose remuneration is determined by the Act, a law of a State or Territory or a contract of employment made in Australia and includes awards and agreements in federal and State systems.

### ***Tax reform***

423. The New Tax System introduced on 1 July 2000 represented a major restructuring of the Australian taxation system, which has continued in recent Budgets. The income thresholds at which higher marginal rates of tax apply have been increased and marginal tax rates reduced. In the 2005–06 Budget the 17 per cent rate marginal income tax rate was reduced to 15 per cent. The 2006–07 Budget reduced the top rate from 47 per cent to 45 per cent and the 42 per cent rate to 40 per cent. More than 80 per cent of Australian taxpayers now face a marginal income tax rate of 30 per cent or less. These reforms ensure that the Australian taxation system continues to support rewards from working.

### ***Pay equity and equal opportunity***

424. The *Equal Opportunity for Women in the Workplace Act 1999* was designed to promote equal employment and eliminate discrimination. The Act requires private sector companies, unions, non-government schools, higher education institutions and community organisations (that have 100 or more people) to establish a workplace program to remove barriers to women entering and advancing in their organisation. The Equal Opportunity for Women in the Workplace Agency is a statutory authority responsible for administering the Act, and through education it assists organisations to achieve equal opportunity for women.

425. State Industrial Relations Commissions (including those in NSW and Queensland) have in recent years conducted inquiries into issues of pay equity and the promotion of equality in the workplace. A number of changes have been made in response to the recommendations of these inquiries. In Queensland, for example, changes have been made to guarantee equal remuneration for men and women employees for work of equal or comparable value.

T. Right to just and favourable conditions of work

426. The WA Government established a Pay Equity Unit (PEU) in February 2006. The PEU has analysed the recommendations of the Review of the Gender Pay Gap in WA to create an action plan, which is now being implemented.

427. The *Equity and Diversity Framework for the ACT Public Service* provided a framework under which agencies can build and develop policies and plans for active future development of Equal Employment Opportunity. The Framework supports measures to prevent discrimination against women on the grounds of marriage and maternity, and ensures their right to work.

428. The Victorian Government established a Pay Equity Inquiry in 2004 to identify the extent of the gender pay gap in Victoria, and to investigate the contributing factors. The Working Party established to oversee the Inquiry released its report *Advancing Pay Equity—their future depends on it*, which is available online at [http://www.business.vic.gov.au/BUSVIC.13238490/STANDARD//PC\\_61635.html](http://www.business.vic.gov.au/BUSVIC.13238490/STANDARD//PC_61635.html) Actions are currently being implemented to address the issues raised.

***Measures to protect outworkers***

429. The Committee on Economic, Cultural and Social Rights has strongly recommended that the Australian Government undertake measures to protect home-workers and to ensure that they receive the official minimum wage, that they benefit from adequate social security and that they enjoy working conditions in conformity with the legislation.<sup>12</sup> In 2003, the Australian Government passed the *Workplace Relations Amendment (Improved Protection for Victorian Workers) Act 2003* which, among other things, ensures minimum rates of pay for contract outworkers (or home-workers) in the Victorian textile, clothing and footwear industry.<sup>13</sup>

430. Under the Work Choices amendments to the WR Act, employee outworkers are entitled to receive the minimum pay and leave entitlements as set out in the

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<sup>12</sup> Committee on Economic, Social and Cultural Rights, Concluding Observations, Australia 08/09/2000, E/C.12/1/Add.50, paragraph 27.

<sup>13</sup> This legislation relates to Victoria only, as Victoria has referred its powers in respect of industrial relations matters to the Commonwealth.

## T. Right to just and favourable conditions of work

Australian Fair Pay and Conditions Standard (the Standard). The Standard sets out the minimum wages and conditions of employment that apply to all employees in the federal system. The Standard contains basic rates (and piece rates) of pay including casual loadings, as well as maximum ordinary hours of work, annual leave, personal/carer's leave and parental leave. The new federal workplace relations legislation maintains existing federal and State protections for employee outworkers. Outworker protections (including provisions dealing with chain of contract arrangements, registration of employers, employer record keeping and inspection of records) remain in awards as allowable award matters. Further, workplace agreements covering outworkers will not be able to override award outworker conditions, except where the agreement is more favourable for the outworker than the award.

### ***Labour in private prisons***

431. The Committee on Economic, Social and Cultural Rights has recommended that the Australian Government ensure that labour in private prisons is voluntarily undertaken and is properly remunerated.<sup>14</sup> Issues concerning the use of prison labour in private prisons, including those identified by the Committee, are being discussed by the Australian Government with the supervisory machinery of the ILO, including the Committee of Experts on the Application of Conventions and Recommendations.

432. In NSW's one private prison, Junee Correctional Centre, and in NSW Government-operated correctional centres, labour is voluntary. The pay scales for work performed at Junee are the same as those in government-operated centres.

433. In Victoria, most convicted prisoners are required by legislation to work during their sentence. Work undertaken by convicted prisoners in private and State run prisons in Victoria has been the subject of extensive dialogue between the Australian Government and the ILO. It is the Victorian Government's view that work in Victorian prisons does not fall within the definition of 'forced or compulsory labour' in ILO Convention No 29 *Forced Labour*. The details of this view have been

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<sup>14</sup> Committee on Economic, Social and Cultural Rights, Concluding Observations, Australia 08/09/2000, E/C.12/1/Add.50, paragraph 30.

## T. Right to just and favourable conditions of work

clearly expressed in article 22 reports on Convention 29 and in submissions for Australia's appearance before the ILO Committee on the Application of Standards in 1999 and 2004.

434. The Queensland Government is not authorised by law, to practise forced or compulsory labour in private or publicly operated facilities, which are subject to the same statutory requirements. Labour in Queensland's two 'private prisons', and in correctional facilities run by the Government, is voluntarily undertaken and is properly remunerated, with the rate of remuneration reviewed annually.

435. In WA all prisoners are treated alike and in accordance with the ILO Conventions concerning forced labour.

436. Whilst Tasmania does not have private prisons, relevant legislation allows government prisons to direct a prisoner to undertake work that is considered suitable to the prisoner's physical and intellectual capacity. The prisoners are paid for the work that they do.

### **Job Security**

437. The Committee on Economic, Cultural and Social Rights has recommended that the Australian Government ensure that legislative provisions concerning job security are strengthened and effectively implemented, especially for the most vulnerable groups, such as fixed-term contract workers, temporary workers and casual workers.<sup>15</sup> The Australian Government believes that workers should be free to enter into either contractual or employment relationships. The Australian Government considers that it should not encourage one working arrangement to the detriment of another, whether it be permanent, casual, full-time, part-time or contract.

438. The *Independent Contractors Act 2006* (the Principal Act) and the *Workplace Relations Legislation Amendment (Independent Contractors) Act 2006* (the Amendment Act) were introduced in 2006. The Acts recognise and protect the unique position of independent contractors in the Australian workplace by supporting the

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<sup>15</sup> Committee on Economic, Social and Cultural Rights, Concluding Observations, Australia 08/09/2000, E/C.12/1/Add.50, paragraph 26.

## T. Right to just and favourable conditions of work

freedom of independent contractors to enter into arrangements outside the framework of workplace relations laws. They also include protections for vulnerable workers. For example, the Amendment Act provides for penalties to be imposed on employers who seek to avoid their obligations under employment law by disguising their employees as independent contractors, or who coerce their employees to become independent contractors.

439. The Australian Government does not agree with proposals to introduce automatic conversion rights for casuals to become permanent employees after certain periods. Casual employees generally receive a loading on their hourly or weekly rate of pay in lieu of certain benefits such as accrued sick leave or annual leave. Under the Work Choices Act conversion from casual employment to another type of employment is no longer an allowable award matter.

440. Under the Work Choices Act the Australian Government prohibited employees employed by businesses with 100 employees or less from having access to the unfair dismissal protections of the WR Act. The Australian Government views that federal unfair dismissal laws had created an onerous burden for employers, particularly small business employers and reduced the labour market flexibility that has contributed significantly to Australia's improved productivity performance over the last ten years. The Australian Government notes that structural change is constant in all economies and that the best assurance of sustainable job security for Australian workers is a dynamic and responsive labour market with high productivity workplaces and readily available job opportunities.

441. However, all Australian employees will continue to have access to the unlawful termination provisions of the WR Act. These provisions make it unlawful to terminate an employee's employment on discriminatory grounds including temporary absence from work due to illness or injury; membership of a trade union, race, sex, sexual preference, age, physical or mental disability and marital status.

442. State governments have introduced measures to strengthen job security, especially for vulnerable workers, including protection against unfair dismissal.

## **Safe and healthy working conditions**

443. The Australian Government considers occupational health and safety (OHS) to be of great importance and remains committed to improving the capacity of employers and employees to prevent injury, disease and fatality at the workplace. OHS developments are discussed and considered by the highest level of Government—the Workplace Relations Ministers’ Council (WRMC).

444. Additionally, all States and Territories have occupational health and safety legislation and workers compensation legislation to protect and compensate workers.

445. In seeking to achieve safer Australian workplaces free from injury and disease the Australian Government, along with the relevant Ministers in each State and Territory, the Australian Council of Trade Unions and the Australian Chamber of Commerce and Industry signed the National OHS Strategy 2002–2012 in May 2002. The Strategy identifies national priorities to bring about short-term and long-term OHS improvements, as well as longer-term cultural change, which are intended to foster sustainable safe and healthy work environments and to reduce significantly the number of people injured or killed at work.

446. In 2004, the Australian Government ratified ILO Convention No 155, whose objective is to prevent accidents and injury to health arising out of, linked with or occurring in, the course of work. State and Territory governments have, in recent years, developed their own OHS programs to complement the National OHS Strategy.

## **Rest, leisure and reasonable limitation of working hours**

447. Under the amendments to the WR Act enacted under the Work Choices Act, the Fair Pay and Conditions Standard (the Standard) guarantees minimum entitlements to paid annual leave and personal/carer’s leave, and unpaid parental leave. The Australian Government’s policy in regard to increases in leave entitlements is that these are to be gained through bargaining and not the subject of regulation. The Standard also provides that employees cannot be required or requested to work more than 38 hours per week, plus reasonable additional hours. In

## T. Right to just and favourable conditions of work

determining whether additional hours an employee is requested or required to work are ‘reasonable’, a range of factors must be taken into account, including (but not limited to) any risk to the employee’s health and safety, and the employee’s personal circumstances including family responsibilities. Disputes regarding the Standard are resolved through the model dispute settling procedure. Civil remedies are also available for contraventions of the Standard.

