



**Australian  
Human Rights  
Commission**

*everyone, everywhere, everyday*

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Comments by the  
Australian Human Rights Commission  
to the  
United Nations Human Rights Committee  
on issues relevant to  
Australia's fifth periodic report under the ICCPR  
30 September 2008

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## **Introduction**

1. The Australian Human Rights and Commission (the Commission) provides these comments to the United Nations Human Rights Committee (the Committee) in response to the Committee's request for information relevant to Australia's fifth periodic report under the *International Covenant on Civil and Political Rights* (ICCPR).<sup>1</sup>
2. The Commission understands that this information will be used to prepare a list of issues for the Committee to raise when it considers Australia's fifth report under the ICCPR in 2009.

## **Summary**

3. In these comments, the Commission aims to provide the Committee with information on a number of key issues that the Commission believes may be relevant to the Committee in considering Australia's implementation of the ICCPR. The Commission does not intend to provide a complete assessment of Australia's compliance with the ICCPR.
4. The Commission's comments respond to Australia's Common Core Document containing the fifth periodic report under ICCPR for the years 1997-2006 (Common Core Document).<sup>2</sup> Where possible, they include references to relevant sections of the Common Core Document and to provisions of the ICCPR. They also provide updated information on particular issues where relevant.
5. The Commission's comments also reiterate some of its previous comments on a draft of the Common Core Document, which were provided to the Australian Government in February 2007.
6. As expressed to the Australian Government in 2007, the Commission believes that the Common Core Document provides an incomplete picture of human rights compliance in Australia. In particular, the Common Core Document does not acknowledge the limitations of the current legal framework for human rights protection and fails to identify and explain significant human rights issues.

## **1 Legal framework for human rights protection**

7. The Commission notes that under Australian law, a treaty only becomes a source of individual rights and obligations when it is directly incorporated by legislation. The ICCPR has not been fully incorporated into Australian law by legislation.

### **1.1 Australian Charter of Rights**

8. Contrary to article 2 of the ICCPR, Australia's current governance system does not adequately protect ICCPR rights. Many of the international human rights standards agreed to by the Australian Government, including the ICCPR, have not been fully incorporated into Australian law. Individuals who experience human rights violations are often left without legal remedies.
9. The need for reform is highlighted by numerous examples of human rights breaches, for example:
  - the mandatory detention of unauthorised arrivals, including children
  - the removal of Aboriginal and Torres Strait Islander children from their parents
  - discrimination against same-sex couples and their children contained within Commonwealth laws.
10. The Australian Government has stated its intention to initiate a public inquiry about the best way to protect human rights and freedoms in Australia. The Commission strongly supports the establishment of an independent and inclusive national inquiry and public consultation process. The process should include community level consultations accessible by all Australians, in particular those who are isolated or disadvantaged.
11. The Commission believes that a federal charter of rights created in consultation with the Australian community could foster a human rights culture in Australian government and society by:
  - making human rights an integral part of law-making and policy-setting processes
  - requiring Parliament to consider whether laws comply with human rights

- enabling courts to interpret laws consistently with human rights where possible, and to identify laws which do not comply with human rights
  - providing accessible, appropriate and enforceable remedies for human rights breaches.
12. A federal charter of rights should be based on the needs and concerns of all Australians, and should fill the gaps in Australia's current system of human rights protection.

### **1.2 Functions of the Australian Human Rights Commission**

13. The Common Core Document outlines the Commission's statutory functions, but it does not acknowledge the limitations of the Commission's powers.<sup>3</sup>
14. For example, under Part II of the *Human Rights and Equal Opportunity Act 1986* (Cth) (HREOC Act), the Commission can inquire into:
- complaints alleging that an act or practice by or on behalf of the Commonwealth or an authority of the Commonwealth is inconsistent with any 'human right' (defined by section 3 of the HREOC Act to include rights under the ICCPR)
  - complaints alleging discrimination in employment on a number of grounds including religion, political opinion, medical record, criminal record, marital status, sexual preference, or trade union activity. These complaints are commonly called 'ILO 111 complaints' because the relevant provisions of the HREOC Act implement, in part, Australia's obligations under the *Discrimination (Employment and Occupation) Convention 1958*.
15. Where the Commission finds a breach of human rights or ILO 111 discrimination, the Commission is empowered to make recommendations, such as for payment of compensation. However, these recommendations are not enforceable.<sup>4</sup>
16. These limitations have been discussed by the UN Human Rights Committee in several communications, particularly in relation to whether this process constitutes an effective remedy in the context of the exhaustion of local

remedies for making a communication under the Optional Protocol to the ICCPR.<sup>5</sup>

## **2 Protection against discrimination**

### **2.1 Gender equality and the right to non-discrimination**

#### *(a) Gender equality*

17. The Commission has recently expressed a number of concerns about women's equality before the law in Australia.<sup>6</sup> In particular, the Commission is concerned about the limited ability of the *Sex Discrimination Act 1984* (Cth) (Sex Discrimination Act) to achieve substantive gender equality in a number of areas of public and private life.<sup>7</sup> The Sex Discrimination Act does not fully implement Australia's international human rights obligations, particularly under the *Convention on the Elimination of all forms of Discrimination against Women* (CEDAW).
18. The Australian Government is currently conducting an inquiry into the effectiveness of the Sex Discrimination Act in eliminating discrimination and promoting gender equality.
19. Recent work conducted by the Sex Discrimination Commissioner has revealed a number of impediments to women's full and equal participation in the workforce, including: ongoing direct and indirect discrimination based on sex, pregnancy and family responsibilities; pay inequity; and limited flexible work arrangement and other family-friendly policies.<sup>8</sup>
20. The Commission has also expressed concern about women's ongoing experiences of sexual harassment and violence as key markers of gender inequality.<sup>9</sup>

#### *(b) Paid maternity leave*

21. Australia remains one of only two OECD countries without a paid maternity leave scheme as required by article 11(2)(b) of CEDAW.<sup>10</sup> While paid maternity leave is provided for public sector employees and some private

sector employees, the majority of mothers in Australia are unable to access this workplace right.

22. The Commission has recently reiterated its previous recommendation for the immediate introduction of a baseline minimum entitlement to paid maternity leave and recommended progressively moving towards a more comprehensive scheme in line with comparable countries.<sup>11</sup>
23. An independent inquiry by the Productivity Commission into paid maternity, paternity and parental leave is currently underway. An interim report was released on 29 September 2008 recommending a preferred model of paid parental leave for Australia. In essence, the Productivity Commission recommended a federal government-funded universal scheme of 18 weeks paid leave for mothers and 2 weeks for fathers or supporting parents (in same sex relationships). A final report will be released in February 2009, following which the federal government will respond.

*(c) Balancing work and family*

24. The Commission has raised the need for greater support for men and women balancing work and family responsibilities with the Australian Government consistently over the last three years.<sup>12</sup>
25. The Commission is concerned that the new National Employment Standards, established as part of the Australian Government's new workplace relations framework, provide inadequate protection for workers with family responsibilities. The new right to request flexible working arrangements under the National Employment Standards is limited to workers with children under school age and does not apply to workers unless they have completed 12 months of continuous service. These limitations will have a disproportionate impact on women with family responsibilities.
26. The Commission has also expressed concern that the family responsibilities provisions of the Sex Discrimination Act provide only limited coverage for employees experiencing this form of discrimination. Currently, protection against discrimination on the grounds of family responsibilities is limited to situations of direct discrimination and dismissal from employment.<sup>13</sup>



## **2.2 Age Discrimination Act**

27. As indicated by the Common Core Document, the Australian Government has introduced the *Age Discrimination Act 2004* (Cth) (Age Discrimination Act), which prohibits age discrimination in many areas of public life.<sup>14</sup> The Commission has raised concerns with the federal government in relation to the following aspects of the Act.<sup>15</sup>

### *(a) The dominant reason test*

28. The Age Discrimination Act provides that where an act is done for two or more reasons, that act will only be discriminatory if the person's age was the 'dominant reason' for doing the act.<sup>16</sup> The introduction of this dominant reason test represents a departure from the position in other federal discrimination laws.

29. The dominant reason test was opposed by the Commission when the legislation was before Parliament in 2003.<sup>17</sup> The Commission remains concerned that the test will make it harder for people to make successful complaints of discrimination on the basis of age, and may lead to considerable legal complexity. The dominant reason test was removed from the *Race Discrimination Act 1975* (Cth) in 1990 because of concerns about its practical application.<sup>18</sup> The government has indicated that it may review this requirement with a view to removing the dominant reason test.

### *(b) Protections for relatives and associates*

30. The Age Discrimination Act does not prohibit discrimination on the basis of the age of a person's relative or associate. The need to extend protection against discrimination to relatives and carers of older people is an increasingly important issue given Australia's ageing population and the large number of people, particularly women, providing informal care to older relatives. The Commission supports extension of the Act's coverage to include relatives and associates of older people.

*(c) Removal of exemptions*

31. The Commission considers that the breadth and range of exemptions provided in the Age Discrimination Act are problematic and potentially undermine the object of the Act to promote attitudinal change and eliminate age discrimination. The Commission considers that the exemptions to the Act should be reviewed.

**2.3 Race Discrimination Act and the Northern Territory  
Emergency Response**

32. The Commission notes with concern that the application of the *Race Discrimination Act 1975 (Cth)* (Race Discrimination Act) has been suspended in relation to the Northern Territory Emergency Response (NTER), an intervention strategy introduced by the Australian Government in 2007 to protect Aboriginal children in the Northern Territory from sexual abuse and family violence.<sup>19</sup>
33. The legislation enacted for the NTER declares itself, and any acts done pursuant to it, to be a special measure for the purposes of the Race Discrimination Act and exempt from the operation of Part II of the Race Discrimination Act. It also declares that, where relevant, it is exempt from Northern Territory and Queensland anti-discrimination legislation.<sup>20</sup>
34. The *Social Justice Report 2007* assessed the NTER's compliance with Australia's human rights obligations and found that:
- the Government did have an obligation to promote and protect the right of Indigenous peoples to be free from family violence and child abuse.
  - the NTER legislation is inappropriately classified as a 'special measure' under the Race Discrimination Act because of the negative impacts of some of the measures on Indigenous people and the absence of adequate consultation or consent by Indigenous peoples to the measures.
  - the NTER legislation contains a number of provisions that are racially discriminatory.

