



Human Rights or Human Blights?

Australia's Reporting on its International Treaty Obligations¹

As part of its reporting obligations under the United Nations human rights treaty body system, Australia has submitted its common core document (**Report**) to the United Nations, which incorporates Australia's Fourth Report under the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* and Australia's Fifth Report under the *International Covenant on Civil and Political Rights (ICCPR)* (together, the **Covenants**). The Report, which covers the period between January 1997 and June 2006, was due in June/July 2005 and is approximately two years late.

A. GENERAL COMMENTS

Fundamental human rights issues have been at the core of national political and social debate in Australia during the period that the Report covers. The human rights of Indigenous peoples, asylum seekers, children, people with mental illness, people in detention, employment conditions of workers and the status of women have all been subjects of major debates, informed by the standards set in the international human rights treaties to which Australia is a signatory.

However, the Report fails to adequately address how the rights contained in the Covenants are protected in the actual political, economic, social and cultural realities in Australia. The Report does not comply with the United Nations Guidelines on reporting (**Guidelines**),² particularly in its failure to provide a complete or accurate account of Australia's fulfilment of its treaty obligations. The Report also fails to set a plan to improve the fundamental human rights of Australians in the future, as required by the Guidelines. The Report's lack of substantive engagement with human rights 'on the ground' is inconsistent with the purpose of reporting to the UN treaty body system. Significantly:

- the Report does not provide a sophisticated description or analysis of Australia's constitutional, political and legal structure and does not provide an accurate appraisal of the realities in Australia;
- the Report contains no real human rights based analysis of where and how the rights contained in the Covenants are protected in the Australian political and legal system;

¹ This report has been written with contributions from the National Association of Community Legal Centres, Human Rights Law Resource Centre, Combined Community Legal Centres NSW, Women's Legal Service Victoria, Women's Legal Services NSW, Elizabeth Evatt Community Legal Centre, Kingsford Legal Centre, Inner City Legal Centre and Welfare Rights Centre Sydney. We are indebted to Ben Schokman of the Human Rights Law Resource Centre for his work in compiling this report.

² *Harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents*, United Nations International Human Rights Instruments, May 2006.

- the Report provides no explicit responses to issues raised by the Human Rights Committee (**HRC**) and the Committee on Economic, Social and Cultural Rights (**CESCR**) in their previous concluding observations on Australia;
- the Report fails to engage with or respond to any of the adverse decisions of the HRC made over the past six years through the individual complaints mechanisms; and
- there has been a lack of consultation and transparency in the Australian Government's process of preparing the Report.

B. SPECIFIC HUMAN RIGHTS ISSUES

The Report contains no discussion of any breaches of the Covenants or of any steps taken to provide safeguards to protect the basic rights contained in the Covenants, particularly in relation to the following issues:

(a) Lack of Entrenchment of Basic Human Rights

Australia remains the only developed nation without a constitutional or legislative Bill of Rights. Aside from the few guarantees found in the Constitution, Federal governments have legislated for only limited incorporation of the Covenants into Australian domestic law. While Australia's domestic law contains a number of pieces of legislation that protect certain human rights, the Report does not address the fact that such legislation does not cover all rights provided for in the Covenants.³

The Report also refers to the Human Rights and Equal Opportunity Commission (**HREOC**) as Australia's national human rights institution.⁴ However, it fails to identify that HREOC's authority is limited to only enquiry into complaints. It is not empowered to make enforceable determinations and there is no requirement on the executive government to even respond to its recommendations.

The HRC, CESCR, Committee on the Elimination of Discrimination against Women (**CEDAW**), Committee on the Elimination of Racial Discrimination (**CERD**) and Committee on the Rights of the Child (**CRC**) have each expressed concern about the lack of protection of human rights in Australia's domestic legal system, as well as a lack of effective domestic remedies.⁵ Human rights are not directly enforceable or justiciable in Australian courts. More recently, the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while

³ For example, the Report at paragraph 68 refers to 'specialised human rights machinery' (such as the *Racial Discrimination Act 1975* (Cth) which is based on the UN *International Convention on the Elimination of All Forms of Racial Discrimination* and the *Sex Discrimination Act 1984* (Cth) which is based on the UN *International Convention on the Elimination of All Forms of Discrimination Against Women*) but neglects to acknowledge that these acts fail to cover some significant provisions of those conventions.