## U. Trade union rights

<b>ICCPR Articles</b>	<b>ICESCR Articles</b>	<b>CAT Articles</b>	<b>CROC Articles</b>	<b>CEDAW Articles</b>	<b>CERD Articles</b>
22	8				5 (e)(ii)

### **The right to form and join trade unions**

448. Part 16 of the WR Act contains extensive freedom of association provisions. The objects of this Part include ensuring that employees are free to join a trade union of their choice, to ensure that they are not victimised for exercising their rights to freedom of association and to provide appropriate remedies for breaches of the freedom of association provisions. The WR Act also makes it unlawful to terminate a person’s employment or injure them in their employment on the grounds of membership (or non-membership) of a trade union.

449. The Work Choices Act retained the fundamental principles of the freedom of association provisions in the old WR Act. The legislation also strengthened those provisions by introducing new objects to provide effective relief to persons who are prevented or inhibited from exercising their right to freedom of association and by providing effective remedies to penalise and deter persons who engage in conduct which prevents or inhibits persons from exercising the right to freedom of association.

450. The Work Choices Act freedom of association provisions are intended to ‘cover the field’ and exclude the operation of State laws that deal with freedom of association. As a consequence, the only remedies for breaches of freedom of association for parties are the remedies provided by the Work Choices Act. The Act

supplements the previous types of prohibited conduct, including new provisions that make it unlawful to coerce a person to become, or not to become a member or officer of an industrial association, make false and misleading statements about membership of associations and organise, take or threaten industrial action because another person is not a member of an industrial association.

451. HREOC is empowered to inquire, on its own motion or upon receipt of a complaint, into acts or practices which may constitute discrimination in employment on the basis of trade union activity. The Commission has reported to Parliament twice on discrimination on this ground (in 1997 and 2000),

<[http://www.humanrights.gov.au/human\\_rights/others/index.html](http://www.humanrights.gov.au/human_rights/others/index.html)>.

### **The right to strike**

452. The Committee on Economic, Cultural and Social Rights has recommended that the Australian Government limit its prohibitions on the right to strike to essential services, in accordance with ILO Convention No 87 (C 87).<sup>16</sup> C 87 does not explicitly provide for the right to strike and there is no consensus on the scope of this right. The Australian Government does not consider that prohibitions on the right to strike should be limited to essential services. Strikes cost jobs and the Australian Government believes that industrial action should be restricted to limited circumstances and used only after parties have genuinely tried to reach agreement.

453. The WR Act (including provisions of the Work Choices Act) provides that industrial action may be taken in particular circumstances free from the threat of civil action for economic loss or damage associated with the action, or from being terminated (in the case of employees). Such action is called ‘protected action’, and must first be approved by a majority of affected employees through a secret ballot process. Protected action may only be taken during a ‘bargaining period’ set aside for negotiating matters to be included in a certified agreement. However, protected action is not available in some circumstances including where the action is to support or advance claims to include certain prohibited content in an agreement, in support of

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<sup>16</sup> Committee on Economic, Social and Cultural Rights, Concluding Observations, Australia 08/09/2000, E/C.12/1/Add.50, paragraph 29.

‘pattern bargaining’ or involving persons who are not protected for that industrial action.

454. This reflects the Australian Government’s belief that enterprise level agreement-making offers benefits for employers and employees in terms of improved flexibility and choice in determining their working arrangements, resulting in more productive and harmonious workplaces.

455. Industrial action not occurring in the context of negotiations for the making of an agreement is not protected action under the WR Act. There are a number of civil remedies provisions in the WR Act, including injunctions and workplace determinations for unlawful industrial action.

456. Employees may also cease work over legitimate occupational health and safety concerns in the workplace—this does not constitute ‘industrial action’ under the WR Act.

## **V. Right to social security**

<b>ICCPR Articles</b>	<b>ICESCR Articles</b>	<b>CAT Articles</b>	<b>CROC Articles</b>	<b>CEDAW Articles</b>	<b>CERD Articles</b>
	9		26	11, 13, 14	5 (e-iv)

### **Reform of the social security system**

457. From 1 July 2006, a number of measures were introduced to increase the social and economic participation of working age income support recipients. Particular emphasis was placed on arrangements to reduced welfare dependency among parents, people with partial capacity for work due to a disability, the mature-aged and the long term unemployed.

458. Key changes to working age income support arrangements included: revised eligibility criteria for payments; increased participation in job-search and/or other approved activities; relaxation of the income test for a number of payments to increase

work incentives; and expansion of services to assist in engagement with the workforce.

## **Superannuation**

459. The Australian Government continues to enhance the overall attractiveness, accessibility and security of private pensions (superannuation) to encourage people to achieve a higher standard of living in retirement than would be possible from the age pension alone. The Australian Government's initiatives include:

- improving superannuation incentives for low income employees by matching personal superannuation contributions with a limited Australian Government superannuation co-contribution
- increasing superannuation incentives for high income earners by reducing the maximum superannuation surcharge rates applicable to their contributions
- giving workers the power, from 1 July 2005, to choose their own superannuation fund, thereby increasing competition and efficiency in the superannuation industry, and
- improving the effectiveness of the Superannuation Guarantee system by requiring employers to make at least quarterly superannuation contributions on behalf of their employees.

## **The work for the dole scheme**

460. The Committee on Economic, Social and Cultural Rights has requested that the Australian Government provide detailed information on the Work for Dole program.<sup>17</sup> Work for the Dole (WFD) is a Commonwealth Government initiative with the principal objective of the program being to provide:

- structured activities that increase participants' employment prospects by developing or enhancing both core and vocational skills and encourage more active and effective participation in the work force
- activities that involve local communities, generate outcomes beneficial to communities and are value for money for the Australian Government, and

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<sup>17</sup> Committee on Economic, Social and Cultural Rights, Concluding Observations, Australia 08/09/2000, E/C.12/1/Add.50, paragraph 31.

- flexible work experience opportunities for participants to re-engage with their community and workplace.

461. Fundamental to the WFD program is the principle of Mutual Obligation (MO) which is based on the proposition that unemployed job seekers supported financially by the community should actively seek work, constantly strive to improve their competitiveness in the labour market and give something back to the community that supports them. The objective of MO is to instil greater self-reliance and motivation in job seekers by encouraging them to take responsibility for, and to be more focussed on, their job search and preparation for work activities. Actively engaging job seekers in planning for their future also gives them a better understanding of support arrangements and how they can use services to help them re-enter the workforce. The MO period for jobseekers in receipt of allowance begins after six months on benefits. Full Time WFD was introduced on 1 July 2006 to increase opportunities for long term unemployed jobseekers who have demonstrated a history of work avoidance and have become disengaged from the labour market. These jobseekers will be required to participate for extended periods on WFD activities in order to qualify for continuation of income support.

462. Quality activities are developed by local service providers known as Community Work Coordinators, who are contracted by the Department of Employment and Workplace Relations and include both non-profit and for-profit organisations. However, WFD places must be within non-profit groups or, if not, all benefits of the activity must accrue directly to the community. WFD activities are also required to include tasks that assist participants to acquire vocational skills that are in demand in their local area. WFD has a strict policy of non-displacement which prevents activities from replacing or reducing the hours of existing paid full-time, part-time or casual workers.

463. The WFD scheme has grown from its pilot program in October 1997, which provided places for around 10,000 unemployed 18–24 year-olds, to a sizable program with a budget of \$217.6 million to provide the unemployed with 16,500 full time and 64,000 standard work-experience places in the 2006–2007 financial year.

464. While WFD is intended to be a work experience program, strong employment outcomes are evident. In the year to end March 2006, 32.7 per cent of the job seekers who left WFD three months earlier were employed (15.5 per cent full-time; 17.2 per cent part-time) and 12.8 per cent were engaged in education or training. Combined this means 41.9 per cent of job seekers were either employed and/or in education or training three months after leaving the program. Another 36.0 per cent of job seekers who left WFD three months earlier had commenced some form of Government funded employment assistance.

### **Social security for new immigrants and refugees**

465. The Committee on Economic, Cultural and Social Rights has called upon the Australian Government to ensure that the two-year waiting period for the receipt of social security assistance by new immigrants does not infringe upon their right to an adequate standard of living.<sup>18</sup> This two year waiting period has been waived for humanitarian entrants.

466. Australia has a long history of providing quality services to newly arrived migrants to ensure their effective settlement into Australian society.

467. The Australian Government, under the *Immigration (Education) Act 1971* (Cth), funds and manages the *Adult Migrant English Program* (AMEP), which assists recently arrived migrants without a functional level of English to acquire the language skills they need to settle effectively in Australia. Refugee and Humanitarian entrants under the age of 25 with low levels of schooling are eligible for up to 910 hours of English language tuition while those over 25 are eligible for up to 610 hours of tuition. Other migrants are eligible for up to 510 hours of tuition. Tuition is free.

468. Migrants entering Australia under the Migration Program are subject to a 'two year residents waiting period' before they are eligible to access Australian Government benefits and services. This does not apply to permanent entrants under the Humanitarian Program who are immediately eligible for benefits and Job Network

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<sup>18</sup> Committee on Economic, Social and Cultural Rights, Concluding Observations, Australia 08/09/2000, E/C.12/1/Add.50, paragraph 32.

services. Consistent with the increased focus of the Migration Program to the permanent entry of young, skilled migrants with high levels of English language proficiency, research and statistics shows these migrants are performing well in the Australian labour market.

469. The Australian Government also provides funding under the *Settlement Grants Program* (SGP) to community organisations to undertake projects which have a specific focus on settlement outcomes for migrants and humanitarian entrants.

470. In addition, the *Integrated Humanitarian Settlement Strategy* (IHSS) provides initial intensive settlement support to newly-arrived humanitarian entrants. It uses a case management approach to identify the needs of humanitarian entrants and tailors services to meet those needs. Services include information and orientation, assistance to find long-term accommodation, a household goods package and torture and trauma counselling.

471. The IHSS aims to help humanitarian entrants achieve self sufficiency as soon as possible after arrival. IHSS services are generally provided for around six months, but may be extended on a needs basis.

472. The *Woman at Risk Program* provides Australian re-settlement for refugee women and women 'of concern' to the United Nations High Commissioner for Refugees, and their dependents, who are in dangerous or vulnerable situations because of the breakdown of traditional support mechanisms. This initiative provides assistance to women who have been tortured, sexually assaulted or otherwise traumatised and are in particular need of settlement assistance.

### ***Translating and interpreting services***

473. The Australian Government's Translating and Interpreting Service (TIS) provides a national 24-hour day, seven days a week, telephone interpreting service.

474. TIS provides interpreting on a fee-for-service basis to individuals, government agencies, community organisations, and private sector businesses and organisations. Other services include fee-free on-site interpreting, telephone interpreting and extract translations of personal documents to eligible individuals and community organisations providing settlement services to non-English-speaking migrants and refugees. Doctors in private practice can call a Doctors Priority Line which provides a free telephone interpreting service.