- some provisions raised concerns for the compliance with human rights obligations (e.g. the lack of access to review of social security matters and the compulsory acquisition of land without just compensation).<sup>21</sup>

35. In accordance with the ICCPR, the promotion and protection of one right, namely freedom from violence and abuse, cannot be undertaken in a discriminatory manner, nor can it be at the expense of other rights, including the right to procedural fairness and an effective remedy, equality before the law and the right to participation.
36. The *Social Justice Report 2007* also found that, despite being entitled a 'national emergency', the NTER does not meet the requirements of a 'public emergency' as articulated in article 4 of the ICCPR. Further, the extent of the derogation allowed for in article 4 is limited. The NTER is not a situation that justifies introducing measures that place restrictions on the rights of Indigenous people, such as overriding the principles of non-discrimination or safeguards for procedural fairness.
37. The ease with which the obligations under the Race Discrimination Act can be set aside highlights the weak status of protections against race discrimination in the Australian legal system. Underlying this weakness is the absence of any constitutional protection against race discrimination and the absence of a federal charter of rights. The Committee on the Elimination of Racial Discrimination has previously noted its concern about the absence of any entrenched guarantee against race discrimination that would override the law of the Commonwealth.<sup>22</sup>
38. The NTER is currently under review and the Commission has recommended a ten point plan be implemented to address the lack of compliance of the NTER with Australia's human rights obligations. The ten point plan sets out how to:
- remove formal discrimination under the NTER legislation
  - ensure that schemes for income management and alcohol control are undertaken in a manner that is consistent with the Race Discrimination Act and that qualify as a 'special measure'

- transition from a crisis or emergency approach to a community development approach through ensuring participatory processes, the creation of community development plans and rigorous participatory based monitoring and reviews.

## **2.4 Religious discrimination and vilification**

39. Federal anti-discrimination law does not make it unlawful to discriminate against or vilify a person on the basis of religion or belief. While such laws exist in some states and territories, the Commission believes that the overall coverage of law is inadequate to protect the right to manifest religion and belief. For example, community consultations and research conducted by the Commission on the right to freedom of religion and belief heard that the law provides inadequate protection is regarding the right to manifest Indigenous beliefs, and religious beliefs concerning autopsies and medical procedures such as blood transfusions.<sup>23</sup>
40. These consultations found that discrimination and vilification on the basis of religion and belief discourages participation in the community and may infringe the right to freedom of religion and belief.
41. In 2003, the Commission conducted a national research and consultation project called *Ismaʿ – Listen* on eliminating prejudice against Arab and Muslim Australians. During consultations, participants said that those most at risk of experiencing prejudice were people who are readily identifiable as Muslim because of their dress, physical appearance or name, particularly Muslim women who wear the hijab. Arab and Muslim youth felt they were particularly at risk of harassment. This has led to feelings of frustration, alienation, loss of confidence and loss of trust in authority.<sup>24</sup>
42. Discrimination, vilification and abuse have had severe social and personal impacts on the ability of some sectors of the Muslim communities in Australia to participate in public life.
43. The Commission considers that a federal law making discrimination and vilification on the ground of religion or belief unlawful should be introduced, in accordance with Australia's obligations under articles 18 and 20(2) of the ICCPR.<sup>25</sup> It should be acknowledged that while religious vilification or

discrimination is not unlawful at a federal level, most states and territories provide at least some degree of protection against religious discrimination.<sup>26</sup>

## ***2.5 Discrimination on the basis of transexuality, gender identity, gender history or sexuality***

44. While there is no federal law prohibiting discrimination on the ground of sexuality or gender diversity, all states and territories have anti-discrimination laws that prohibit discrimination on the basis of transsexuality, gender identity, gender history or sexuality.
45. However, the Commission is concerned that the definitions currently used in various discrimination laws do not cover all people who are sex and gender diverse. Many state discrimination laws only protect people who have undergone surgery and therefore do not cover the majority of people in the sex and gender diverse community. Further, while some laws do protect intersex people who identify as either male or female, none protect intersex people who do not present as either male or female and are intergender.<sup>27</sup>

## **3 Counter terrorism legislation**

46. As discussed in the Common Core Document, since the terrorist attacks in the United States on September 11 2001, the Australian Government has introduced over 40 new counter terrorism laws.<sup>28</sup> The Commission has raised concerns with the federal government that a number of the new laws may breach, or allow for the breach of, Australia's human rights obligations. The Commission wishes to draw attention to the following systemic issues.

### ***3.1 Expansion of executive power***

47. Despite international recognition of the vital role of an independent and impartial judiciary in overseeing the application of counter terrorism laws, counter terrorism powers in Australia tend to be located in the executive, rather than the judicial branch, of government.
48. The Commission is concerned that this expansion of executive power has not been accompanied by adequate safeguards to check that the power is

exercised in a way that is proportionate and necessary in the particular circumstances.

49. In the Commission's view, in order to discharge Australia's obligations under the ICCPR, decision making powers must be subject to judicial review, to check the legal validity of the decision, and merits review, to properly investigate the facts on which the decision was based. Such safeguards are particularly important in the Australian context, where there is no federal charter of rights to protect ICCPR rights.

### ***3.2 Independent review of counter terrorism laws***

50. Independent review of counter terrorism laws in Australia has been piecemeal. The Commission considers it vital that a system of regular and independent reviews of counter terrorism legislation be established. To ensure that the combined impact of all counter terrorism measures on individual rights can be monitored, reviews must consider how counter terrorism laws are working as a whole.
51. A permanent independent reviewer should be given powers to gather information from a range of sources, including intelligence agencies, and be required to consider the human rights impacts of the laws.
52. A Bill to enable the appointment of an Independent Reviewer to review and report on terrorism related laws was recently introduced into the Senate.<sup>29</sup> An inquiry into this Bill is currently being conducted and will report on 24 September.<sup>30</sup>

### ***3.3 Impact on Arab and Muslim Australians***

53. A number of reports have found that the counter terrorism laws impact most on Arab and Muslim Australians who feel under greater surveillance and suspicion.
54. The Review of Security and Counter Terrorism Legislation, conducted by the Parliamentary Joint Committee on Intelligence and Security in 2006 found that Australians of Arabic heritage and Australian Muslims feel like they are under greater surveillance and suspicion, and that counter terrorism laws have

increased distrust of authority and alienation from the wider community within these groups.<sup>31</sup>

55. Reports from non-government organisations such as the Australian Muslim Civil Rights Advocacy Network (AMCRAN) have also advised that Muslims have felt that counter terrorism laws are selectively applied to them. This perception was increased by the fact that only Muslim organisations were listed as ‘terrorist organisations’ under the *Criminal Code Act 1995* (Cth). Compounded by uncertainties around the definition of terrorism and terrorist organisations, this has fuelled confusion and fear.<sup>32</sup> In many instances, this has led to self-limiting behaviours – a form of self-censorship that has reduced personal freedom and choices.<sup>33</sup>

## **4 Immigration detention**

### **4.1 Arbitrary detention**

56. Australia’s system of mandatory detention has led to prolonged and indefinite detention for many people. The Common Core Document explains this system at paragraphs 261-272. The Commission has consistently called for an end to this policy because it places Australia in breach of its obligations under the ICCPR to ensure that no one is arbitrarily detained.<sup>34</sup>
57. While detention may be acceptable for a short period in order to conduct security, identity and health checks, currently, mandatory detention laws require detention for more than these purposes, for unlimited periods of time and in the absence of independent review of the need to detain.
58. On 29 July 2008, the Minister for Immigration and Citizenship (the Minister), Chris Evans, announced a new direction in immigration detention policy.<sup>35</sup> The Commission understands that this new direction provides for a fundamental shift in immigration detention policy, away from the requirement that all unlawful non-citizens be detained, towards a presumption that detention will occur as a last resort and for the shortest practicable period.
59. While the Commission welcomes this announcement, to date it has not received further detail on the practical implementation of the new approach, in particular how such changes will be enforced or guaranteed. The Commission

remains concerned that without legislative change, the immigration detention system will fail to guarantee freedom from arbitrary detention, among other human rights.

#### **4.2 Review of detention**

60. The Commission is concerned that the absence of the right to judicial review of immigration detention breaches article 9(4) of the ICCPR. There is no right to judicial review of decisions to detain unlawful non-citizens under the *Migration Act 1958* (Cth) (Migration Act). The courts are precluded from authorising release from detention, unless the detention contravenes domestic law. The courts have no authority to order that a person be released from immigration detention on the grounds that the person's continued detention is arbitrary, in breach of article 9(1) of the ICCPR. This is because under Australian law it is not unlawful to detain a person (or to refuse to release a person) contrary to article 9(1) of the ICCPR.
61. The Commission believes that any decision to detain a person should be subject to judicial review and there should be clear legal limits on the period of time for which immigration detention is permitted.

#### **4.3 Detainees in excised offshore places**

62. People who arrive in excised offshore places are unable to make a valid visa application under the Migration Act unless the Minister exercises his discretion.<sup>36</sup> These people have also been unable to access the same legal assistance as those who arrive on mainland Australia and their cases cannot be reviewed by the Refugee Review Tribunal or the courts.<sup>37</sup>
63. The Commission has repeatedly raised concerns that the practice of processing asylum seekers offshore denies them their rights under article 9(4) of the ICCPR.<sup>38</sup> The lack of legal safeguards increases the risk of a person who is genuinely in need of Australia's protection being returned to a place of persecution.
64. As part of the Australian Government's announcement of a new direction in immigration detention policy, the Minister indicated new plans to provide legal assistance to those people detained on Christmas Island (an 'excised offshore



place') and provide them with access to independent review of their applications for asylum. The Commission has not as yet received any details about these new arrangements.