⁴ Common Core Document, [69].

⁵ *Concluding Observations of the Human Rights Committee: Australia*, UN Doc A/55/40 (2000), *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Australia*, UN Doc E/C.12/1/Add.50 (2000), *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Australia*, UN Doc CEDAW/C/AUL/CO/5 (2006), *Concluding Observations of the Committee Against the Elimination of Racial Discrimination: Australia*, UN Doc CERD/C/AUS/CO/14 (2005) and *Concluding Observations of the Committee on the Rights of the Child: Australia*, UN Doc CRC/C/15Add.268 (2005).

countering terrorism has urged the Australian Government to enact federal legislation implementing the ICCPR and mechanisms for the protection of rights and freedoms.⁶

(b) *The Human Rights of Indigenous Australians*

A significant gap exists between Indigenous and non-Indigenous Australians relating to, among other things, standards of living and health, political participation, the right to self-determination, the administration of justice, land rights, access to adequate housing and education.

Health Issues Facing Indigenous Australians

The state of Indigenous health in Australia results from and represents serious human rights breaches. The Report fails to acknowledge that many Indigenous Australians do not have the benefit of equal access to primary health care and many Indigenous communities lack basic needs, such as adequate housing, safe drinking water, electricity and effective sewerage systems.⁷ These essential services underlie the fulfilment of the right to an adequate standard of living in accordance with article 11 of ICESCR. A recent report released by the Australian Medical Association says that the life expectancy of Indigenous Australians is at least 17 years less than non-Indigenous Australians due to 'institutionalised racism'.⁸

Political Representation and Self Determination

Indigenous Australians are unable to make their own choices and participate in a meaningful sense in the democratic process. This was particularly exacerbated by the abolition in 2004 of the Aboriginal and Torres Strait Islander Commission (**ATSIC**), which consisted of elected Indigenous representatives. ATSIC was the main policy-making body and international representative for Aboriginal affairs. While the Report presents that ATSIC was replaced with the National Indigenous Council, that body is a non-representative advisory group appointed by the Federal Government and has only a limited role in monitoring government policy. The HRC, CESCR and CEDAW have each expressed concern that sufficient action has not been taken in relation to Australia's Indigenous peoples exercising meaningful control over their affairs.⁹ The Report fails to acknowledge these concerns expressed by the committees.

⁶ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, *Australia: Study on Human Rights Compliance While Countering Terrorism*, UN Doc A/HRC/4/26/Add.3 (2006), [10].

⁷ Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission, *Social Justice Report 2005* (2005).

⁸ Australian Medical Association Report Card Series 2007, *Aboriginal and Torres Strait Islander Health: Institutionalised Inequity Not Just a Matter of Money* (2007).

⁹ See *Concluding Observations of the Human Rights Committee: Australia*, UN Doc A/55/40 (2000), *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Australia*, UN Doc CEDAW/C/AUL/CO/5 (2006) and *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Australia*, UN Doc E/C.12/1/Add.50 (2000). CEDAW recommended that Australia consider the adoption of quotas and targets to increase the number of Indigenous women in political and public life (at [17]).