### **Assistance for carers**

475. There are two forms of Australian Government assistance that may be available in a caring situation:

- *Carer Payment* provides income support to people who, because of the demands of their caring role, are unable to support themselves through substantial workforce participation.
- *Carer Allowance* is an income supplement available to people who provide daily care and attention in a private home to a person with a disability or severe medical condition, or who is frail aged.

476. The Australian Government provided carers with direct payments, including bonuses, totalling an estimated \$2.2 billion in 2004–05. In addition to financial assistance, the Australian Government also provides non-financial assistance to carers such as resource centres to provide information and support, special measures for young carers, assistance to parents with disabled children and projects to address the impacts of long term caring.

477. In December 2003, the ACT Government released the *Caring for Carers Policy*, with the aim to better acknowledge and support carers in the ACT, and in August 2004 launched *Caring for Carers in the ACT—a Plan for Action* outlining

actions to achieve the objectives of the Policy. To support the policy and action plan, the ACT Government committed \$830,000, to be delivered over four years in its 2004–05 Budget. This funding is delivered through Carers Recognition Grant Program to support the implementation of the *Caring for Carers Policy*.

478. In 2006, the Victorian Government introduced its carers' policy framework *Recognising and Supporting Care Relationships*, moving carer policy to a relationship-based model. Its overarching principles will guide the development of action plans that focus on the relationship between the carer and the person receiving care with regard to program delivery, funding and service provision.

## **Assistance to rural and regional Australians**

### ***Economic security and sustainability***

479. A wide range of initiatives has been introduced to support the employment and economic security of rural families, and the economic sustainability of rural communities. The *Farm Family Restart Scheme*, introduced in 1997, is the key program for delivering improved welfare support to the farm sector, as well as adjustment assistance for farmers who wish to exit the industry. The Scheme incorporates several key features: access to income support; professional advice on the future viability of their business; and career counselling where appropriate.

480. Substantial funding (\$14.5 million) has been allocated to the Foundation for Rural and Regional Renewal to help provide a viable social and economic future for regional, rural and remote communities. The Foundation aims to encourage innovative collaboration between business, community and government in philanthropic endeavours that will boost the economic and social stocks of regional Australia.

481. The *Regional Partnerships* program provides funding for regional projects that:

- stimulate growth by investing in projects that strengthen and provide greater opportunities for economic and social participation in the community

- improve access to services (with a priority to communities with a population of less than 5,000)
- support planning by investing in projects that assist communities to identify and explore opportunities and to develop strategies for action, and
- help communities make structural adjustments in regions by investing in projects that assist specifically identified communities and regions adjust to major economic, social or environmental change.

482. The *Sustainable Regions Program* assists regional communities to address priority issues they have themselves identified. The Program offers a planned, integrated approach to regions facing economic, social and environmental change. Assistance under the program has been provided to 10 regions. Local Advisory Committees provide advice to the Australian Government on issues associated with the regions, including recommendations on project funding.

### **Measuring poverty**

483. The Committee on Economic, Social and Cultural Rights has strongly urged the Australian Government to establish an official poverty line. The Australian Government considers that, rather than generating a credible assessment of social outcomes, simplistic income poverty lines tend to obscure the wide range of factors which lead to disadvantage, and introduce a focus which risks inappropriately distorting social policy priorities. In addition, public debate and academic and other research and analysis has demonstrated little consensus on the definition and measurement of disadvantage.

484. The Australian Government does however support the collection of extensive economic and social data on the circumstances of Australians both through the Australian Bureau of Statistics and the longitudinal Household Income and Labour Dynamics Australia Survey. These data are easily accessible to the community and have enabled academics and social welfare advocacy groups to produce a diverse range of different measures of poverty and disadvantage for which they can advocate.

## W. Right to adequate food, clothing and housing

ICCPR Articles	ICESCR Articles	CAT Articles	CROC Articles	CEDAW Articles	CERD Articles
6	11		27	14	5 (e)(iii)

### Food and nutrition

485. During 1999–2000, the Australian Government took a lead role in developing a ten-year agenda for action in public health nutrition, titled *Eat Well Australia*.

Priority nutrition areas identified include: prevention of overweight and obesity; increasing the consumption of fruits and vegetables; promotion of optimal nutrition for women, infants and children; and improving nutrition for vulnerable groups.

### Access to housing

#### *Assistance for first home buyers*

486. Since 1 July 2000, the Australian Government has required the States and Territories to assist first home buyers through the provision of a \$7,000 *First Home Owners Scheme* (FHOS) grant to ensure that first home buyers are appropriately compensated for the impact of tax reform on the price of houses. From 1 July 2000 to 30 June 2004, over 594,000 families and individuals received in excess of \$4.1 billion in FHOS grants to assist with the purchase of their first home.

487. The Australian Government also funded an Additional FHOS grant for eligible first home buyers contracting to buy or build a new home. Over 69,000 families and individuals have received in excess of \$425 million under the Additional FHOS to assist in buying or building a new home.

#### *Other housing assistance*

488. The Commonwealth–State Housing Agreement is the Australian Government’s principal strategy to address housing needs of low-income people. The Australian Government is providing more than \$4.75 billion for housing assistance from 1 July 2003 to 30 June 2008. Assistance includes the provision of government housing at subsidised rent.

489. The Australian, State and Territory governments have committed to spend \$1.82 billion on the Supported Accommodation Assistance Program (SAAP) from 1 October 2005 to 30 June 2010. SAAP is Australia's primary service delivery response to homelessness and assists people who are homeless or at risk of homelessness (including women and children escaping domestic violence) through a range of support and transitional accommodation services. Some 1,290 SAAP agencies across Australia are funded through the program.

490. Rent Assistance is an additional payment provided by the Australian Government in recognition of the relatively higher costs faced by private renters. Whilst not intended to cover the full cost of private rent, Rent Assistance has a significant impact on increasing housing affordability for income support recipients and low-income families participating in the private rental market. In 2005–06, Rent Assistance provided \$2.11 billion in assistance to over one million Australians.

491. State and Territory governments have developed various strategies aimed at provision of affordable housing. These include Queensland Government efforts to encourage greater private sector involvement in the provision of affordable accommodation, Disability Services Queensland's operation and support for a range of accommodation services to people with disability, significant commitment by the Victorian Government of funding to pursue growth and innovation in the delivery of social housing and maximise leveraging of resources from the private and non-government sectors and the NT's *Home Territory 2010* strategy, which aims to provide safe, secure and affordable housing for all Territorians.

### ***Access to adequate and affordable housing for Indigenous peoples***

492. Headway continues to be made in improving the standard of housing and infrastructure in Indigenous communities.

493. The States and Territories provide a range of housing programs which focus on the needs of Indigenous Australians. For example, in NSW the Department of Housing provides subsidised rental housing to 8,194 Aboriginal households. It has developed initiatives aimed at improving Indigenous access to housing, improving the

quality and appropriateness of Indigenous housing, and involving Indigenous peoples in the planning and delivery of housing services. Victoria has also established a state-wide program to support Indigenous households at risk of eviction to maintain their tenancies, and a Joint Planning Committee to ensure Indigenous input into all major Indigenous housing planning decisions in Victoria.

### ***Homelessness***

494. In May 1996, the Prime Minister announced the formation of a Youth Homelessness Taskforce to explore more effective responses to youth homelessness, focusing on early intervention. Following on from the work of this Taskforce, the Australian Government took a lead role in responding to and preventing homelessness. The Australian Government funds a range of programs and initiatives which aim both at preventing homelessness and helping people who become homeless regain stability in their lives. These include:

- SAAP, a program funded jointly by the Australian, State and Territory governments, providing emergency and transitional supported accommodation and related services to people who are homeless or at risk of homelessness (see paragraph 489)
- \$10 million over four years (1 July 2005 to 30 June 2009) for the *National Homelessness Strategy* (NHS), which funds demonstration projects to develop innovative ways to prevent and respond to homelessness and Communication Activities that help services share their knowledge and expertise in recognising or responding to homelessness
- \$10.4 million over four years (to 2008) for the *Household Organisational Management Expenses* (HOME) Advice Program, which is an early intervention program offering assistance to families who are getting into difficulties with maintaining their tenancies or home ownership
- *Reconnect*, a program aimed at young people aged 12–18 who are homeless or at risk of homelessness and their families, providing early intervention support through counselling, mediation and other practical assistance to help the young person to reconnect with their families (where appropriate), education, training, employment and the community, and

W. Right to adequate food, clothing and housing

- the *Job Placement, Employment and Training Programme* (JPET), which assists disadvantaged and disconnected young people aged 15–21 years to overcome multiple personal and social barriers so that they can reconnect with education and training, employment and their communities.

495. In terms of State and Territory government programs, in NSW the *Wood Accommodation Support Program* was established in response to the link between homelessness, sexual exploitation and offending identified by the Royal Commission into the NSW Police Force—the Paedophilia Enquiry. The NSW Government funds six accommodation programs through this program. These accommodation programs assist young people who are at risk of sexual exploitation, homeless or at risk of entering the juvenile justice system because of the former reasons.

496. The ACT Government has set a target under *The Canberra Social Plan* of reducing primary homelessness to as close as possible to zero by 2013. In April 2004, the ACT Government released *Breaking the Cycle—the ACT Homelessness Strategy*, which recognises the right of all ACT residents to safe, secure, affordable and appropriate accommodation.

497. Since 1999, the Victorian Government has improved Victoria’s response to homelessness through the Victorian Homelessness Strategy and the Youth Homelessness Action Plan. These strategies have successfully trialled new models of service delivery with a focus on joined-up services across housing, health, community services and justice programs, and many of these service models have now been established as state-wide programs with ongoing funding.

### ***Protection of tenants***

498. The Committee on Economic, Cultural and Social Rights has recommended that Australian Governments, at federal, State and Territory levels, develop housing strategies and policies which include the protection of tenants from forced eviction without reasons and from arbitrary rent increases.<sup>19</sup>

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<sup>19</sup> Committee on Economic, Social and Cultural Rights, Concluding Observations, Australia 08/09/2000, E/C.12/1/Add.50, paragraph 34.

499. The Victorian Government amended the *Residential Tenancies Act 1997* to increase protection for rental housing tenants. Amendments have focussed on tenure security and fair rent mechanisms:

- The notice period a landlord, rooming house owner or caravan park owner may give to a tenant or resident to vacate without giving a reason has been increased from 90 to 120 days, to deter property owners from using the ‘no-reason’ notice to vacate inappropriately.
- The criteria to be considered when determining whether or not a rental increase is excessive were expanded, allowing each case to be assessed on its merits, rather than on general market information.

500. The NT enacted the *Residential Tenancies Act* in 1999, replacing the *Tenancy Act*. The new Act provides for termination of a tenancy upon grounds of breach of the agreement and an order for possession only upon order of the court or the Commissioner of Tenancies after a hearing. A periodic tenancy (that is, one without a fixed term) can be terminated by the landlord without grounds only upon six weeks notice. Rent can only be increased in accordance with the tenancy agreement, and not more frequently than every six months. Tenants can apply to the Commissioner of Tenancies for a declaration that rent is excessive and the Commissioner can determine the amount of rent payable.