#### **4.4 Standards for conditions in detention**

65. The Commission is concerned that there are inadequate mechanisms to safeguard the treatment of people in immigration detention and ensure that conditions meet international human rights standards.<sup>39</sup> There are no legislated minimum standards for conditions and treatment that apply to all persons in immigration detention.<sup>40</sup>
66. In the Common Core Document, the Australian Government refers to the Immigration Detention Standards (IDS).<sup>41</sup> The IDS are part of the contract that exists between the Australian Government and the private provider that runs its immigration detention facilities, GSL (Australia). The IDS require regular reporting on a range of service requirements, including the conditions for immigration detainees. However, the IDS do not provide sufficient guidance on what service providers must do to ensure that conditions in immigration detention comply with international human rights standards. There is also inadequate accountability on the service provider to ensure they comply with the IDS. The IDS are not legally enforceable and do not provide people in immigration detention with a cause of action or an effective remedy for alleged breaches of their human rights.
67. The Commission notes that, in 2008, the UN Committee against Torture recommended that the IDS be codified into legislation.<sup>42</sup>

#### **5 Non-refoulement obligations**

68. The Commission has on numerous occasions recommended that a system of complementary protection be introduced to protect people who do not fall within the definition of refugee under the *Refugee Convention* but who nonetheless must be protected from refoulement under the ICCPR, the *Convention against Torture* (CAT) and the *Convention on the Rights of the Child* (CRC).<sup>43</sup>

69. Australia currently has no effective system of protection for these asylum seekers. Instead, their claims can only be considered after they have been rejected at each stage of the refugee determination process and then seek a personal intervention by the Minister for Immigration and Citizenship (the Minister) under the Migration Act. Although the Minister may consider Australia's obligations under other treaties, his or her decisions in these cases are non-compellable and non-reviewable. The Minister is also not obliged to give reasons for his or her decisions, which means that the decisions lack transparency and accountability, and consistency.
70. In May 2008, the UN Committee against Torture repeated its recommendation that Australia introduce a system of complementary protection to ensure that Australia no longer relies on the Minister's discretionary powers to meet its non-refoulement obligations under CAT.<sup>44</sup>

## **6 People trafficking**

71. As discussed in the Common Core Document, visa arrangements were set up in 2004 whereby suspected victims of trafficking may be able to obtain a visa to remain in Australia for up to 30 days, conditional upon their willingness and ability to assist police investigations and prosecutions.<sup>45</sup> Only visa holders have access to the Government funded victim support program.
72. The Commission remains very concerned about this system and has emphasised that victim support for trafficking victims should be available on the basis of need.<sup>46</sup>
73. Further, the Commission is concerned that the current 30 day visa available to victims of trafficking is an insufficient period to allow them to recover from their traumatic experience before engaging in decisions about whether to participate in a criminal justice process. The Commission has raised these concerns with the Department of Immigration and Citizenship as part of its review of the People Trafficking Visa Framework in January 2008.

## **7 Equality between Indigenous and non-Indigenous**

### **Australians**

74. Indigenous disadvantage is an indicator of the discrimination and inequality faced by Aboriginal people.<sup>47</sup> The Committee recognised in its 2000 Concluding Observations that the high level of exclusion and poverty facing indigenous persons is indicative of the lack of adequate protection of indigenous peoples' cultural rights recognised in Article 27.<sup>48</sup>
75. Aboriginal and Torres Strait Islander people continue to experience significant inequalities in the realisation of their civil and political rights. Inequality in the right to life is of particular concern. Between 1996 and 2001, there was an estimated difference of 17 years between Indigenous and non-Indigenous life expectancy.<sup>49</sup>
76. Underlying this inequality in the right to life is a range of social and economic inequalities including lower incomes, higher rates of unemployment, poorer educational outcomes and lower rates of home ownership.<sup>50</sup> For example, in 2001 the unemployment rate for Indigenous peoples was 20% - three times higher than the rate for non-Indigenous Australians.
77. The Commission is concerned that the current spending on Indigenous programs is still insufficient to meet the need in Indigenous communities. For example, the \$425.3 million allocated in the 2008-09 budget for Indigenous health policies and programs falls significantly short of the \$460 million per year which is estimated to be the minimum commitment needed to close the gap in equality in health status between Indigenous and non-Indigenous Australians.<sup>51</sup> Adequate funding for health programs and services is an important contribution to equalising the life expectancy levels between Indigenous and non-Indigenous people.
78. The Commission notes that at the Indigenous Health Equality Summit in 2008, the Australian Government made accountable and measureable commitments to achieving equality in health status and life expectancy between Indigenous and non-Indigenous Australians by 2030. The Council of Australian Governments has similarly committed to closing the life expectancy gap within a generation, halving the mortality gap for children under five within

a decade and halving the gap in reading, writing and numeracy within a decade.

79. Having committed itself to applying this human rights based framework to address Indigenous health, the Australian Government should take steps to equally apply a human rights based framework to all aspects of Indigenous affairs policy, programs and service delivery, including in relation to the Northern Territory Emergency Response.
80. The Commission looks forward to the government introducing measures to realise these commitments.

## **8 Indigenous self-determination**

81. In its Concluding Observations in 2000, the Human Rights Committee noted the inadequacy of the government's position on the right to self determination:

[T]he Committee takes note... the Government of the State party prefers terms such as "self-management" and "self-empowerment" to express domestically the principle of indigenous peoples' exercising meaningful control over their affairs. The Committee is concerned that sufficient action has not been taken in that regard.<sup>52</sup>

82. The *Declaration on the Rights of Indigenous Peoples* recognises the right to self-determination of indigenous peoples and provides a clear guide for interpreting State parties' obligations to Indigenous peoples. With the adoption of the Declaration, there is now international recognition of the right to self-determination of Indigenous peoples.
83. The Commission notes that although the Australian Government declined to sign the Declaration on the basis of its dissatisfaction with the references to self-determination in the text, the new Australian Government has since indicated that it will support the Declaration and is consulting with state and territory governments prior to formally expressing its support. At the Australian Government's request, the Commission has been seeking the views of Indigenous Organisations on how the government should support the Declaration.

84. The Declaration provides a firm basis for advancing greater recognition and protection of Indigenous people's rights to self-determination in Australia. The Commission looks forward to the Australian Government formally expressing its support for the Declaration and working with the government on mechanisms for implementing the Declaration within Australia. Strengthening the powers of the Commission so that it can take the Declaration into account in exercising its functions, as well as providing greater resourcing and capacity to the Commission, would contribute to the future operation of the Declaration in Australia.

## **9 Indigenous representation and participation in decision-making**

85. The Commission's *Social Justice Reports* from 2004-2006 outline a reduction in Indigenous people's participation in decision-making bodies since the abolition of the Aboriginal and Torres Strait Islander Commission (ATSIC) and within the 'new arrangements' for the administration of Indigenous Affairs subsequently put in place by the Australian Government. The Commission particularly notes the absence of processes for systematic engagement with Indigenous people under the new arrangements.<sup>53</sup>
86. The new Australian Government has made a commitment to set up a new national representative body to provide an Aboriginal and Torres Strait Islander voice within government. To this end, the Australian Government has begun formal discussions with Indigenous people about the role, status and composition of this body.

## **10 Indigenous people and the legal system**

### ***10.1 The criminal justice system and Aboriginal deaths in custody***

87. The Commission is concerned about the continued high levels of incarceration of Indigenous people, particularly women and children, and the over-representation of Indigenous people in prisons and juvenile justice facilities. For example:

- Indigenous prisoners represented 24% of the total prisoner population at 30 June 2006, the highest proportion since 1996
- only 5% of Australians aged 10-17 years are Indigenous, but 40% of those aged 10-17 years under juvenile justice supervision were Indigenous.<sup>54</sup>

88. These issues have been dealt with extensively by the Social Justice Commissioner in the annual *Social Justice Report*.<sup>55</sup>
89. The Committee against Torture recently recommended that the Australian Government reduce the overcrowding in prisons, implement alternatives to detention, abolish mandatory sentencing and prevent and investigate deaths in custody.
90. In light of the continued over-representation of Indigenous people, particularly women, in the criminal justice system, there is a pressing need for the continued implementation of the 339 recommendations contained in the Report of the Royal Commission into Aboriginal Deaths in Custody, including any outstanding recommendations.<sup>56</sup>
91. A comprehensive response to the issues raised by this report requires government commitment in two key areas:
- ongoing community justice mechanisms which recognise Indigenous governance models and return control and decision-making processes to Aboriginal and Torres Strait Islander communities
  - measures to address the impact of Indigenous marginalisation and socio-economic disadvantage on Indigenous peoples' contact with the criminal justice system.<sup>57</sup>

## **10.2 Customary law**

92. The Commission has expressed concern about developments under federal law which undermine the role of Aboriginal customary law. These developments prevent a court from taking into account 'any form of customary law or cultural practice' as a mitigating factor in sentencing, or in the context of granting bail.<sup>58</sup>

93. The Commission opposes this law for a number of reasons, including the importance of recognising the right of minorities to enjoy their own culture, which applies to Indigenous peoples and imposes a positive obligation on States to protect their cultures.<sup>59</sup> People who are convicted of criminal offences should be appropriately punished. This is best achieved by ensuring that courts can consider the full range of factors relevant to the commission of the offence, including a person's culture. The right to enjoy culture cannot be enjoyed at the expense of the rights of others and must be consistent with other human rights in the ICCPR and the rights of women and children as protected by the CEDAW and the CRC.