The recent declaration by the Federal Government of a 'national emergency' in response to the Northern Territory Government's report that revealed the widespread sexual abuse of children in particular Aboriginal communities in the Northern Territory¹⁰ is a further example of the lack of consultation with Indigenous representatives and affected communities. Many of the paternalistic policies adopted by the Government raise serious concerns in relation to the human rights of Indigenous Australians, including the right to self-determination, political participation, land rights, access to adequate housing and education and freedom from discrimination. Indeed, these concerns are reflected in a recently released report of the Combined Aboriginal Organisations of the Northern Territory.¹¹

Administration of Justice

Indigenous peoples in Australia, and particularly Indigenous women and children, are among the most highly incarcerated peoples in the world. Many Indigenous Australians confront serious human rights issues in the justice system, including in relation to the disproportionate impact of certain criminal laws and the incidence and impacts of incarceration. These issues are further compounded by limited access to legal and interpretative services for Indigenous Australians.¹²

The deaths of Indigenous Australians in custody also continues to be of serious concern, despite the recommendations of the *Royal Commission on Aboriginal Deaths in Custody* over 15 years ago.¹³ Of the total deaths in custody in 2005 stated in Australia's Report, Indigenous people made up about 27.7 per cent, a shocking statistic for a minority group that comprises only 2.1 per cent of the Australian population. The striking over-representation of Indigenous Australians in prison, as well as the percentage of Indigenous deaths in custody and the lack of fair treatment under the criminal justice system, all raise serious concerns in relation to articles 6 (right to life), 7 (freedom from cruel treatment or punishment), 9 (freedom from arbitrary detention), 10 (humane treatment in detention) and 14 (right to a fair hearing) of the ICCPR.

Domestic and Family Violence against Indigenous Women

In some areas of Western Australia, the incidence of family violence is 45 times higher than that of non-Indigenous women and Indigenous women are ten times more likely to be killed as a result of domestic violence than non-Indigenous women.¹⁴ The Report fails to acknowledge the serious concerns that these facts raise under articles 6 (right to life), 7 (freedom from cruel treatment or punishment), 9 (right to liberty and security of person) and 17 (right to privacy) of the ICCPR.

¹⁰ Northern Territory Government, Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, *Little Children Are Sacred* (April 2007).

¹¹ Combined Aboriginal Organisations of the Northern Territory, *A proposed Emergency Response and Development Plan to protect Aboriginal children in the Northern Territory: A preliminary response to the Australian Government's proposals*, July 2007,

¹² See Chapter 5 of Commonwealth, Joint Committee of Public Accounts and Audit, *Inquiry into Indigenous Law and Justice* (2005).

¹³ Commonwealth, Royal Commission on Aboriginal Deaths in Custody, *National Report* (1991).

¹⁴ A Ferrante et al., *Measuring the Extent of Domestic Violence* (1996), 10.

Rights and Access to Traditional Lands and Preservation of Indigenous Culture

Access to and control over traditional lands continues to be a major human rights issue for Indigenous Australians. Despite significant developments in the recognition of Indigenous land rights in the early 1990s, legislation now provides for onerously high standards of proof to obtain recognition of their relationship with traditional lands.¹⁵ Furthermore, in many cases, the participation or informed consent of Indigenous Australians was not sought before decisions relating to their rights to land were adopted, contrary to articles 25 and 27 of the ICCPR.

The 'Stolen Generations'

Despite HREOC's report in 1997 on the forcible removal of at least 100,000 Indigenous children from their families by various government agencies and church missions between approximately 1910 and 1970,¹⁶ many of the 54 recommendations contained in the report have not been implemented by the Australian Government. The Report inadequately addresses the Australian Government's failure to act to restore justice and dignity to the Stolen Generations and to rectify the past and present effects of family separation.

Adequate Housing for Indigenous Australians

Indigenous communities in both urban and rural areas are facing a severe housing crisis. Indeed, the UN Special Rapporteur on Adequate Housing was 'particularly disturbed' by the adverse housing conditions he observed in Indigenous communities during his country visit to Australia in 2006, describing it as a 'humanitarian tragedy'.¹⁷ Unaffordability of housing, lack of appropriate support services, significant levels of poverty and underlying discrimination are all factors that contribute to the situation faced by Indigenous Australians that are not addressed in the Report.