501. The Tasmanian *Residential Tenancies Act 1997* commenced on 14 January 1998. It sets out the grounds on which an owner may increase the rent payable by a tenant, and the reasons an owner may rely on to serve on a tenant of the premises a notice requiring the tenant to deliver vacant possession of the premises.

## **International cooperation and assistance**

502. The objective of Australia's international development cooperation program is to assist developing countries to reduce poverty and achieve sustainable development, in line with Australia's national interest. Its focus is on the Asia-Pacific region. Australia addresses poverty through an overarching framework and four interlinked themes:

- accelerating economic growth
- fostering functioning and effective states
- investing in people, and
- promoting regional stability and cooperation

503. Australia's international development cooperation program contributes to the realisation of the right to an adequate standard of living through its primary focus on poverty and through specific initiatives in a number of key areas such as food, water, sanitation, health and education.

### ***Freedom from hunger***

504. Australia, through its overseas aid program, works with partner countries in the Asia Pacific region and Africa to alleviate hunger and create conditions that foster long-term food security. Since the 1960s, Australia has provided funds to the World Food Program for food aid. In 2005–06, Australia's total funding for food aid reached \$87.3 million. In 2003, Australia announced it would contribute \$1 billion from the aid program over five years from 1 July 2003–20 June 2008 for food security.

505. Australia also supports programs that enable farmers to grow more food and wider varieties of produce to make themselves less vulnerable to natural disasters and fluctuating international markets.

506. Australia is also committed to ensuring the preservation of plant genetic resources for food and agriculture around the world. The recent commitment of \$16.5 million over 5 years to the Global Crop Diversity Trust will help ensure that

## W. Right to adequate food, clothing and housing

plant genetic material continues to circulate for research and development, ultimately increasing food.

507. The Australian Government views trade liberalisation as the key to promoting global food security. In 2003–04, Australia provided an estimated \$31 million, an increase of over 70 per cent in the last seven years, to developing countries to enhance their trade facilitation and negotiation, investment and business development capacity.

## X. Right to enjoy the highest standard of physical and mental health

ICCPR Articles	ICESCR Articles	CAT Articles	CROC Articles	CEDAW Articles	CERD Articles
6	12		24, 27, 32, 33, 37	12, 14	5 (e)(iv)

508. The Australian Government has a leadership role in policy making for the physical and mental health of Australians particularly in national issues like public health, research and national information management. The States and Territories are primarily responsible for the delivery and management of health services and for maintaining direct relationships with most health care providers, including the regulation of health professionals. Public acute and psychiatric hospital services and a wide range of community and public health services including school health, dental health, maternal and child health, and environmental health programs are delivered by States and Territories.

### Improving access to health services

509. The Medicare program provides underlying universal access to the public health system. Under the *Strengthening Medicare* plan introduced in May 2004, Medicare continues to pay the 85 per cent rebate on the schedule fee and a new Medicare Safety Net was introduced to cover 80 per cent of out-of-pocket costs for out of hospital Medicare services for the rest of that calendar year once an individual or family has reached that year's defined threshold.

X. Right to enjoy the highest standard of physical and mental health

510. The *Pharmaceutical Benefits Scheme (PBS)* continues to subsidise the cost of most prescriptions to ensure that all Australian residents have affordable access to the medicines they need. People from countries with which Australia has reciprocal health care agreements are also eligible for PBS subsidies. Patients are required to pay a co-payment for each PBS prescription. For concession card holders the co-payment was \$4.70 and for all other patients the co-payment was \$29.50 (for 2005). A safety net arrangement is also in place which is designed to protect those patients and their families who require a very large number of prescriptions.

511. A subsidy is provided to encourage people to take out private health insurance. Access to private health insurance is guaranteed through the community rating principle. Community rating means that all members of the community can access private health insurance, regardless of age, gender or higher health risks. Community rating ensures that older Australians and other high risk groups do not have to pay more for their private health insurance premiums.

512. In February 2004, the NT Government released a 5 year framework outlining strategies to improve the health and wellbeing for NT residents: *Building Healthier Communities—A framework for Health and Community Services 2004–2009*, available at <[http://www.nt.gov.au/health/building\\_healthier\\_communities.pdf](http://www.nt.gov.au/health/building_healthier_communities.pdf)>. Progress to date has included the establishment of a dedicated Office of Aboriginal Health, Family and Social Policy within the Department of Health and Community Services, and the extension of specialist medical outreach services to remote areas.

513. In March 2004, the WA Government released the final report of the Health Reform Committee (HRC): *A Healthy Future for Western Australians*. The Report set out a plan for major health reform, recommending a fundamental reconfiguration of the State's health system during the next 10 to 15 years. The WA Government endorsed the 86 recommendations put forward by the Committee, The Health Reform Implementation Taskforce (HRIT) commenced operations in August 2004 with the task of driving the health reform changes by implementing the recommendations of the HRC's final report.

## **Women's health**

514. The *Australian Longitudinal Study on Women's Health*, known as the Women's Health Australia Study, commenced in June 1995. About 40,000 women are involved in the study, which follows their individual experience of health and wellbeing while considering social, economic and psychosocial factors that influence health, and how to address health needs. The study is designed to run for at least 20 years. Results of analyses are published and provide guidance for health policy and program development.

515. Specific women's health needs are among the areas targeted under the Public Health Funding Outcomes Agreements (PHOFAs). The PHOFAs are bilateral agreements between the Australian Government and the State and Territory governments that provide broad-banded and specific purpose funding for a range of public health programs. The PHOFAs support services such as sexual assault counselling, information on alternative birthing, education in relation to female genital mutilation, breast and cervical cancer screening, and sexual and reproductive health services.

516. The Australian Government also funds a range of programs targeting health needs for particular groups of women.

517. From late 2006, additional support and information will be available for women who are anxious about their pregnancy. This support will be available through pregnancy support counselling by general practitioners and, on referral, by other health professionals. The Australian Government will also fund a National Pregnancy Support Telephone Helpline, which will provide professional and non-directive advice 24 hours a day, seven days a week. The Helpline will provide assistance to women, their partners and family members who wish to explore pregnancy options.

518. The Australian Government funds *Beyondblue*: the national depression initiative, which has developed a National Perinatal Mental Health Program. The first stage of the program was a 2001–2005 research project on postnatal depression

## X. Right to enjoy the highest standard of physical and mental health

involving 40,000 pregnant women and 12,000 new mothers across Australia. The second stage of the Program is now underway and aims to develop a national action plan to address depression and related difficulties in women during pregnancy and in early parenthood.

519. As part of the Investing in Stronger Regions policy, the Australian Government provides a Medicare rebate for practice nurses to take Pap smears on behalf of a GP in rural areas. This provides better preventive health care for women in rural areas.

520. State and Territory government initiatives include the *Victorian Women's Health and Wellbeing Strategy*, launched in 2002, which outlined the Victorian Government's key directions for improving the health and wellbeing of Victorian women, particularly those who are most disadvantaged, including women of culturally and linguistically diverse (CALD) backgrounds, Aboriginal and Torres Strait Islander women, women in rural Victoria and women with disability.

### **Children and young people's health**

#### ***Infant mortality***

521. Australian children on average enjoy a high standard of health by international standards. However, Indigenous children often suffer poorer health outcomes from birth (see Statistical Annex paragraph 38). In early May 2005 the Minister for Health and Ageing announced research funding of \$6.58 million under the *Healthy Start to Life for Aboriginal and Torres Strait Islander Children*.

522. Increased access to antenatal care and improvements in health outcomes have been demonstrated by a number of Aboriginal community controlled health services. Three Child and Maternal Health Exemplar Sites have been established since 2002–2003 to support policy development and to document and disseminate information regarding 'best practice' in the regional delivery of child and maternal health services in a primary health care setting. A report on outcomes from this initiative is available in a Resource Package at <<http://www.health.gov.au/healthyforlife>>.

## X. Right to enjoy the highest standard of physical and mental health

523. In May 2005, the Australian Government provided \$102.4 million over four years for the Healthy for Life program. This initiative aims to improve the health of mothers, infants and children, and improve the prevention, early detection and management of chronic diseases.

524. A new annual health check for Aboriginal and Torres Strait Islander children up to 14 years was introduced on 1 May 2006 through the Medicare Benefits Scheme (MBS). This child health check complements the existing MBS-funded Adult Health Checks for Indigenous Australians over 15 years, and encourages doctors to carry out regular (annual) and comprehensive health checks for Indigenous children, to promote healthy behaviours, prevent illness, and improve the early detection of disease.

### ***Youth suicide***

525. At the completion in 1999 of the *National Youth Suicide Prevention Strategy* (NYSPS), the first attempt to provide a nationally coordinated approach to youth suicide prevention, the Australian Government announced a *National Suicide Prevention Strategy* (NSPS) to build on the good results of the NYSPS. Initially, \$48 million was allocated over five years for the NSPS. The NSPS was later extended to June 2006, with a total budget allocation of \$66 million. The focus of the NSPS is to foster strategic partnerships and to position suicide prevention effort across all sectors.

### **Older people's health**

526. In 2004, the *Investing in Australia's Aged Care: More Places, Better Care* strategy was released. It provides further support for older Australians needing care, while encouraging aged care providers to become more flexible, accountable and innovative in the delivery of care. Features include: more aged care places, more choice, more training and better systems, better administration and better management. *A New Strategy for Community Care—The Way Forward* was also released, outlining ways to reshape and improve the community care system in areas such as access, eligibility and assessment, reducing overlap and duplication.

X. Right to enjoy the highest standard of physical and mental health

527. In 2004, the *National Action Plan for Improving the Care of Older People across the Acute-Aged Care Continuum* was endorsed. The Plan covers the period 2004–08 and focuses on acute, sub-acute, transition and aged care services. Each jurisdiction is implementing the National Action Plan goals in the context of the particular structure, the availability and the need for health and aged care services in the jurisdiction.

528. In 2005, the Australian Government provided \$320.6 million over five years for the *Helping Australians with dementia, and their carers—making dementia a National Health Priority* to provide support for people with dementia, their carers and families.

529. In 2006, the Australian Government provided continued funding of \$23.7 million over four years to expand psychogeriatric support services to give national coverage through the Dementia Behaviour Management Advisory Services (DBMAS). The DBMAS provides expert advice and support for staff in residential care, improving their care of people with dementia and challenging behaviours.

530. In November 2005, Australian Health Ministers released the *National Framework for Action to Promote Eye Health and Prevent Avoidable Blindness and Vision Loss* in response to World Health Assembly Resolution 56.26 on the elimination of avoidable blindness. The Framework sets out a blueprint for nationally coordinated action by governments, health professionals, non-government organisations, industry and individuals to work in partnership to prevent avoidable blindness amongst Australians.