### **10.3 Mandatory sentencing**

94. In 2005 the Committee on the Elimination of Racial Discrimination reiterated its concerns about the provisions for mandatory sentencing in the Criminal Code of Western Australia and the disproportionate impact of this law on Indigenous groups.
95. As noted in the Common Core Document, mandatory sentencing laws are still in place in Western Australia.<sup>60</sup> These laws have resulted in situations of injustice, with individuals receiving sentences that are disproportionate to the circumstances of their offending.<sup>61</sup>
96. The Commission notes that although the Northern Territory Parliament made changes to the 'mandatory sentencing' laws for property offences effective from 2001, the *Sentencing Act 1995* (NT) still contains forms of mandatory sentencing in cases involving offences of violence.<sup>62</sup>
97. The *Social Justice Report 2001* concluded that the policy of mandatory detention is not only ineffective in deterring crime and rehabilitating offenders, but costly and manifestly unjust. The Social Justice Commissioner has called on the Western Australian Government to repeal its mandatory detention provisions and for the federal Parliament to exercise its responsibilities to ensure compliance by the WA Government with Australia's international human rights obligations by overriding the laws if necessary.<sup>63</sup>

## **11 Indigenous family support and protection of children and young people**

98. As exemplified by reports such as the *Little Children are Sacred Report* (NT) and the *Breaking the Silence Report* (NSW), child abuse, child sexual abuse and family violence are critical issues for Indigenous communities.<sup>64</sup> An Indigenous child is six times more likely to be involved with the statutory child protection system than a non-Indigenous child, but four times less likely to have access to child care or preschool service that can offer family support to reduce the risk of child abuse.<sup>65</sup>
99. The new federal government is currently developing a national framework for child protection that consolidates the different state and territory child protection systems, to ensure an integrated response across all government and non-Government organisations.
100. As part of this framework, the government has looked to introduce income management schemes, where welfare incomes are quarantined or deducted subject to the enrolment and participation of children in schools.
101. The Commission has recommended against the introduction such schemes as part of the national child protection framework. The Commission has called for the government to adopt a human rights-based approach to the framework that would uphold the ‘best interests of the child’, ‘non-discrimination’, and the child’s ‘right to life’ and ‘right to participation’.
102. The Commission’s report on *Ending Family violence and Abuse in Aboriginal and Torres Strait Islander Communities* highlights the need for support for Indigenous community initiatives and networks, human rights education, government action, and robust accountability and monitoring.<sup>66</sup>

## **12 Indigenous language, culture and arts**

103. A recent *National Indigenous Languages Survey* shows that of the original estimated 300 Indigenous languages, only a third of these exist today and most are critically endangered.<sup>67</sup>



104. Indigenous languages and cultures are closely intertwined. Safeguarding languages preserves Indigenous culture and identity.
105. Currently, the promotion and protection of Indigenous languages and cultures is not sufficiently prioritised by the Australian Government. If languages are to survive, genuine commitment and policies are required for language maintenance and language revitalisation programs at all levels of Australia's educational institutions. This means making schools culturally familiar and appropriate for Indigenous children and embedding Indigenous perspectives across the curriculum.
106. Additionally, the Commission is concerned that the protection of Indigenous cultural and intellectual property by the mainstream legal system is inadequate. Instruments such as the *Copyright Act 1986* (Cth) that provide legal protections for the life of the artist plus fifty years are not equipped to protect knowledge systems and artistic designs that are thousands of years old. Nor are they capable of recognising and protecting collective ownership of artistic content and products, which is common in Indigenous cultures.<sup>68</sup>

### **13 Stolen Generations**

107. As discussed in the Common Core Document, the *Bringing them Home* Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (1997) documents the experiences of the Stolen Generations, who were forcibly removed from their families under the guise of welfare.<sup>69</sup>
108. This report recommended that reparation be made in recognition of the history of gross violations of human rights and that the *van Boven principles* guide the reparation measures, which should consist of:
- acknowledgment and apology
  - guarantees against repetition
  - measures of restitution
  - measures of rehabilitation
  - monetary compensation.

109. The first of these steps for reparation was undertaken by the new Australian Government this year. The Prime Minister of Australia apologised to the Stolen Generations in February 2008 for ‘laws and policies of successive Parliaments and governments that have inflicted profound grief, suffering and loss on these our fellow Australians... especially for the removal of Aboriginal and Torres Strait Islander children from their families, their communities and their country’.<sup>70</sup>
110. The other recommendations for reparation remain outstanding, including the provision of healing programs for the Stolen Generations and their families and monetary compensation.
111. The only compensation scheme established for the Stolen Generations to date has been in Tasmania.

#### **14 Indigenous Stolen wages**

112. The issue of ‘stolen wages’ has contributed to the entrenched and inter-generational disadvantage experienced by Indigenous people in Australia, and the consequent discrimination and inequality that contravenes the non-discrimination and equality provisions in Articles 2 (1) and 26 of the Covenant.
113. The Stolen wages compensation schemes are a critical means for Indigenous people to access their right to remedy for the human rights violations they experienced, as required under Article 2 of the ICCPR, and as the Committee recommended in 2000.<sup>71</sup>
114. Stolen wages compensation schemes have been established in Queensland and New South Wales to compensate Indigenous people for the withholding, non-payment and underpayment of wages in the control of government.<sup>72</sup> Investigations and consultations on the nature and extent of stolen wages issues in Western Australia are also underway.
115. The right to remedy remains unfulfilled in areas where compensation schemes have not been established. The Commission notes the need for stolen wages compensation schemes to be established in other States and Territories as appropriate.

116. The Commission also has significant concerns about the adequacy and fairness of the regimes established, particularly by the Queensland Government, to address injustices inflicted on Aboriginal and Torres Strait Islander people through the underpayment of wages.<sup>73</sup>
117. In December 2006 the Senate Standing Committee on Legal and Constitutional Affairs published a report titled *Unfinished business: Indigenous stolen wages*, which recommended the following to strengthen the existing compensation schemes:
- governments provide unhindered access to archives for the purposes of researching the stolen wages issue as a matter of urgency
  - funding be made available for education and awareness in Indigenous communities about, and preliminary legal research, into stolen wages issues.<sup>74</sup>

## **15 Native Title**

118. The Committee has recognised that the protection of indigenous peoples' cultural rights under Article 27 includes their rights to land and the use of natural resources.<sup>75</sup> The Committee raised concerns in its Concluding Observations in 2000 about the native title system not complying with article 27 and the need for Indigenous people to have a stronger role in decision-making over their traditional lands and natural resources, as required by Article 1(2).<sup>76</sup> The Committee has also considered in Concluding Observations for other States the protection of indigenous people's land rights under Articles 1 and 25.
119. As noted in the Common Core Document, the *Native Title Act 1993* (Native Title Act) is the primary mechanism through which Aboriginal and Torres Strait Islander people access their cultural rights to land.<sup>77</sup> The Act was intended to advance and protect Indigenous people by recognising their traditional rights and interests in the land.<sup>78</sup> However, the Common Core Document fails to acknowledge the limitations of the Native Title Act, in particular that it does not deliver its intended outcomes.<sup>79</sup>

### **15.1 Native title rights and interests are severely limited**

120. The Native Title Act has been drafted and interpreted such that native title rights will only be recognised in very limited circumstances. For example:

- The courts require that Indigenous people claiming native title prove traditional laws and customs at sovereignty and their continued observance, generation by generation, until today. One of the cruel consequences is that the greater the Indigenous peoples were impacted on by colonisation (for example, if they were forcibly removed from their land), the more unlikely it is they will be able to access their native title rights.
- Indigenous peoples bear the burden of proof and strict rules of evidence apply. The result is that Indigenous peoples of a culture based on the oral transmission of knowledge, must prove every aspect, including the content of the law, and custom and genealogy, back to the date of sovereignty (up to almost 200 years) in a legal system based on written evidence. There is very limited flexibility for the court to take into account cultural differences in hearing the case.
- Only traditional laws and customs of Indigenous peoples' that existed at the time of sovereignty and which are still observed and practiced today will be recognised. There is little room for adaptation of the traditions to today. Similarly, the rights recognised are severely limited in terms of how the Indigenous peoples can utilise any resources associated with that land for economic or social benefit.

### **15.2 Discriminatory aspects of the Native Title Act**

121. In 1999, acting under its early warning procedures, the Committee on the Elimination of Racial Discrimination considered amendments to the *Native Title Act 1998* (Cth) and expressed concern over their compatibility with Australia's international obligations under the *Convention on the Elimination of All Forms of Racial Discrimination*. The Committee noted several provisions that discriminate against Indigenous title holders under the newly amended Act.<sup>80</sup>

122. These issues have remained unaddressed and the Committee has repeated its concerns in the 2000 and 2005 Concluding Observations:

The Committee reiterates its view that... the 1998 amendments roll back some of the protections previously offered to indigenous peoples and provide legal certainty for Government and third parties at the expense of indigenous title. The Committee stresses in this regard that the use by the State party of a margin of appreciation in order to strike a balance between existing interests is limited by its obligations under the Convention (art. 5).<sup>81</sup>

123. The Human Rights Committee and the Committee on Economic Social and Cultural rights also noted their concerns on these issues in 2000.<sup>82</sup>

### ***15.3 Operation of the native title system***

124. The native title system is in a state of gridlock.<sup>83</sup> Only 111 determinations of native title have been made in 15 years, and another 504 determinations are waiting to be made. Litigated determinations take an average of seven years.<sup>84</sup>

125. This is in part due to the technical and aggressive attitude of government parties in an adversarial setting. Another relevant factor is the inadequate funding by government for Indigenous peoples pursuing their rights.<sup>85</sup> Although some amendments to the system were made in 2007, these measures do not adequately improve the process.