(c) *Immigration Detention – Policy and Practice*

The HRC, CESCR, CEDAW and CRC have each expressed concern about Australia's mandatory detention of 'unlawful non-citizens', including asylum-seekers. Australian laws and policies raise issues in relation to articles 7 (freedom from torture or to cruel, inhuman or degrading treatment or punishment), 9 (right to liberty and security of person) and 10 (right to humane treatment when deprived of liberty) of the ICCPR. In 2000, the HRC urged Australia to reconsider its policy of mandatory detention of 'unlawful non-citizens' with a view to instituting alternative mechanisms of maintaining an orderly immigration process,¹⁸ however these considerations have not been addressed in the Report. HREOC has also recently renewed its call for Australia's policy of

¹⁵ The Australian Government made amendments in 1998 and 2006, and is likely to make further amendments in 2007, that wind back some of the protections previously afforded to Indigenous peoples.

¹⁶ Human Rights and Equal Opportunity Commission, *Bringing Them Home – Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (1997).

¹⁷ United Nations Special Rapporteur on adequate housing, Miloon Kothari, *Preliminary observations: Mission to Australia*, 15 August 2006.

¹⁸ *Concluding Observations of the Human Rights Committee: Australia*, UN Doc A/55/40 (2000). See also, for example, *A v Australia*, UN Doc CCPR/C/59/D/560/1993 (30 April 1997).

mandatory detention of asylum seekers to be repealed and for alternative measures to be considered.¹⁹

While the Report states that the CRC has welcomed changes to the Migration Act affirming as a principle that a minor child shall only be detained as a measure of last resort, it fails to mention that the CRC also stated that it was 'seriously concerned' that:

- administrative detention is not always used as a measure of last resort and does not last for the shortest appropriate period of time; and
- conditions of immigration detention have been very poor, with harmful consequences on children's mental and physical health and overall development.²⁰

Mandatory detention has also been recognised by CEDAW as having disproportionately adverse gender-specific dimensions, such as denial of the right to family reunion for up to five years, which may impose particular hardships on women.²¹

(d) Counter-Terrorism Laws and Measures

Since 'September 11', both Federal and State governments have progressively introduced counter-terrorism legislation seeking to facilitate investigation and prosecution of conduct that might be connected with, or give rise to, terrorist-related activities. The UN Commission on Human Rights has called on all states to ensure that counter-terrorism measures are consistent with international human rights law.²² However, Australia's counter-terrorism laws compromise some of the long-standing protections in the Australian legal system, including:

- many laws overturn basic aspects of the presumption of innocence, such as control orders and preventive detention;
- the extended stop, question and search powers granted to the Australian Federal Police (**AFP**) and state and territory police potentially violate the right to freedom from detention and arbitrary deprivation of liberty;
- grounds for inferring that an individual may commit a 'terrorism' offence on the basis of his or her political or religious beliefs has implications for the freedoms of political and religious association and belief;
- many provisions enable once-private information to be more easily gathered by police and security organisations potentially in breach of the right to privacy;

¹⁹ Human Rights and Equal Opportunity Commission, *Summary of Observations following the Inspection of Mainland Immigration Detention Facilities*, January 2007.

²⁰ *Concluding Observations of the Committee on the Rights of the Child: Australia*, UN Doc (2005), [62].

²¹ *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Australia*, UN Doc CEDAW/C/AUL/CO/5 (2006).

²² Commission on Human Rights, *Protecting human rights and fundamental freedoms while countering terrorism*, UN Doc E/CN.4/2004/9 (2004).

- the powers conferred by these laws may be exercised in a discriminatory fashion due to the increased discretion to target individuals and organisations because of their race, ethnicity or political or religious views. All persons charged so far with a 'terrorism' offence are Muslim and all groups, except for one, that have been proscribed as 'terrorist organisations' under the Criminal Code are organisations that espouse a connection to Islam; and
- laws against sedition appear to be an unreasonable constraint on freedom of speech.