531. State and Territory governments have introduced their own complementary initiatives in aged care. For example, the ACT has announced initiatives in aged care, including the *Building for Our Ageing Community Strategy*.

## **Indigenous health**

532. Although Aboriginal and Torres Strait Islander peoples are the most disadvantaged group within the Australian community, Australian governments are making headway in addressing health disadvantage.

533. *The Aboriginal and Torres Strait Islander Health Workforce National Strategic Framework* was launched in 2002. It is a ten-year plan to improve training, recruitment, support and retention of appropriately skilled health professionals, health service managers and health policy officers in both mainstream and Aboriginal and Torres Strait Islander specific services. An evaluation is due in 2007.

534. The 2003 *National Strategic Framework for Aboriginal and Torres Strait Islander Health* outlines agreed principles and nine key result areas that all jurisdictions and the community sector are committed to achieving through collaboration over the next ten years. The Aboriginal and Torres Strait Islander Health Performance Framework is providing the basis for quantitative measurement of the impact of the *National Strategic Framework*, with the first report at the end of 2006 reporting on approximately 90 measures that address key issues about health outcomes, determinants of health, and the performance of the health system for Aboriginal and Torres Strait Islander peoples.

535. The Aboriginal and Torres Strait Islander Health Performance Framework Report 2006 shows that there was a 16 per cent drop in death rates and a 44 per cent drop in infant mortality rates among Aboriginal and Torres Strait Islander peoples in the Northern Territory, SA and WA between 1991 and 2003. The report shows that there are continuing areas of concern including deaths caused by chronic disease, hospitalisation for injury, low birth weight (which is twice as common among Aboriginal and Torres Strait Islander peoples as other Australians), chronic ear disease, smoking, nutrition and obesity.

536. State and Territory government initiatives have included the Queensland Indigenous Sexual Health Strategy 2003–2006, which identified key outcomes for

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improved sexual health among Queensland's Indigenous population, and suggested strategies for achieving them. The NT Aboriginal Health Framework (NTAHF) is a joint health and community services planning forum created under the NT Aboriginal Health Framework Agreement signed in 1998. The *Western Australian Aboriginal Sexual Health Strategy 2005–2008* recognises the importance of a comprehensive approach to sexual health, and outlines a framework for engaging communities and service providers to bring about improvements in sexual health.

### **Health of people with disability**

537. State and Territory government initiatives in this area have included the following:

- The Disability Services Commission (Western Australia) has established a Health Resource and Consultancy Team, which aims to enhance the understanding within the wider community and the disability sector that health is part of quality of life considerations for people with disability. The team works to improve access to appropriate health services and ensure optimum health outcomes.
- The Queensland Government's *Strategic Plan for Psychiatric Disability Services and Support 2000–2005*, which provided a range of strategies for the Health Department to work with the psychiatric disability sector and other key stakeholders to improve access to services and support.
- In 2004, the ACT Government launched *Future Directions: A framework for ACT 2004–08*. Future Directions provides the community and the ACT Government, and in particular the Department of Disability, Housing and Community Services, with a framework to support all people with a disability to realise their vision and rights to respect, dignity and participation at all levels in the community. Future Directions builds on the implementation work already undertaken within the context of the Government's response to the 2002 Board of Inquiry into Disability Services in the ACT.
- Victoria is currently implementing, initially within disability accommodation services, a range of quality initiatives which focus on health promotion activities, screening and early identification of health risks, training for

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disability support workers and building partnerships with health professionals to improve accessibility of health services.

### **Health in regional, rural and remote locations**

538. Building on the *Regional Health Strategy* of 2000–2001, the Australian Government reaffirmed its commitment to rural health and aged care in the 2004–05 Budget by providing renewed funding for what is now retitled the *Rural Health Strategy*. The funding of \$830.2 million over the next four years gives continuing support for programs to provide increased access to doctors and other health professionals in rural areas, and will also support two new Strategy objectives. Funding under the Strategy will support a flexible package of health and aged care services and workforce measures.

539. Based on the experience of the Strategy's first four years, the Australian Government has concluded that: more effort is required to provide allied and primary health services to more remote areas; and there should be an increased focus on preventative health, to address more directly the causes of health differences between metropolitan and rural and remote Australians.

540. The *Rural Women's GP Service*, launched in March 2000, aims to improve access to primary health services for rural women who have little or no access to a female general practitioner.

### **Better health information**

541. *HealthConnect* began in 2004. It is the new national system of electronic health records designed to make available people's health information by electronically connecting the different health services people use.

### **Physical health**

#### ***Obesity***

542. The prevention of obesity in young people has been the focus of Australia's National Obesity Taskforce, which has been chaired by the Australian Government.

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*Healthy Weight 2008—Australia's Future—A National Action Agenda for Children and Young People and their Families* and *Healthy Weight for Adults and Older Australians*, both align closely with the WHO's Global Strategy on Diet, Physical Activity and Health. In 2004, the *Building a Healthy, Active Australia* program began. The Program provides a national framework for addressing childhood obesity.

***Immunisation rates***

543. Immunisation rates continue to increase under the *National Immunisation Program*. As at 31 March 2006, 90.2 per cent of children aged 12 to 15 months and 92.1 per cent of children aged 24 to 27 months were fully immunised.

544. Since January 2003, the Department of Health and Ageing has commenced three new universal vaccination programs for children: the *National Meningococcal C Vaccination Program* commenced on 1 January 2003; the *National Childhood Pneumococcal Vaccination Program* commenced on 1 January 2005; and the *Childhood Varicella Vaccination Program* commenced on 1 November 2005. In 2005, four deaths from meningococcal C were recorded, a decrease of 80 per cent from 24 in 2002. The *National Childhood Pneumococcal Vaccination Program* has also been successful in reducing deaths in under 5 year olds from 16 in 2004 before the program was introduced to 9 in 2005. In addition, a targeted Hepatitis A vaccination program for Indigenous children was also implemented on 1 November 2005.

***HIV/AIDS***

545. The fifth *National HIV/AIDS Strategy 2005–2008* and the first *National Sexually Transmissible Infections (STIs) Strategy 2005–2008* were implemented on 1 July 2005. They provide strategic direction towards a national approach to STIs, as well as revitalising Australia's response to HIV/AIDS.

***Cancer***

546. The Australian Government is providing substantial funding for cancer screening. Three examples of funded screening programs are:

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- *BreastScreen Australia*, which aims to achieve significant reductions in mortality and morbidity from breast cancer by early detection of the disease through provision of free biennial screening and assessment services to women aged 50–69
- the *National Cervical Screening Program*, which seeks to reduce morbidity and mortality from cervical cancer by biennial screening of all women aged between 18 and 70 years, and
- the *National Bowel Cancer Screening Program*, which aims to reduce the morbidity and mortality associated with bowel cancer through the provision of population screening using faecal occult blood tests followed by referral to further clinical services, as appropriate.

### ***Hepatitis C***

547. The *National Hepatitis C Strategy 2005–2008* was released in June 2005 and builds on the success of the first Strategy. The aim of the Strategy is to reduce transmission rates of hepatitis C and minimise the physical and social impact of the disease on people living with and affected by hepatitis C.

### ***Illicit drug use***

548. Under the *National Illicit Drugs Strategy*, funding has been allocated for 169 non-government services across Australia through the *Non-Government Organisation Treatment Grants Program*. These services provide a range of education, counselling, rehabilitation and other types of support to individuals and families affected by illicit drug use.

### ***Alcohol***

549. Australia has developed a *National Alcohol Strategy 2006–09* to provide national direction for minimising the consequences of alcohol-related harm. The *National Alcohol Strategy* forms part of national action that has been under way for a number of years to reduce the harm caused by drugs in Australia, including mortality, morbidity and violence (including domestic violence). It contains strategies for high risk groups such as young people, Indigenous peoples and pregnant women.

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### ***Smoking***

550. Australia's *National Tobacco Strategy 2004–09* is a statement of the resolve of governments to work together to reduce the misery and wasted human potential caused by tobacco smoking in Australia. The most recent estimate of daily smoking rates from the 2004 National Drug Strategy Household Survey fell from the 2001 figure of 19.5 per cent to 17.4 per cent. In 2004–05, the *Australian Bureau of Statistics National Aboriginal and Torres Strait Islander Survey* estimated that about 50 per cent of Indigenous Australians are daily smokers.

### ***Hospital waiting periods***

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551. Several States now employ coordinators at public hospitals to develop and implement waiting list initiatives that improve outcomes for patients waiting for elective surgery. An elective surgery patient management policy is currently being developed to streamline waiting lists across the public hospitals.

### **Mental health**

552. The Australian Government, through the COAG process, has made mental health issues a priority area for action, requiring all jurisdictions to work on a range of measures to address the mental health needs of the nation.

553. The *National Mental Health Strategy* which was endorsed in 1992, and reaffirmed in 1998 and 2003, provides a framework for national reform from an institutionally based mental health system to one that is consumer focused with an emphasis on supporting individuals in their communities. In 2006, COAG agreed to the implementation of the *National Action Plan on Mental Health 2006–2011* to address the shortfall in service provision for people with mental illness. The Australian Government has contributed \$1.9 billion over five years for 19 measures to assist people with mental illness, their families and carers.

554. The Australian Government also funds the *MindMatters* mental health promotion resource for secondary schools and is supporting the pilot of the *KidsMatter* mental health promotion, prevention and early intervention resource for

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primary schools. These projects provide material to help schools foster a positive school community, to provide an effective social and emotional learning curriculum to students, to provide information and education of child and youth mental health for parents, and to develop processes for addressing the needs of students who are at risk of experiencing mental health difficulties.

555. The *National Action Plan for Promotion, Prevention & Early Intervention for Mental Health 2000* provides a framework for a co-ordinated national approach to the promotion of mental health and prevention and early intervention for mental health problems. The Australian Government has funded a number of projects aimed at improving the mental health of children, including *Auseinet*, a national early intervention network to promote early intervention in mental health problems in children, which commenced in May 1997. Australian Government funding for *Beyondblue*, a national, independent, not-for-profit organisation working to address issues associated with depression, anxiety and related substance misuse disorders in Australia, with a key goal of raising community awareness about depression and reducing stigma associated with the illness, has been extended to 2009.

## Y. The right to education, other cultural rights

ICCPR Articles	ICESCR Articles	CAT Articles	CROC Articles	CEDAW Articles	CERD Articles
27	13, 14, 15		23, 24, 28, 29, 30, 31, 32	10, 13, 14	5 (e)(v), (e)(vi)

### Primary, secondary and tertiary education

#### *School education in Australia*

556. The schooling system in Australia comprises thirteen years, with some variations in Queensland and WA, and is compulsory between the ages of six and 15 (or 16 in some States).<sup>20</sup> School education is divided into a preparatory year, primary schooling and secondary schooling. The final two years of secondary schooling are necessary for those wishing to proceed to higher education (including university).