126. The Commission is concerned that while the system continues to progress so slowly, Indigenous peoples' rights are being denied and Indigenous elders are dying.

### ***15.4 Native title is at the bottom of the hierarchy of Australian proprietary rights***

127. Native title is at the bottom of the hierarchy of proprietary rights in Australia. Through the Native Title Act, native title rights and interests are regularly permanently extinguished by overriding government and private interests.

### **15.5 Indigenous Land Use Agreements**

128. Indigenous Land Use Agreements have been taken up rapidly and the government is focused on pursuing these agreements.<sup>86</sup> The Commission considers that these Agreements should be subject to closer scrutiny to ensure that they are delivering tangible benefits. The Commission also considers that the government should do more to support and build the capacity of Indigenous people to undertake negotiations.

### **16 Measures to promote Indigenous home ownership**

129. The government's policy for pursuing Indigenous home ownership, outlined in the Common Core Document, requires Indigenous-owned land to be leased back to the government, who then sub-lease the land.<sup>87</sup> The Commission has a number of concerns about the legislative amendments:

- The legislation does not require that the Indigenous owners have consented to the lease of their land to government.
- The amendments were made without the full understanding and consent of traditional owners and Indigenous people in the Northern Territory.
- Research suggests that there is a high probability the policy will lead to reduced land holdings for Indigenous peoples, fewer rights over land and little if any material benefit.<sup>88</sup>

### **17 Compulsory acquisition and the Northern Territory**

#### **Emergency Response**

130. Through provisions in the *Northern Territory National Emergency Response Act 2007* (Cth), the federal government compulsorily acquired five year leases over Indigenous peoples' land. However, the law does not require the government to pay the Indigenous owners any rent or compensation for the land which they have compulsorily acquired.

131. The Commission is concerned that this is not consistent with legal principles in Australia, including the Australian Constitution which guarantees that just terms compensation will be paid to any person whose property is acquired.

## **18 Indigenous participation in the management of environment, cultural heritage and climate change**

132. Indigenous Australians have had very limited influence in decision-making affecting their natural environment and their means of subsistence. For example, while the Australian Government has been developing a policy for climate change, and while they developed laws and policies for water use and access, there has been minimal consultation or discussion with Indigenous peoples.

## **19 Cultural diversity and multiculturalism**

133. The Commission has previously expressed concern over the increasing ambivalence and, at times, antagonism in public debate towards multiculturalism as a set of principles and as a government policy that frames social relations in Australia.<sup>89</sup>

134. The Commission believes that multiculturalism in Australia is a policy that seeks to ensure equal enjoyment of rights. Multiculturalism also provides a framework to uphold the standards imposed by anti-discrimination law, such as the Race Discrimination Act, and the rights conferred through the international human rights framework.

135. The Common Core Document notes that a policy review was conducted in 2005 regarding multiculturalism.<sup>90</sup> However, the Commission remains concerned that there has still been no commitment by the Australian Government to multiculturalism.

## **20 Formal Citizenship Test**

136. The Australian Government referred in the Common Core Document to the importance of citizenship for promoting cultural diversity and inclusion.<sup>91</sup> However, the Commission is concerned that the introduction of a formal citizenship test for migrants and refugees who wish to become Australian citizens may have a discriminatory impact.

137. In 2007, the Australian Government introduced a formal citizenship test as part of the requirements for applying to gain Australian citizenship. The test

aims to verify that applicants have demonstrated English competence and understanding of Australian values. The Commission recognises the right of the Australian Government to introduce formal citizenship test that is pursuant to a legitimate aim, proportionate to achieving this aim and based on reasonable and objective criteria. However, the Commission is concerned that the particular test introduced may disadvantage certain categories of people, particularly refugees and humanitarian applicants, and deprive them the right to equal treatment under articles 2 and 26 of the ICCPR.

138. The Commission believes that humanitarian applicants should not have to demonstrate English language competency or an understanding of Australian values in order to find permanent refuge and settlement in Australia. It would also be inappropriate to require family reunion applicants, such as applicants for aged parent or spouse visas, to pass language or values tests.<sup>92</sup>

## **23 Homelessness**

139. In response to the high rates of homelessness which currently exist in Australia, the Australian Government held a public inquiry into homelessness in 2008.<sup>93</sup> The Commission welcomed the Australian Government's move to prioritise homelessness and encouraged it to recognise the human rights implications of homelessness in developing a new approach to homelessness.<sup>94</sup>

140. People experiencing homelessness are unable to enjoy many human rights under the ICCPR to the same extent as other Australians. These rights include:

- the right to liberty and security of the person<sup>95</sup>
- the right to privacy<sup>96</sup>
- the right to non-discrimination<sup>97</sup>
- the right to vote.<sup>98</sup>

141. Homeless people in Australia may also be adversely affected by laws that regulate public spaces. These laws may disproportionately impact on homeless people, who heavily rely on using public space, and enforcement of



the laws by way of fines or other criminal sanctions exacerbates disadvantage faced by homeless people. Human rights affected by public space laws include:

- the right to freedom of movement and freedom of association<sup>99</sup>
- the right to freedom of expression<sup>100</sup>
- the right to freedom from cruel, inhuman or degrading treatment or punishment.<sup>101</sup>

## **24 Mechanisms to prevent torture and cruel, inhuman and degrading treatment within detention**

142. In comments to the Committee against Torture in February 2007, the Commission emphasised the importance of preventive actions to reduce the risk of people in detention being subjected to torture or cruel, inhuman or degrading treatment or punishment.<sup>102</sup>
143. Although the Commission does not have jurisdiction to monitor the implementation of the CAT, the Commission has investigated complaints regarding allegations of violations of the freedom from cruel, inhuman and degrading treatment under the ICCPR and CRC.<sup>103</sup>
144. In the comments to the Committee against Torture, the Commission identified shortcomings in the existing Commission protections against torture and cruel, inhuman or degrading treatment or punishment for people in detention, including that:
- the Commission is unable to investigate complaints of a breach of a person's human rights under the CAT
  - the Commission's powers to receive complaints do not apply to acts or practices that occur in state or territory prisons
  - the Commission's complaints handling function is reactive rather than preventative because it deals with individual complaints which occur after the breach

- the Commission has no specific power to compel entry into places of detention

145. The Commission welcomes the Australian Government's indication of its intention to accede to the Optional Protocol of the Convention against Torture (OPCAT). An inspections regime envisaged under OPCAT would provide independent monitoring of the conditions in all places of detention including immigration detention facilities and juvenile and adult correctional facilities.

## **25 Laws regulating use of public space**

146. Public space in Australia is regulated in many different ways. There are a range of laws and policies in different states and territories which give police powers to direct people in public places to 'move on', powers to search, question and arrest people in public, laws imposing curfews and provisions regarding public demonstrations and riots.<sup>104</sup>

147. As noted by the Common Core Document, these laws and policies are intended to ensure public safety and order.<sup>105</sup> However, the Commission is concerned that they may impact on the following rights under the ICCPR:

- the right to freedom of movement<sup>106</sup>
- the right to freedom of association<sup>107</sup>
- the right to peaceful assembly.<sup>108</sup>

148. In some instances, broad and largely discretionary powers are conferred on police officers to enforce the laws, without adequate safeguards to ensure that these powers are invoked proportionally, in circumstances posing a sufficiently serious threat to public safety.

149. These laws and policies may also have a disproportionate impact on certain groups of the population that rely on public space more than others, including young people, homeless people, Indigenous people, and certain cultural groups. Criminalisation of the use of public space by these groups fails to address the underlying health and welfare issues and may exacerbate their existing disadvantage.

## **26 The right to vote**

150. The Common Core Document states that the government makes efforts to encourage all eligible Australians to vote in elections.<sup>109</sup> The Commission has raised a number of concerns with the federal government about the ability of Australians to exercise their right to vote and participate in the political process without discrimination.<sup>110</sup>

### ***26.1 Early closure of the electoral rolls***

151. In 2006, the Australian Government amended electoral laws to shorten the period of time in which people can enrol or change their enrolment details after a federal election is called.<sup>111</sup> The Commission believes that early closure of the electoral rolls may lead to the disenfranchisement of many Australians by imposing an additional and unreasonable restriction on the right to vote. The changes may also disproportionately impact on marginalised groups who experience difficulties in enrolling to vote, including young people and new Australian citizens; people living in rural and remote areas; homeless and itinerant people; Indigenous peoples; and people with a mental illness or an intellectual disability.

### ***26.2 Trialling of electronically assisted voting for people with vision impairment***

152. Electronically assisted voting for people with vision impairment was trialled at the 2007 federal election. The Commission believes it is important that this method of voting be made permanently available and be provided in as many locations as possible. Eligibility to use this method of voting should be extended to all people who are unable to complete a secret ballot using a pencil and paper, including people with physical disability and people who cannot effectively use written instructions in completing a ballot paper, whether by reason of intellectual or learning disability, or other language or literacy difficulties.

### **26.3 Enrolment of homeless and itinerant persons**

153. People experiencing homelessness in Australia often face significant difficulties in exercising their right to vote. For example, some people may have difficulty meeting proof of identity requirements because they do not have and cannot afford to obtain the necessary identity documents. Further, the threat of monetary penalties for failure to vote or failure to register changes of address may also discourage homeless people from enrolling to vote.

### **26.4 Disenfranchisement of prisoners sentenced to more than three years imprisonment**

154. Under Australian law, persons serving sentences of imprisonment of three years or more are not eligible to vote.<sup>112</sup> The Commission is concerned that this restriction on the right of prisoners to vote may not be proportionate, as required by article 25 of the ICCPR.<sup>113</sup> Further, this restriction may have a disproportionate impact on groups who are overrepresented in the prison populations, such as Indigenous peoples, people with a mental illness and people with an intellectual disability.