The Report fails to address the concerns expressed by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism in relation to a number of areas in which the rights and freedoms of those in Australia have been, or may be, limited in the pursuit of countering terrorism. These concerns are most starkly embodied by the Australian Government's recent treatment of Dr Mohamed Haneef.²³

(e) *Detention of Australian Citizens David Hicks and Mamdouh Habib*

David Hicks is an Australian citizen who was detained in Guantanamo Bay, Cuba without trial for over 5 years after allegedly having served with the Taliban and al-Qaeda in Afghanistan. Similarly, Mamdouh Habib was incarcerated in Guantanamo Bay for two years on suspicion of involvement in terrorism. Hicks and Habib's treatment was entirely inconsistent with the basic principle of innocence until proven guilty. The Australian Government was complicit in denying them this fundamental right, as well as the most basic legal right of habeas corpus. Hicks and Habib's unlawful and arbitrary detention raises serious concerns in relation to articles 9 (freedom from arbitrary detention) and 14 (right to a fair trial) of the ICCPR, however their mistreatment has not been mentioned in the Report.

In addition to the unlawfulness of Hicks and Habib's detention, there have also been many allegations of serious mistreatment in custody. Allegations of Hicks' treatment and conditions include:

- extended periods of time in solitary confinement;
- that he was beaten while blindfolded and handcuffed;
- sensory-deprivation treatment for a period of eight months;
- medication forced upon him against his will; and
- sleep deprivation as a matter of policy.²⁴

Habib's allegations of torture and abuse include being subjected to electric shock treatment, long periods of time spent in isolation and having menstrual blood from a prostitute thrown into his face during questioning.²⁵

²³ See, for example, Julian Burnside QC, 'A case of justice denied', *The Age* (Melbourne), 18 July 2007.

²⁴ In 2002, Hicks submitted a report to the International Committee of the Red Cross outlining abuses by United States officials that he suffered in Guantanamo. Information accessed on Amnesty International website at <<http://news.amnesty.org/pages/torture-case-eng>> at 6 February 2007.

²⁵ Phil Mercer, 'Fresh Guantanamo torture claims', *BBC News* (United Kingdom), 13 February 2005.

Such treatment clearly raises serious issues in relation to articles 7 (right to freedom from torture or cruel, inhuman or degrading treatment or punishment) and 10 (right to humane treatment in detention) of the ICCPR and concerns about the Australian Government's protective duty to Australian citizens in custody overseas.

(f) *Mental Health Law, Policy and Practice*

In 1993, the National Inquiry into the Human Rights of People with Mental Illness²⁶ uncovered overt human rights abuses within mental health institutions, as well as covert neglect in the wider community. The inquiry's major conclusions were that:

- people affected by mental illness suffered from widespread systemic discrimination and were consistently denied the rights and services to which they are entitled; and
- health services and other services which would enable people with a mental illness to live effectively in the community were found to be seriously under funded and in some areas simply not available at all.

Despite significant advances in legislation and policy, the reality for people in Australia with a mental illness continues to be a denial of fundamental human rights in practice. Mental health systems throughout Australia continue to be vastly under-resourced, suffer from split responsibility between national, state and territory governments, and the absence of a clear legislative framework balancing the right to treatment and civil rights. Further, within mental health services, there are many reports of abuses, such as hostile environments, mental health staff ignoring or dismissing consumers' personal feelings, physical abuse and forced treatment.²⁷ These serious concerns are not addressed in the Report.

(g) *Australia's Policy on the Death Penalty*

Australia has committed itself not to expose a person to the real risk of the application of the death penalty.²⁸ However, over the last few years the Australian Government has weakened its stance in relation to the application of the death penalty to individuals, including Australian citizens, in other countries and indicated that it is inappropriate to intervene in the affairs of a foreign country.

Of particular concern is the Australian Government's involvement in the case of the nine Australian citizens (known as the 'Bali Nine') who were arrested in Bali, Indonesia for alleged involvement in heroin trafficking as the result of intelligence provided by members of the AFP.