557. The major responsibility for funding government schools lies with State and Territory governments, which provide about 90 per cent of schools' running costs. The Australian Government contributes approximately 10 per cent of government school running costs. Education for compulsory aged students in all government primary and secondary schools is free. Voluntary contributions are sought in some case for certain materials, services and facilities. Private school education exists in parallel with the State system.

558. Consultation and collaboration between the different levels of government in relation to school education occurs through the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA). Membership of the Council comprises State, Territory, Australian Government and New Zealand Ministers with responsibility for the portfolios of education, employment, training and youth affairs, with Papua New Guinea and Norfolk Island having observer status. The Council meets at least once a year.

<sup>20</sup> The WA Government has recently amended its legislation to raise the leaving age to the end of the year in which young peoples turn 16. From 1 January 2008, this will be extended to the end of the year in which they turn 17.

559. The Australian Government acknowledges the right of Australian parents to choose the most appropriate schooling for their children.

560. The Committee on Economic, Cultural and Social Rights has expressed interest in the difference in quality of schooling available to students in public and private schools.<sup>21</sup> NSW has conducted a review of non-government schools in NSW, and as a consequence amendments were made in June 2004 to the *Education Act 1990* which promote greater parity between public and private schools, ensure all students undertake courses of study that are in accordance with NSW Board of Studies syllabuses, and also ensure greater accountability of non-government schools with regard to student welfare, child protection, teacher standards, improved governance and annual reporting mechanisms. Other States and Territories monitor quality of schooling system-wide (public and private) through annual national numeracy, reading, writing and spelling benchmark assessment activities as required by the Australian Government funding agreement, but do not compare, or have not compared, achievement of students in public and private schools.

#### **Reform agenda for schools**

561. The Australian Government has announced its reform agenda for Australian schools. The objectives of the reforms across all educational sectors are to promote quality (especially in terms of consistency and relevance), accessibility, choice, flexibility and sustainability. Issues covered include introducing national consistency in schooling and measures for dealing with poorly performing schools and the development of a National Safe Schools Framework.

562. The Australian Government also recognises that there are some students with particular needs who require additional help and resources to reach their full potential. All States and Territories offer a range of programs to address the special education needs of all students. Programs available include those for students with intellectual and physical disabilities, behaviour disorders, special learning needs, for gifted

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<sup>21</sup> Committee on Economic, Social and Cultural Rights, Concluding Observations, Australia 08/09/2000, E/C.12/1/Add.50, paragraph 22.

students, and for migrant students particularly those with low numeracy and literacy skills or without fluency in English.

### **National Goals for Schooling**

#### *Literacy and Numeracy*

563. The *National Literacy and Numeracy Plan* is a coordinated approach by the Australian Government and States and Territories to improve literacy and numeracy standards, involving national benchmarks in literacy and numeracy to facilitate early identification of problems and intervention prior to high school, and professional development for teachers.

564. The Australian Government has developed a range of specific programs to improve the literacy and numeracy skills of Australian children:

- The Literacy, Numeracy and Special Learning Needs Program, introduced in 2005, aims to improve the literacy, numeracy and other learning outcomes of educationally disadvantaged students, including students with disabilities.
- The Reading Assistance Voucher Program provides support to parents of children who do not meet the 2006 Year 3 national reading benchmark. Parents of eligible students will be able to access \$700 worth of reading assistance for their child during the 2007 school year.
- *National Literacy and Numeracy Week* is an event held annually since 1999 to celebrate literacy and numeracy achievement.

565. The *English as a Second Language Program* remains an important part of addressing the special educational needs of newly arrived migrant students. Under this Program, education authorities (government and non-government) attract a one-off per capita payment for eligible newly-arrived primary and secondary students. The funding aims to provide intensive language tuition to improve English Language competence, and facilitate participation by these students in mainstream educational activities.

#### *Information and communication technology (ICT) in school education*

566. In recent years a major instrument of change in the way schools operate has been the increased use of ICT. The Australian Government recognises the importance of ICT in improving the quality of teaching and learning throughout all Australian schools and has implemented strategies to ensure that young people have the school education that is needed for the knowledge society and the knowledge economy.

567. Information on Vocational and Technical Education is available at paragraphs 409–414 above.

### ***Higher education***

568. The higher education sector comprises 37 public and two private universities, one branch of an overseas university; four other self-accrediting institutions and over 150 other institutions, such as TAFES, theological colleges and other providers specialising in professional, business or artistic courses of studies.

569. The majority of Australian undergraduate students are enrolled in a Commonwealth supported place (previously called a HECS place) and contribute towards the cost of their education by paying a student contribution amount. From 2005, higher education providers are able to set student contributions within a range from \$0 to a maximum set by the Australian Government, which is no more than 25 per cent higher than the 2004 HECS rates (indexed). The Australian Government contributes to the cost of educating Commonwealth supported students through Commonwealth Grant Scheme funding.

570. Eligible students can access a HELP loan to defer payment of their tuition costs. HELP debts are required to be paid back only after an annual income threshold has been reached, \$38,149 in 2006–07. HELP debts are indexed by the Consumer Price Index to maintain their real value but are otherwise interest free.

571. A review of the higher education sector was carried out in 2002. As a result of the review, in 2003 the Australian Government introduced the *Our Universities: Backing Australia's Future* package of higher education reforms. The reforms give

universities access to the funding they need to deliver world-class higher education, with a focus on quality learning outcomes.

572. In higher education, the following groups have been identified as targets for equity planning, on the basis of their history of relative disadvantage in accessing higher education: Indigenous Australians, people from low socio-economic backgrounds, people from rural and isolated areas, people with disabilities, and people from non-English-speaking backgrounds.

573. The progress that these groups have made in the last decade has varied. The proportion of all domestic students who have a disability has increased over recent years. The proportion who are from rural areas and low socio-economic backgrounds has remained fairly stable, while that for isolated students has fallen slightly. The proportion of students participating from a language background other than English has been declining. 56 per cent of students are female and 44 per cent are male.

### ***Women and men in education***

574. Women have overtaken men in several key aspects of education performance. In general terms, girls out-perform boys during the school years in terms of levels of literacy and numeracy, retention to the end of secondary school (Year 12) and achievement in Year 12 (which increases the chances of entry into university). On the other hand, the post school experience of women and men in education, while different in character, is in many respects more equal. In 2005, women represented 50.1 per cent of all government funded VTE students. Women tend to undertake higher level Certificates and have pass rates comparable to men.

### ***Indigenous people and education***

575. There have been significant improvements in outcomes for Indigenous students, although disparities remain between Indigenous and non-Indigenous students. Indigenous Australians have a high rate of participation in the Australian training system. While 2.4 per cent of the Australian population is Indigenous, in 2005 Indigenous students comprised around 3.8 per cent of the total students participating in VTE.

576. In April 2004, the Australian Government announced that \$2.1 billion will be allocated over the 2005–2008 quadrennium to programs to improve educational outcomes for Indigenous students.

577. A significant restructure of existing programs has been implemented to redirect funding to initiatives based on proven effectiveness and greatest need. The Indigenous Education Program includes elements such as:

- *Supplementary Recurrent Assistance (SRA)*, which provides supplementary recurrent funding on a per student basis to independent preschools, government and non-government schools and independent vocational education and training institutions
- *Whole of School Intervention (WoSI)* strategy, which enables creative approaches to improving the educational outcomes of Indigenous schools students by encouraging the parents of Indigenous students, Indigenous communities and schools to work together, and
- *Indigenous Tutorial Assistance Scheme (ITAS)*, which provides supplementary tuition to Indigenous students.

578. Other programs include the following:

- ABSTUDY provides income support and supplementary benefits to Indigenous secondary and tertiary students.
- *Indigenous Support Program (ISP)* enables higher education institutions to invest further in initiatives designed to increase the participation and success of Indigenous students in higher education.
- The *National Indigenous English Literacy and Numeracy Strategy (NIELNS)* was launched in 2000 with the objective to achieve literacy and numeracy for Indigenous students at levels comparable to those achieved by other young Australians.
- The *Indigenous Youth Mobility Program (IYMP)* supports the development of local economic employment opportunities for young Indigenous Australians in remote areas, and will support at least 600 young people from 2006 to 2009. The IYMP improves access for these young people to training and employment opportunities in major centres by providing pathways planning,

mentoring, intensive support and safe and supported accommodation in ten IYMP host locations.

- The *Indigenous Youth Leadership Program (IYLP)* aims to assist young Indigenous people, generally from remote areas, to develop and fulfil roles as Indigenous leaders in their communities. The program will provide 205 talented Indigenous students with scholarships to attend high performing schools and universities.

579. Some State and Territory government initiatives over recent years have included:

- a NSW Department of Education and Training review of Aboriginal education in NSW (2003–2004)
- the Victorian Government’s Aboriginal education policy, *Yalca: A Partnership in Education and Training for the New Millennium*, which supports lifelong education
- the introduction in SA of *Yurrekaityarindi*, an Aboriginal decision-making model introduced to ensure that Indigenous parents and community members are included in educational decision-making
- the WA Government’s *Follow the Dream* strategy into selected government schools, aimed at improving secondary retention of Indigenous students
- Queensland’s *Education and Training Reform Framework* and *Bound for Success* – education strategies for Cape York and the Torres Strait.
- the NT Government’s comprehensive Indigenous Education Strategic Plan (2000–2004), and
- the ACT Department of Education and Training’s *Action Plan 2002–2004: Services to Indigenous Peoples*.

### ***Rural and remote education***

580. The *National Inquiry into Rural and Remote Education* was initiated by HREOC in February 1999. The Commission’s 1998 *Bush Talks* consultations on the human rights concerns of regional, rural and remote Australians had revealed that access to education of an appropriate standard and quality was a significant concern in rural and remote areas. The Commission made detailed recommendations aimed at

improving the education provided to children in rural and remote Australia. Those recommendations can be found at

[http://www.humanrights.gov.au/word/human\\_rights/Recommendations.doc](http://www.humanrights.gov.au/word/human_rights/Recommendations.doc).

Fifty-four per cent of students in vocational and technical education are located in major cities, 38 per cent in regional areas, and almost five per cent in remote areas.<sup>22</sup>

581. The Australian Government directly supports rural and isolated school students through the following programs:

- The *Assistance for Isolated Children (AIC) Scheme* provides financial assistance to families of students who are unable to attend an appropriate government school on a daily basis because of geographical isolation. The underlying principle of the Scheme is that all Australian children should have reasonable daily access to an appropriate government school without regard to parents' income.
- The *Country Areas Program (CAP)* provides supplementary funding to schools to cover some of the additional costs associated with schooling that result from geographic isolation. CAP funding is allocated to the State and NT government and non-government education authorities to be distributed by them in accordance with their priorities but within Australian Government guidelines.
- The *Non-Government School-Term Hostels Program* is a four year initiative targeted at not-for-profit, non-government, school term hostels that operate principally to accommodate primary and secondary students from rural and remote areas of Australia. The objective of this Program is to assist hostels provide a high standard of care to rural primary and secondary school students residing at the hostels.