## **27 Discrimination against same-sex couples and their children**

155. In 2006, the Commission conducted a National Inquiry into discrimination against people in same-sex relationships in the area of financial and work-related entitlements and benefits. The final report, *Same-Sex: Same Entitlements*, found that more than 58 laws discriminate against people in same-sex relationships and their children in this way.<sup>114</sup> These laws breach the right to non-discrimination and equality before the law.<sup>115</sup>

156. Recently, the Australian Government announced its intention to amend laws that discriminate against people in same-sex relationships and their children to remove the discrimination. The Commission welcomes the Government's announcement and looks forward to the amendments which are expected to occur progressively over the next 12 months.

## **28 Sex and gender diverse people**

157. The Commission is concerned that people who are transgender, transsexual or intersex in Australia are unable to enjoy a number of rights under the ICCPR to the same extent as others. These include:

- freedom of expression<sup>116</sup>
- the right to non-discrimination<sup>117</sup>
- freedom of movement and travel<sup>118</sup>
- the right to privacy<sup>119</sup>
- the right to protection from torture, cruel, inhuman or degrading treatment or punishment.<sup>120</sup>

### **28.1 Official documents and records**

158. Having documents that contain accurate information about sex and gender is crucial for the full participation in society of people who are sex and gender diverse. It is also an important aspect of expression of identity and sexuality and, in relation to travel documents, can affect a person's freedom of movement and travel.<sup>121</sup>

159. Some transgender, transsexual and intersex people have documents that state an inappropriate sex. Although Australia has some systems that enable the sex marker on official documents to be changed, not all transgender, transsexual and intersex people can access those systems. In particular, current systems for changing the sex marker on some official documents only can only be accessed by people who have undergone sex affirmation surgery. Further, the current systems do not allow for people who are married to change some or all of their documents.

160. The absence of nationally consistent procedures to assist people who are transgender, transsexual or intersex to change their documents means that the process may be time consuming, frustrating and inconsistent.<sup>122</sup>

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<sup>1</sup> Note that from 4 September 2008, the Human Rights and Equal Opportunity Commission is called the Australian Human Rights Commission.

<sup>2</sup> Australian Government, *Common Core Document forming part of the reports of States Parties – Australia – incorporating the Fifth Report under the International Covenant on Civil and Political Rights and the Fourth Report under the International Covenant on Economic, Social and Cultural Rights* (June 2006).

<sup>3</sup> See Common Core Document, pars 69-73.

<sup>4</sup> *Human Rights and Equal Opportunity Commission Act 1984* (Cth), ss 29(2), 35(2).

<sup>5</sup> See for example, Human Rights Committee, *C v Australia*, Communication No 900/1999, UN Doc CCPR/C/76/D/900/1999 (2002), par 7.3. At: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/f8755fbb0a55e15ac1256c7f002f17bd?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/f8755fbb0a55e15ac1256c7f002f17bd?Opendocument) (viewed 11 September 2008).

<sup>6</sup> ICCPR, articles 2, 26. See Common Core Document, pars 152-154.

<sup>7</sup> The Commission has made a wide range of recommendations to government in the *Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the effectiveness of the Sex Discrimination Act 1984 (Cth) in eliminating discrimination and promoting gender equality* (2008). At: [http://www.humanrights.gov.au/legal/submissions/2008/20080901\\_SDA.html](http://www.humanrights.gov.au/legal/submissions/2008/20080901_SDA.html) (viewed 17 September 2008).

<sup>8</sup> The Sex Discrimination Commissioner's findings are contained within *Gender Equality: What matters for Australian women and men* (2008). At: <http://www.humanrights.gov.au/listeningtour/launch/index.html> (viewed 17 September 2008).

<sup>9</sup> See Australian Human Rights Commission, *Gender Equality: What matters for Australian women and men* (2008). At: <http://www.humanrights.gov.au/listeningtour/launch/index.html> (viewed 17 September 2008).

<sup>10</sup> See Common Core Document, pars 380-383.

<sup>11</sup> See Australian Human Rights Commission, *Submission to the Productivity Commission's Inquiry into maternity, paternity and parental leave* (2008). At: [http://www.pc.gov.au/\\_data/assets/pdf\\_file/0011/80984/sub128.pdf](http://www.pc.gov.au/_data/assets/pdf_file/0011/80984/sub128.pdf) (viewed 17 September 2008).

<sup>12</sup> See Common Core Document, pars 340-352. Publications from the Commission's two-year Women, Men, Work and Family project are available at: [http://www.humanrights.gov.au/sex\\_discrimination/its\\_about\\_time/index.html](http://www.humanrights.gov.au/sex_discrimination/its_about_time/index.html) (viewed 17 September 2008).

<sup>13</sup> See recommendations of the Commission in *Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the effectiveness of the Sex Discrimination Act 1984 (Cth) in eliminating discrimination and promoting gender equality* (2008). At: [http://www.humanrights.gov.au/legal/submissions/2008/20080901\\_SDA.html](http://www.humanrights.gov.au/legal/submissions/2008/20080901_SDA.html) (viewed 17 September 2008).

<sup>14</sup> See Common Core Document, par 111.

<sup>15</sup> Australian Human Rights Commission, *Submission to the Standing Committee on Legal and Constitutional Affairs Inquiry into Older People and the Law* (December 2006). At: [www.humanrights.gov.au/legal/submissions/2006/ADA\\_200612/older\\_people\\_and\\_the\\_law\\_dec06.html](http://www.humanrights.gov.au/legal/submissions/2006/ADA_200612/older_people_and_the_law_dec06.html) (viewed 4 September 2008).

<sup>16</sup> *Age Discrimination Act 2004* (Cth), s 16.

<sup>17</sup> Australian Human Rights Commission, *Submission to the Senate Legal and Constitutional Legislation Committee Inquiry into the Age Discrimination Bill 2003* (3 September 2003). At: [www.humanrights.gov.au/legal/submissions/age\\_discrimination.html](http://www.humanrights.gov.au/legal/submissions/age_discrimination.html) (viewed 4 September 2008).

<sup>18</sup> A dominant reason test presents difficulty where it requires an evaluation of the respective weight of two or more reasons contributing to a decision.

<sup>19</sup> Minister for Families, Community Services and Indigenous Affairs, 'National emergency response to protect children in the NT', (Media Release, 21 June 2007). At: [http://www.fahcsia.gov.au/internet/minister3.nsf/content/emergency\\_21june07.htm](http://www.fahcsia.gov.au/internet/minister3.nsf/content/emergency_21june07.htm) (viewed 18 October 2007). The catalyst for the measures was the release of Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, titled *Ampe Akelyernemane Meke Mekarle: 'Little Children are Sacred'*.

<sup>20</sup> *Northern Territory National Emergency Response Act 2007* (Cth); *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007* (Cth); *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth).

<sup>21</sup> The *Social Justice Report 2007* is available at: [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport07/index.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport07/index.html) (viewed 22 September 2008).

<sup>22</sup> Committee on the Elimination of Racial Discrimination, *Consideration of Reports Submitted by States Parties under Article 9 of the Convention Concluding observations of the Committee on Australia* (2005), CERD/C/AUS/CO/14; Committee on the Elimination of Racial Discrimination, Sixty-sixth session, 21 February-11 March 2005.

<sup>23</sup> See Australian Human Rights Commission, *Article 18: Freedom of religion and belief* (1998). At: [http://www.hreoc.gov.au/pdf/human\\_rights/religion/article\\_18\\_religious\\_freedom.pdf](http://www.hreoc.gov.au/pdf/human_rights/religion/article_18_religious_freedom.pdf) (viewed 4 September 2008).

<sup>24</sup> The *Ismaʿ* report is available at: [http://www.humanrights.gov.au/racial\\_discrimination/isma/index.html](http://www.humanrights.gov.au/racial_discrimination/isma/index.html). See also the results of the Commission's Living Spirit project *Report on Muslim Women's Project* (2006). At: [http://www.humanrights.gov.au/racial\\_discrimination/livingspirit/1.html#5\\_3](http://www.humanrights.gov.au/racial_discrimination/livingspirit/1.html#5_3) (viewed 4 September 2008).

<sup>25</sup> This was a recommendation of the report by Australian Human Rights Commission, *Isma – Listen: National consultations on eliminating prejudice against Arab and Muslim Australians 2003-2004*, available at: [http://www.humanrights.gov.au/racial\\_discrimination/isma/index.html](http://www.humanrights.gov.au/racial_discrimination/isma/index.html) (viewed 23 September 2008).

<sup>26</sup> See for example, *Racial and Religious Intolerance Act 2001* (Vic), s 8.

<sup>27</sup> ICCPR, arts 2, 26. For more information, see Australian Human Rights Commission, *Report of initial consultation of the Sex and Gender Diversity Project* (July 2008). At: [http://www.hreoc.gov.au/genderdiversity/consultation\\_report2008.html](http://www.hreoc.gov.au/genderdiversity/consultation_report2008.html) (viewed 4 September 2008).

<sup>28</sup> See Common Core Document, pars 232-260, 294-298.

<sup>29</sup> Independent Reviewer of Terrorism Laws Bill 2008 [No.2].

<sup>30</sup> Senate Committee on Legal and Constitutional Affairs Inquiry into the Independent Reviewer of Terrorism Laws Bill 2008 (No2): At [http://www.aph.gov.au/senate/committee/legcon\\_ctte/terrorism/index.htm](http://www.aph.gov.au/senate/committee/legcon_ctte/terrorism/index.htm)

<sup>31</sup> Australian Government, Parliamentary Joint Committee on Intelligence and Security Review of Security and Counter Terrorism Legislation (2006). At: <http://www.aph.gov.au/house/committee/pjcis/securityleg/index.htm> (viewed 4 September 2008).

<sup>32</sup> Reports by AMCRAN are available at: <http://www.amcran.org/>.