## **Cultural rights**

### ***Cultural Diversity***

582. The Australian Government's cultural diversity policies have reflected its commitment to ensuring that all Australians have the opportunity to be active and

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<sup>22</sup> See Table 25, Statistical Annex

equal participants in the economic, social and cultural life of the country. Based on universal civic responsibilities, respect for each person, fairness in opportunities for all people, and benefits of cultural diversity for all Australians, the policies have supported the goals of Australia's anti-discrimination legislation and the delivery of human rights in both the Australian workplace and the wider society.

583. As part of the regular funding cycle, an evaluation of multicultural policy and associated programs has been recently conducted. Renewed funding for the programs was provided in 2006 for four years. A key message to all Australians is that cultural diversity, as a national strength, must continue to be balanced against individual and collective commitment to common Australian values.

584. The Australian Government continues to support a system of government services appropriate for all Australians. Since 1998, the *Charter of Public Service in a Culturally Diverse Society* has placed an emphasis on building cultural diversity considerations into the strategic planning, policy development, budgeting and reporting processes of government services—irrespective of whether these services are provided by government agencies, community organisations or commercial enterprises.

585. As discussed at paragraphs 236–237 and 316, the *National Action Plan to Build on Social Cohesion, Harmony and Security* developed by the Australian Government and the Muslim Community Reference Group builds on existing cultural diversity policies and programs at all levels of government. The Plan, and the initiatives pursued under it, addresses both extremism and intolerance, and promotes harmony, understanding and a diverse but still unified Australian community.

586. Sixteen Australian Government Agencies have been working together to develop strategies to improve the settlement outcomes of humanitarian entrants through an Interdepartmental Committee (IDC) on Humanitarian Settlement.

587. States and Territories have, in recent years, implemented their own complementary multicultural policies, including:

- Queensland's 1998 *Multicultural Queensland Policy*

- the Tasmanian *Multicultural Policy 2001*
- establishment by the WA Government of an Office of Multicultural Interests, and
- establishment in the NT of an Office of Ethnic Affairs, which includes programs such as *Cross Cultural Awareness Training*, and the *Multicultural Policy*, through which the NT affirms its commitment to multiculturalism.

### ***Arts***

588. The Australian Government continues to support the Australian arts community and enhance the opportunity for Australians to take part in cultural life by providing the assistance described in the Third Australian periodic report under ICESCR.<sup>23</sup> New initiatives include:

- additional funding of \$25.4 million over four years to ensure the ongoing sustainability of Australia's major orchestras, and
- additional funding of \$10.6 million over four years for Australia's two specialist opera and ballet orchestras.

### ***National cultural institutions***

589. Funding for national cultural institutions has increased substantially, from \$112 million in 1996–1997 to \$229 million in 2005–2006—an increase of 104 per cent.

### ***Sport***

590. Consistent with its 2004 *Building Australian Communities Through Sport* policy, the Australian Government will invest in excess of \$250 million in Australian sport in the 2006–07 financial year. One of the four planks of the Australian Government's sport policy is to increase greater grass roots participation in sport for all ages so as to ensure that Australians regardless of culture, gender, race, capability, or age have an opportunity to participate in quality sporting activities.

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<sup>23</sup> See Economic and Social Council, *Third periodic report: Australia*, 23/07/98. E/1994/104/Add.22, paragraphs 322 - 325.

591. The Australian Sports Commission takes an important leadership role in working with national sporting organisations to establish structures and policies to ensure that a fair, safe, ethical and inclusive culture pervades sport at all levels. The Commission's key initiative has been to devise and implement the *Harassment-free Sport Strategy* to address harassment and abuse issues in sport. The Commission also encourages the application of the principles outlined in the *Essence of Australian Sport* to realise the values and benefits offered by sport.

### ***Broadcasting***

592. There are 342 licensed community radio services throughout Australia, including 80 Remote Indigenous Broadcasting Services (RIBS). There are 15 full-time Radio for the Print Handicapped stations and 40 full-time religious stations. There are also six full-time ethnic community broadcasters which, together with almost 100 other community radio stations who provide some ethnic programming, produce 1,800 hours of ethnic broadcasting in over 100 languages each week.

593. The national and commercial free-to-air broadcasters are required under the Australian Captioning Standards to provide a captioning service for people who are deaf or hearing impaired for television programs transmitted during prime time viewing hours and for news and current affairs programs transmitted outside prime viewing hours.

### ***Indigenous culture***

594. Language is a core element of Indigenous peoples' cultural identity. Aboriginal and Torres Strait Islander peoples have been assisted in maintaining the richness and diversity of their cultural life through:

- the administration of the *Maintenance of Indigenous Languages and Records (MILR) Program*—in 2005–06, the MILR Program provided funding assistance around Australia to conduct activities in language maintenance and revival projects; language recording; production of language materials and curricula; public awareness and advocacy, and development and maintenance of archives

- the implementation of targeted funding assistance to endangered Australian Indigenous languages to counter language loss
- the commission of a *National Indigenous Language Survey*, completed in 2005, to better enable the targeting of programs to address language erosion, and
- the development of State-level Indigenous language maintenance policies.

595. The Australian Government supports Indigenous cultural participation, enhancing opportunities for Indigenous peoples to take part in cultural life. The Australian Government provides funding assistance for community social and cultural participation through the *Indigenous Culture Support Program*.

596. The Australian Government provides funding to support, maintain and strengthen Indigenous visual arts and craft through the *National Arts and Crafts Industry Support Program*. The program recognises the critical connection between Indigenous culture, art practice and the success of the Indigenous visual arts industry.

597. The Australian Government administers Indigenous broadcasting programs, through which the use of traditional language, culture and religion is supported and encouraged via Indigenous organisations delivering television and community radio services.

### ***Science***

598. The Australian Government Department of Education, Science and Training supports science through considerable funding to universities and to major research organisations such as the Commonwealth Scientific and Industrial Research Organisation, the Australian Nuclear Science and Technology Organisation, and the Australian Institute of Marine Science. It also supports the Cooperative Research Centres Program to bring together researchers and research users, particularly industry.

599. *Backing Australia's Ability—Building Our Future through Science and Innovation* is the most recent in a series of initiatives announced by the Australian

## Appendix A

Government in May 2004 to promote research, development and innovation. It builds on the 2001 *Backing Australia's Ability* package to establish a ten-year commitment to science and innovation. Total Australian Government funding for science and innovation is expected to be around \$52 billion over that period. The *Backing Australia's Ability* strategy focuses on strengthening Australia's ability to generate ideas and undertake research, accelerating the commercialisation of research, and developing and retaining skills. It also maintains the Australian Government's commitment to strategic investment in ICT. A key feature is increased emphasis on collaboration between businesses, universities and publicly funded research organisations.

### ***Information technology***

600. The Australian Government recognises the impact and importance of ICT as a means of enabling people to share in the economic, social and cultural benefits of society. The Australian Government's *Australia's Strategic Framework for the Information Economy 2004–2006* identified as a priority ensuring 'that all Australians have the capabilities, networks and tools to participate in the benefits of the information economy' and proposes a range of key strategies to achieve this.

601. The Australian Government takes seriously its responsibility to provide an effective internet regime and of the need to address internet related criminal activity, publication of illegal and offensive material online, and consumer policy issues like spam, while ensuring that regulation does not place onerous or unjustifiable burdens on business, industry and citizens that inhibit the development of the online economy. These measures include:

- the *Broadcasting Services (Online Services) Act 1999* for the regulation of internet content
- the *Cybercrime Act 2001*, a series of provisions building on existing legislation, experience and international consultation on measures required to prevent computer damages and offences
- the *Interactive Gambling Act 2001*, providing for restrictions and complaints in relation to interactive gambling, and
- the *Spam Act 2003*, a scheme for regulating the sending of commercial electronic messages.

### ***Telecommunications***

602. The Australian Government recognises the importance of access to telecommunications services to participation in all aspects of contemporary Australian life. The open and competitive telecommunications market established in 1997 is the key to improving the access of Australians to quality, lower cost telecommunications services. A range of other measures safeguard access to telecommunications include:

- the *Universal Services Obligation*, which provides all people in Australia, including people with disability, with reasonable access to standard telephone

and payphone services on an equitable basis, regardless of where they reside or carry on business

- safeguarding of effective access to the internet through the *Internet Assistance Program* and *Digital Data Service Obligation*, and
- establishment of a *National Broadband Strategy* to improve the availability and effective use of broadband services and capture the economic and social benefits of greater broadband connectivity.

603. Targeted Australian Government funding and a range of public awareness activities are also helping to improve telecommunications access and uptake in areas such as mobile telephony and broadband, particularly for regional, rural and remote, and Indigenous Australians.

### ***Intellectual property and moral rights***

604. The Australian Government is committed to creating a copyright regime which balances the rights of copyright owners and creators to receive appropriate rewards for their investment of skill and resources, with the rights of users to access copyright material on reasonable terms.

605. Since 2000, the *Copyright Act 1968* has been extensively amended to update Australia's copyright law in response to digital technology and the online environment. Some of these changes have included extending the term of copyright protection and broadening the range of criminal offences and civil remedies available for infringement. Moral rights for creators of works and films were incorporated into the Act in 2000, and these rights were extended to performers for their live and recorded performances in 2005. Amendments to the Act in 2006 strengthen owners' rights through new enforcement provisions and increased protection for technological protection measures. At the same time, the amendments provide certainty for users by ensuring exceptions are available for commonly used digital technology and providing innovative exceptions for socially useful purposes such as use by people with disability. For further information see <<http://www.ag.gov.au/copyright>>.