- <sup>33</sup> Parliamentary Joint Committee on Intelligence and Security *Review of Security and Counter Terrorism Legislation*, see chapter 3 pp 23-38.
- <sup>34</sup> For example, Australian Human Rights Commission, Submission to the Joint Standing Committee on Migration Inquiry into Immigration Detention in Australia (4 August 2008). At: [http://www.humanrights.gov.au/legal/submissions/2008/20080829\\_immigration\\_detention.htm](http://www.humanrights.gov.au/legal/submissions/2008/20080829_immigration_detention.htm) (viewed 4 September 2008); ICCPR, art 9.
- <sup>35</sup> Senator Chris Evans, 'New Directions in Detention – Restoring Integrity to Australia's Immigration System', Seminar – Centre for International and Public Law, 29 July 2008.
- <sup>36</sup> *Migration Act 1958* (Cth), s 46A.
- <sup>37</sup> *Migration Act 1958* (Cth), s 494AA.
- <sup>38</sup> For example, Australian Human Rights Commission, *Submission to the Senate Legal and Constitutional Committee Inquiry into the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006* (19 January 2007). At: [http://www.humanrights.gov.au/legal/submissions/2007/migration\\_amendment\\_bill\\_06.htm](http://www.humanrights.gov.au/legal/submissions/2007/migration_amendment_bill_06.htm) (viewed 4 September 2008).
- <sup>39</sup> For example, ICCPR article 10. See Common Core Document pars 273-279.
- <sup>40</sup> For more information, see Australian Human Rights Commission, *Comments on Australia's Compliance with the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment* (April 2008). At: [http://www.humanrights.gov.au/legal/submissions/2008/080415\\_torture.html](http://www.humanrights.gov.au/legal/submissions/2008/080415_torture.html) (viewed 4 September 2008).
- <sup>41</sup> See Common Core Document, pars 156-157.
- <sup>42</sup> Committee against Torture, *Concluding Observations of the Committee against Torture: Australia*, Advance unedited version, UN Doc CAT/C/AUS/CO/115 (2008).
- <sup>43</sup> For example, Australian Human Rights Commission, *Submission to the Senate Select Committee on Ministerial Discretion in Migration* (2003). At: [http://www.hreoc.gov.au/legal/submissions/migration\\_matters.html](http://www.hreoc.gov.au/legal/submissions/migration_matters.html) (viewed 4 September 2008). See Core Document, pars 299-301.
- <sup>44</sup> Note 8.
- <sup>45</sup> ICCPR, article 8. See Common Core Document, pars 220-221.
- <sup>46</sup> See for example, Australian Human Rights Commission, Submission to the Senate Legal and Constitutional References and Legislation Committee Inquiry into the Criminal Code Amendment (Trafficking in Persons) Bill 2005 (2005). At: [http://www.hreoc.gov.au/legal/submissions/criminal\\_code\\_trafficking\\_bill.html](http://www.hreoc.gov.au/legal/submissions/criminal_code_trafficking_bill.html) (viewed 17 September 2008).
- <sup>47</sup> ICCPR, article 2(1) and article 26.
- <sup>48</sup> Human Rights Committee, *Concluding observations: Australia, 24/07/2000* UN Doc A/55/40, paras.498-528 (available at: <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/e1015b8a76fec400c125694900433654?Opendocument>)
- <sup>49</sup> These issues are discussed in detail in the *Social Justice Report 2003*, available at: [http://www.hreoc.gov.au/social\\_justice/statistics/index.html](http://www.hreoc.gov.au/social_justice/statistics/index.html) (viewed 9 September 2008); Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2005*, available at: [www.aihw.gov.au/publications/ihw/hwaatsip05/hwaatsip05.pdf](http://www.aihw.gov.au/publications/ihw/hwaatsip05/hwaatsip05.pdf) (viewed 9 September 2008); Australian Institute of Health and Welfare, *Australia's Health No. 11*, 2008, available at: <http://www.aihw.gov.au/publications/aus/ah08/ah08-c03.pdf> (viewed 9 September 2008).
- <sup>50</sup> ICCPR, article 2(1).



- <sup>51</sup> Research by the Australian Medical Association, cited in *OXFAM Australia, Close the Gap – Solutions to the Indigenous Health Crisis facing Australia*, April 2007, p7. At: <http://www.oxfam.org.au/media/files/CTG.pdf> (viewed 23 September 2008).
- <sup>52</sup> Human Rights Committee, *Concluding observations of the Human Rights Committee: Australia* (2000), UN Doc A/55/40, par 506. At: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/e1015b8a76fec400c125694900433654?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/e1015b8a76fec400c125694900433654?Opendocument) (viewed 22 September 2008). See Common Core Document, p55. ICCPR, article 1.
- <sup>53</sup> These issues are noted in the Common Core Document at pars 181-183. See also Australian Human Rights Commission, *Building a National Indigenous Representative Body – Issues for Consideration*, available at: [http://www.humanrights.gov.au/social\\_justice/rebody/index.html](http://www.humanrights.gov.au/social_justice/rebody/index.html) (viewed 23 September 2008).
- <sup>54</sup> Australian Bureau of Statistics, *Prisoners in Australia 2006*. At: <http://www.abs.gov.au/ausstats/abs@.nsf/ProductsbyReleaseDate/BA368B46230A4118CA2573AF0014B905?OpenDocument> (viewed 23 September 2008). Australian Institute for Health and Welfare, *Juvenile Justice National Minimum Data Set 2005-06: Facts and figures*. At: [http://www.aihw.gov.au/childyouth/juvenilejustice/ji\\_facts\\_and\\_figures.cfm](http://www.aihw.gov.au/childyouth/juvenilejustice/ji_facts_and_figures.cfm) (viewed 23 September 2008).
- <sup>55</sup> See, for example, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2000*, Sydney, 2001; Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2001*, Sydney, 2002; Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2002*, Sydney, 2003; and Aboriginal and Torres Strait Islander Commissioner, *Social Justice Report 2004*, Sydney, 2005. See Common Core Document, p29. ICCPR, articles 2, 9.
- <sup>56</sup> See Common Core Document, pars 285-288.
- <sup>57</sup> See the findings of the Cooperative Research Centre for Aboriginal Health regarding the links between preventing recidivism and improving the social, emotional and cultural wellbeing of Aboriginal people: Cooperative Centre for Aboriginal Health Research, *Research Priorities in Aboriginal Prisoner Health: Recommendations and Outcomes from the CRAH Aboriginal Prisoner Health Industry Roundtable, November 2007*, Discussion Paper Series No. 6, August 2008.
- <sup>58</sup> *Crimes Amendment (Bail and Sentencing) Act 2006* (Cth).
- <sup>59</sup> ICCPR, article 27; Human Rights Committee, General Comment 23, par 7. For further details, see Australian Human Rights Commission, Submission to the Legal and Constitutional Affairs Committee (2006). At: [http://www.humanrights.gov.au/legal/submissions/crimes\\_amendment.html](http://www.humanrights.gov.au/legal/submissions/crimes_amendment.html) (viewed 22 September 2008).
- <sup>60</sup> See *Criminal Code* (WA), s 282. See Common Core Document, pars 163-164. ICCPR, article 9.
- <sup>61</sup> See further Australian Human Rights Commission, Submission to the Human Rights Committee. At: [http://www.hreoc.gov.au/pdf/social\\_justice/submissions\\_un\\_hr\\_committee/5\\_mandatory\\_sending.pdf](http://www.hreoc.gov.au/pdf/social_justice/submissions_un_hr_committee/5_mandatory_sending.pdf) (viewed 23 September 2008).
- <sup>62</sup> See *Sentencing Act 1995* (NT), ss 78BA, 78BB.
- <sup>63</sup> See further Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2001*, available at: [http://www.hreoc.gov.au/social\\_justice/sjreport\\_01/index.html](http://www.hreoc.gov.au/social_justice/sjreport_01/index.html) (viewed 23 September 2008).
- <sup>64</sup> See Common Core Document, pars 365-368. ICCPR, article 24.
- <sup>65</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007*, p116.

<sup>66</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner, *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities: Key issues* (2006), pp5-6. See also Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007*, pp 194-95.

<sup>67</sup> See Common Core Document, pars 147-151, 594-597. ICCPR, article 27.

<sup>68</sup> For further information, President of Australian Human Rights Commission, *Presentation on the legal protection of Indigenous Cultural and artistic works*. At: [http://www.hreoc.gov.au/about\\_the\\_commission/speeches\\_president/20060901\\_Malaysia.html](http://www.hreoc.gov.au/about_the_commission/speeches_president/20060901_Malaysia.html) (viewed 23 September 2008).

<sup>69</sup> Australian Human Rights Commission, *Bringing them home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, 1997, Sydney. At: [http://www.hreoc.gov.au/social\\_justice/bth\\_report/report/index.html](http://www.hreoc.gov.au/social_justice/bth_report/report/index.html) (viewed 23 September 2008). See Common Core Document, par 369.

<sup>70</sup> House of Representatives, Official Hansard No.1 , Forty second Parliament, First Session, First Period (13 February 2008), p167. At: <http://www.aph.gov.au/hansard/reps/dailys/dr130208.pdf> (viewed 10 June 2008).

<sup>71</sup> <sup>71</sup> Human Rights Committee, *Concluding observations: Australia, 24/07/2000UN Doc A/55/40, paras.498-528* (available at: <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/e1015b8a76fec400c125694900433654?Opendocument>).

<sup>72</sup> See Common Core Document, par 230. ICCPR, articles 2, 8.

<sup>73</sup> See Australian Human Rights Commission, Submission to the Senate Legal and Constitutional References and Legislation Committee Inquiry into Stolen Wages (2006), pars 13-24. At: [http://www.humanrights.gov.au/legal/submissions/stolen\\_wages\\_2006.html](http://www.humanrights.gov.au/legal/submissions/stolen_wages_2006.html) (viewed 23 September 2008).