## **Appendix A: Non-Governmental Organisations invited to provide input into/comment on Australia's Common Core Document**

Aboriginal Legal Rights Movement  
ACT Chief Minister's Multicultural Consultative Council  
ACT Multicultural Council Inc  
Advisory Commission of the Commonwealth Human Rights Initiative  
Amnesty International Australia  
Anglican Church of Australia – General Synod  
Antidefamation  
Unit B'nai B'rith  
AntiSlavery  
Society  
Asia Pacific Forum of National Human Rights Institutions  
AsiaPacific  
Centre for Human Rights and the Prevention of Ethnic Conflict  
AUSTCARE  
Australia Baptist World Aid  
Australia Gay and Lesbian Rights Lobby  
Australia Tibet Council  
Australian Baha'i Community  
Australian Catholic Migration and Refugee Office  
Australian Catholic Social Justice Council  
Australian Council for International Development  
Australian Council for Lesbian and Gay Rights  
Australian Council of Social Services  
Australian Council of Trade Unions  
Australian Education Union  
Australian Federation of Homelessness Organisations  
Australian Federation of Disability Organisations  
Australian Federation of Human Rights Organisations  
Australian Federation of Islamic Councils  
Australian Forum of Human Rights Organisations  
Australian Human Rights Centre  
Australian Lawyers for Human Rights  
Australian Library and Information Association  
Australian Multicultural Foundation  
Australian Muslim Civil Rights Advocacy Network  
Australian Red Cross  
Australian Section of the International Commission of Jurists  
Australian Women's Lawyers Association  
Australians for Native Title and Reconciliation  
Brahma Kumaris  
Bravehearts Inc  
Business and Professional Women Australia  
Castan Centre for Human Rights Law  
Catholic Commission for Justice, Development and Peace  
Centre for Democratic Institutions  
Centre for International and Public Law ANU  
Christian Solidarity Australasia

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Civil Liberties Australia  
Combined Community Legal Centres Group (NSW) Inc.  
Communications Law Centre  
Creative Industries Research & Application Centre, Queensland University of  
Technology  
Defence for Children International  
Environmental Defenders Office (NSW)  
Equal Rights Network  
Evatt Foundation  
Executive Council of Australian Jewry  
Faculty of Information Technology, Monash University  
Federation of Community Legal Services Vic. Inc  
Federation of Ethnic Community Councils of Australia  
Foundation for Aboriginal and Islander Research Action  
Health Consumers Network  
Homelessness Legal Rights Project  
Human Rights and Equal Opportunity Commission  
Human Rights Council of Australia  
Human Rights International  
Human Rights Law Resource Centre  
Indigenous Law Centre  
International Society for Human Rights  
International Women's Development Agency  
Just Rights Queensland  
Kingsford Legal Centre  
Law Council of Australia  
Law Institute of Victoria  
Liberty Victoria  
Maningrida Arts & Culture  
Mooka Bula Indigenous Association Incorporated  
Multicultural Disability Advocacy Association, NSW  
National Aboriginal Community Controlled Health Organisation  
National Aboriginal & Torres Strait Islander Legal Services Secretariat  
National Association of Community Legal Centres  
National Children's and Youth Law Centre  
National Committee on Human Rights Education  
National Council of Churches  
National Council of Women of Australia  
National Ethnic Disability Alliance  
National Legal Commission  
National Women's Justice Coalition  
National Youth Advocacy Network  
NSW Council for Civil Liberties  
Older Women's Network  
Oxfam Community Aid Abroad  
People with Disability Australia Inc  
Plan International Australia  
Project Nuff Stuff  
Public Interest Advocacy Centre  
Public Interest Law Clearing House Inc, NSW

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Public Interest Law Clearing House Inc, Vic  
Quaker Service Australia  
Refugee Council of Australia  
Rights Australia  
School of Law, Queensland University of Technology  
Service for the Treatment and Rehabilitation of Torture and Trauma Survivors  
Sisters Inside  
Southern Communities Advocacy Legal and Education Service  
Tears of the Oppressed  
Unifem  
United Nations Association of Australia  
United Nations Children's Fund  
United Nations Youth Association of Australia  
Uniting Church in Australia  
Uniting Justice Australia  
Uniya Jesuit Social Justice Centre  
Victorian Council of Social Service  
Vietnamese Community in Australia  
Women with Disabilities Australia  
Women's Electoral Lobby  
Women's Rights Action Network Australia  
Young Lawyers Human Rights Committee  
Young Women's Christian Association of Australia

## **Appendix B: Text of Australia's Reservations to International Human Rights Treaties**

- **International Covenant on Civil and Political Rights**

Reservations:

*Article 10*

In relation to paragraph 2(a) the principle of segregation is accepted as an objective to be achieved progressively. In relation to paragraph 2(b) and 3 (second sentence) the obligation to segregate is accepted only to the extent that such segregation is considered by the responsible authorities to be beneficial to the juveniles or adults concerned.

*Article 14*

Australia makes the reservation that the provision of compensation for miscarriage of justice in the circumstances contemplated in paragraph 6 of article 14 may be by administrative procedures rather than pursuant to specific legal provision.

*Article 20*

Australia interprets the rights provided for by articles 19, 21 and 22 as consistent with article 20; accordingly, the Commonwealth and the constituent States, having legislated with respect to the subject matter of the article in matters of practical concern in the interest of public order (*ordre public*), the right is reserved not to introduce any further legislative provision on these matters.

- **International Convention on the Elimination of all Forms of Racial Discrimination**

Reservation:

The Government of Australia ... declares that Australia is not at present in a position specifically to treat as offences all the matters covered by article 4(a) of the Convention. Acts of the kind there mentioned are punishable only to the extent provided by the existing criminal law dealing with such matters as the maintenance of public order, public mischief, assault, riot, criminal libel, conspiracy and attempts. It is the intention of the Australian Government, at the first suitable moment, to seek from Parliament legislation specifically implementing the terms of article 4(a).

- **Convention on the Elimination of All Forms of Discrimination against Women**

Reservations:

The Government of Australia States that maternity leave with pay is provided in respect of most women employed by the Commonwealth Government and the Governments of New South Wales, Victoria and the ACT. Unpaid maternity leave is provided in respect of all other women

employed in the State of NSW and elsewhere to women employed under Federal and some State industrial awards. Social Security benefits subject to income tests are available to women who are sole parents.

The Government of Australia advises that it is not at present in a position to take the measures required by article 11(2) to introduce maternity leave with pay or with comparable social benefits throughout Australia.

The Government of Australia advises that it does not accept the application of the Convention in so far as it would require alteration of Defence Force policy which excludes women from combat duties.

- **Convention on the Rights of the Child**

Reservation:

Australia accepts the general principles of article 37. In relation to the second sentence of paragraph (c), the obligation to separate children from adults in prison is accepted only to the extent that such imprisonment is considered by the responsible authorities to be feasible and consistent with the obligation that children be able to maintain contact with their families, having regard to the geography and demography of Australia. Australia, therefore, ratifies the Convention to the extent that it is unable to comply with the obligation imposed by article 37(c).

The Australian Government has a policy of keeping existing reservations to human rights treaties actively under review, consistent with the *Vienna Declaration and Program of Action*.

Updates on the status of Australia's treaty ratifications are available from the Australian Treaties Database. The Database is an on-line resource for researching treaties to which Australia is a signatory, or where Australia has taken other treaty action: <<http://www.info.dfat.gov.au/treaties/>>.

## **Appendix C: other relevant treaties to which Australia is party**

### **B. Other United Nations human rights and related conventions**

Convention on the Prevention and Punishment of the Crime of Genocide 1948

Slavery Convention 1926 as amended 1955

Convention relating to the Status of Refugees 1951, and its 1967 Protocol

Convention relating to the Status of Stateless Persons 1954

Convention on the Reduction of Statelessness 1961

Rome Statute of the International Criminal Court 1998

United Nations Convention against Transnational Organized Crime 2000, and its Protocols against the smuggling of migrants by land, sea and air, and to prevent, suppress and punish trafficking in persons, especially women and children

### **C. Conventions of the International Labour Organization**

Forced or Compulsory Labour Convention 1930 (No. 29)

Labour Inspection Convention 1947 (No. 81)

Freedom of Association and Protection of the Right to Organise Convention 1948 (No. 87)

Right to Organize and Collective Bargaining Convention 1949 (No. 98)

Equal Remuneration Convention 1951 (No. 100)

Abolition of Forced Labour Convention 1957 (No. 105)

Discrimination (Employment and Occupation) Convention 1958 (No. 111)

Employment Policy Convention 1964 (No. 122)

Minimum Wage-Fixing Convention 1970 (No. 131)

Occupational Safety and Health Convention 1981 (No. 155)

Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities Convention 1981 (No. 156)

### **D. Conventions of the United Nations Educational, Scientific and Cultural Organization**

Convention against Discrimination in Education 1960

**E. Conventions of the Hague Conference on Private International Law**

Convention on the Recognition of Divorces and Legal Separations 1970

Convention on the Recognition and Enforcement of Decisions relating to Maintenance Obligations 1973

Convention on the Civil Aspects of International Child Abduction 1973

Convention on Celebration and Recognition of the Validity of Marriages 1978

Convention on Protection of Children and Co-operation in respect of Intercountry Adoption 1993

Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children 1996

**F. Geneva Conventions and other treaties on international humanitarian law**

Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field 1949

Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea 1949

Geneva Convention (III) relative to the Treatment of Prisoners of War 1949

Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War 1949

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) 1977

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) 1977

Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and On Their Destruction 1987

## Appendix D: Sources of further information on human rights in Australia

Further information on human rights, and on Australia's promotion of human rights, is available from the following sources:

- Human Rights Manual:  
<[http://www.dfat.gov.au/hr/hr\\_manual\\_2004/index.html](http://www.dfat.gov.au/hr/hr_manual_2004/index.html)>
- Australia's National Framework for Human Rights – National Action Plan:  
<[http://www.dfat.gov.au/hr/nap/nap\\_2004.pdf](http://www.dfat.gov.au/hr/nap/nap_2004.pdf)> and  
<<http://www.ag.gov.au/nap>>
- Department of Foreign Affairs and Trade human rights information:  
<<http://www.dfat.gov.au/hr/>>
- AusAID: <<http://www.ausaid.gov.au>>
- Human Rights and Equal Opportunity Commission:  
<<http://www.humanrights.gov.au>>, including the following reports:
  - Social Justice Reports:  
<[http://www.humanrights.gov.au/social\\_justice/sj\\_reports.html](http://www.humanrights.gov.au/social_justice/sj_reports.html)>
  - Native title reports:  
<[http://www.humanrights.gov.au/social\\_justice/nt\\_reports.html](http://www.humanrights.gov.au/social_justice/nt_reports.html)>
  - Reports on Human Rights Issues:  
<[http://www.humanrights.gov.au/human\\_rights/index.html](http://www.humanrights.gov.au/human_rights/index.html)>
  - Reports on Complaints Under the HREOC Act:  
<[http://www.humanrights.gov.au/human\\_rights/index.html](http://www.humanrights.gov.au/human_rights/index.html)>
  - Reports on Racial Discrimination:  
<[http://www.humanrights.gov.au/racial\\_discrimination/publications.html](http://www.humanrights.gov.au/racial_discrimination/publications.html)>
  - Disability Inquiry Reports:  
<[http://www.humanrights.gov.au/disability\\_rights/inquiries/reports.html](http://www.humanrights.gov.au/disability_rights/inquiries/reports.html)>
- Attorney-General's Department: <<http://www.ag.gov.au>>