<sup>74</sup> The report is available at: [http://www.aph.gov.au/senate/committee/legcon\\_cte/stolen\\_wages/report/index.htm](http://www.aph.gov.au/senate/committee/legcon_cte/stolen_wages/report/index.htm) (viewed 23 September 2008).

<sup>75</sup> See Human Rights Committee General Comment 23 – Rights of Minorities (Article 27).

<sup>76</sup> Human Rights Committee, *Concluding observations: Australia, 24/07/2000UN Doc A/55/40, paras.498-528* (available at: <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/e1015b8a76fec400c125694900433654?Opendocument>).

<sup>77</sup> See Common Core Document, pars 127-135. ICCPR, articles 1, 2(1), 27.

<sup>78</sup> See the preamble to the *Native Title Act 1993* (Cth).

<sup>79</sup> See Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2007*. At: [http://www.humanrights.gov.au/social\\_justice/nt\\_report/index.html](http://www.humanrights.gov.au/social_justice/nt_report/index.html) (viewed 23 September 2008).

<sup>80</sup> These provisions included: validation provisions; the confirmation of extinguishment provisions; the primary production upgrade provisions; and restrictions concerning the right of indigenous title holders to negotiate non-indigenous land uses: Committee on the Elimination of Racial Discrimination, *Decision 2 (54) on Australia* (18/03/1999), UN Doc A/54/18, par 21(2). At: <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/a2ba4bb337ca00498025686a005553d3?Opendocument> (viewed 23 September 2008).

<sup>81</sup> Committee on the Elimination of Racial Discrimination, *Concluding Observations: Australia* (2005), UN Doc CERD/C/AUS/CO/14, par 16. At: [http://www.bayefsky.com/docs.php/area/conclobs/treaty/cerd/opt/0/state/9/node/3/filename/australia\\_t4\\_cerd\\_66](http://www.bayefsky.com/docs.php/area/conclobs/treaty/cerd/opt/0/state/9/node/3/filename/australia_t4_cerd_66) (viewed 23 September 2008).

<sup>82</sup> Committee on Economic Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Australia* (01/09/2000), UN Doc E/C.12/1/Add.50. At: <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/693c56f3d2694130c12569580039a1a2?Opendocument> (viewed 23 September 2008); Human Rights Committee, *Concluding observations of the Human Rights Committee: Australia* (24/07/2000), UN Doc A/55/40, pars 498-528. At: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/e1015b8a76fec400c125694900433654?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/e1015b8a76fec400c125694900433654?Opendocument) (viewed 23 September 2008).

<sup>83</sup> See Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2007*. At: [http://www.humanrights.gov.au/social\\_justice/nt\\_report/index.html](http://www.humanrights.gov.au/social_justice/nt_report/index.html) (viewed 23 September 2008).

<sup>84</sup> See Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2007*. At: [http://www.humanrights.gov.au/social\\_justice/nt\\_report/index.html](http://www.humanrights.gov.au/social_justice/nt_report/index.html) (viewed 23 September 2008).

<sup>85</sup> See Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2007*. At: [http://www.humanrights.gov.au/social\\_justice/nt\\_report/index.html](http://www.humanrights.gov.au/social_justice/nt_report/index.html) (viewed 23 September 2008).

<sup>86</sup> See Common Core Document, pars 133-134.

<sup>87</sup> See Common Core Document, pars 136-139.

<sup>88</sup> See also *the Social Justice Report 2005*, available at [http://www.hreoc.gov.au/social\\_justice/ntreport05/index.html](http://www.hreoc.gov.au/social_justice/ntreport05/index.html); Australian Human Rights Commission, *Submission to the Senate Legal and Constitutional Committee Inquiry into the ALRA amendments* (2006). At: [http://www.hreoc.gov.au/social\\_justice/submissions/alra\\_amendments\\_senate\\_subjuly2006.html](http://www.hreoc.gov.au/social_justice/submissions/alra_amendments_senate_subjuly2006.html) (viewed 23 September 2008).

<sup>89</sup> For example, Australian Human Rights Commission, Acting Race Discrimination Commissioner, *Position paper on multiculturalism* (August 2007). At: [http://www.humanrights.gov.au/racial\\_discrimination/multiculturalism/index.html](http://www.humanrights.gov.au/racial_discrimination/multiculturalism/index.html) (viewed 4 September 2008); Australian Human Rights Commission, *Submission to the Department of Immigration and Multicultural Affairs on the discussion paper: 'Australian citizenship: much more than just a ceremony'* (September 2006). At: [http://www.humanrights.gov.au/racial\\_discrimination/reports/citizenship\\_paper\\_2006.html](http://www.humanrights.gov.au/racial_discrimination/reports/citizenship_paper_2006.html) (viewed 4 September 2008).

<sup>90</sup> See Common Core Document, pars 582-587.

<sup>91</sup> See Common Core Document, par 167.

<sup>92</sup> For example, see Australian Human Rights Commission, *Submission to the Citizenship Taskforce on the discussion paper 'Australian citizenship: much more than just a ceremony'* (September 2006). At: [http://www.humanrights.gov.au/racial\\_discrimination/report/citizenship\\_paper\\_2006.html](http://www.humanrights.gov.au/racial_discrimination/report/citizenship_paper_2006.html) (viewed 8 September 2008); Australian Human Rights Commission, *Submission to the Legal and Constitutional Affairs Committee on the Australian Citizenship Amendment (Citizenship Testing Bill) 2007* (6 July 2007). At: [http://www.humanrights.gov.au/legal/submissions/2007/aust\\_citizenship\\_amendment.html](http://www.humanrights.gov.au/legal/submissions/2007/aust_citizenship_amendment.html) (viewed 8 September 2008).

<sup>93</sup> Australian Government, *Which Way Home? A New Approach to Homelessness* (2008). At: [http://www.facsia.gov.au/internet/facsinternet.nsf/housing/new\\_approach\\_stage1.htm](http://www.facsia.gov.au/internet/facsinternet.nsf/housing/new_approach_stage1.htm) (viewed 4 September 2008).

<sup>94</sup> Australian Human Rights Commission, *Submission to the Green Paper on Homelessness – Which Way Home?* (4 July 2008). At: [http://www.hreoc.gov.au/legal/submissions/2008/20080704\\_homelessness.html](http://www.hreoc.gov.au/legal/submissions/2008/20080704_homelessness.html) (viewed 4 September 2008).

<sup>95</sup> ICCPR, article 9(1).

<sup>96</sup> ICCPR, article 17.

<sup>97</sup> ICCPR, article 26.

<sup>98</sup> ICCPR, article 25.

<sup>99</sup> ICCPR, articles 12, 22.

<sup>100</sup> ICCPR, article 19(2).

<sup>101</sup> ICCPR, article 7. There are a range of laws in Australia that criminalise essential human behaviours connected to being homeless, such as sleeping, bathing, urinating, and storing belongings in public. When homeless people have no other choice but to perform these acts in public, enforcing these laws may violate the right to freedom from cruel, inhuman or degrading treatment or punishment.

<sup>102</sup> These comments are available at [http://www.humanrights.gov.au/legal/submissions/2007/aust\\_compliance\\_with\\_the\\_convention\\_against\\_torture.html](http://www.humanrights.gov.au/legal/submissions/2007/aust_compliance_with_the_convention_against_torture.html).

<sup>103</sup> The reports of these findings can be found at [http://www.hreoc.gov.au/human\\_rights/human\\_rights\\_reports/hrc\\_report\\_35.html](http://www.hreoc.gov.au/human_rights/human_rights_reports/hrc_report_35.html).

<sup>104</sup> For example, *Crime Prevention Powers Act 1998* (ACT); *Summary Offences Act 1953* (SA); *Summary Offences Act 2005* (Qld); *Police Powers and Responsibilities Act 2000* (Qld).

<sup>105</sup> See Common Core Document, par 329.

<sup>106</sup> ICCPR, article 12.

<sup>107</sup> ICCPR, article 22.

<sup>108</sup> ICCPR, article 21.

<sup>109</sup> See Common Core Document, pars 171-174.

<sup>110</sup> For example, Australian Human Rights Commission, *Submission to the Joint Standing Committee on Electoral Matters Inquiry into the 2007 federal election*, 15 May 2008. At: <http://www.aph.gov.au/house/committee/em/elect07/subs/sub097.pdf> (viewed 4 September 2008); ICCPR, article 25.

<sup>111</sup> After an election writ is issued, new enrolments of new citizens and persons who turn 18, and updates of name and address details, must be completed within three days. Other new enrolments and re-enrolments must be completed by 8pm on the same day.

<sup>112</sup> Note that, in 2006, the Australian Government passed legislation which excluded all people serving a sentence of imprisonment, of any length, from voting. The High Court later found that these amendments were constitutionally invalid: *Roach v Electoral Commissioner* [2007] HCA 43.

<sup>113</sup> ICCPR, General Comment 25, par 14.

<sup>114</sup> *Same-Sex: Same Entitlements* is available at [http://www.humanrights.gov.au/human\\_rights/samesex/index.html](http://www.humanrights.gov.au/human_rights/samesex/index.html).

<sup>115</sup> ICCPR, article 26.

<sup>116</sup> ICCPR, article 19.

<sup>117</sup> ICCPR, article 26.

<sup>118</sup> ICCPR, article 12.

<sup>119</sup> ICCPR, article 17.

<sup>120</sup> ICCPR, article 7.

<sup>121</sup> ICCPR, articles 2, 12, 18, 19.

<sup>122</sup> For more information, see Australian Human Rights Commission, *Report of initial consultation of the Sex and Gender Diversity Project* (July 2008). At: [http://www.hreoc.gov.au/genderdiversity/consultation\\_report2008.html](http://www.hreoc.gov.au/genderdiversity/consultation_report2008.html) (viewed 4 September 2008).