²⁶ Human Rights and Equal Opportunity Commission, *Human Rights and Mental Illness: Report of the National Inquiry into the Human Rights of People with Mental Illness* (1993).

²⁷ Senate Select Committee on Mental Health, *A National Approach to Mental Health – From Crisis to Community* (First Report, 30 March 2006), [3.18].

²⁸ By becoming a party to the Second Optional Protocol to the ICCPR, Australia has committed itself not to expose a person to the real risk of the application of the death penalty. In *Judge v. Canada*, the HRC decided that Canada had breached its obligations under article 6(1) of the ICCPR by deporting Mr Judge 'without ensuring that the death penalty would not be carried out'. The HRC stated: 'For countries that have abolished the death penalty, there is an obligation not to expose a person to the real risk of its application. Thus, they may not remove, either by deportation or extradition, individuals from their jurisdiction if it may be reasonably anticipated that they will be sentenced to death, without ensuring that the death sentence will not be carried out.' See Communication No. 829/1998, UN Doc CCPR/C/78/D/829/1998 (2003) at [10/4].

Presently, six members of the 'Bali Nine' face execution as a result of the actions of the AFP. This case represents an example of the failure of the Australian Government to protect the fundamental human rights of Australian citizens by exposing them to a real risk of the death penalty being applied. In addition, the Australian Government has condoned the application of the death penalty in Indonesia to members of the 'Bali Nine'.²⁹

(h) Welfare to Work

The Australian Government's Report contains no reference to the 'Welfare to Work' changes that came into operation on 1 July 2006. These changes represent the most significant downgrading of income support in the Social Security system since the Social Security Act was introduced in 1947. When the Government proposed the changes late last year, they allowed just one week for the community to respond. This was clearly an inadequate timeframe to enable debate on measures that will affect tens of thousands of Australians over many years.

The core of the new system involves a harsh penalty regime, cuts in payments, increased obligations on parents and people with disabilities, and the removal of important protections and safeguards that were contained in the previous Act. There is also a fundamental shift in that many rights, entitlements, obligations and responsibilities that were previously spelled out in legislation will now be based on policy developed by bureaucrats. Such policy is developed without the scrutiny of Parliament and may be changed at any time.

Many people, including single parents when their youngest child turns eight, partnered parents when their youngest child turns six, and people with a disability who can work between 15 and 29 hours per week, who previously would have been entitled to Parenting Payment or Disability Support Pension will have to claim Newstart Allowance. Being on Newstart Allowance will mean that these people will receive significantly less income than they would have on a pension payment and will be subjected to both a harsher income test and a less generous assets test. They are required to undertake, or at least look for, part-time work. They are also required to undertake 'mutual obligation' activities, such as 'Work for the Dole' or training, in order to satisfy the 'activity test' for Newstart Allowance.

The harsher penalty regime that has been introduced means that parents with dependent children and people with disabilities could completely lose payments for eight weeks for only minor omissions or failures. Unfortunately, these initiatives, which are designed to push parents and people with disabilities into work, have not been accompanied by initiatives to improve job opportunities for these groups.

The Welfare to Work changes raise serious issues in relation articles 6 (right to work), 9 (right to social security), 10 (protection of families) and 11 (adequate standard of living) of the ICESCR.

²⁹ The Australian Prime Minister said that the '[Bali Nine] should be dealt with in accordance with Indonesian law. ...and if [the death penalty] is what the law of Indonesia provides, well, that is how things should proceed. There won't be any protest from Australia'. Source: ATV Channel 7, 'Interview with John Howard (Part 2)', *Sunday Sunrise*, 16 February 2003 <<http://seven.com.au/sundaysunrise/transcripts/18363>> at 6 February 2007.

(i) WorkChoices

The amendments to the *Workplace Relations Act 1996* (Cth) (**WorkChoices**) introduced in 2006, have resulted in a significant regression of employees' rights at work. The erosion of these rights, including the right to work (article 6 of the ICESCR), the right of everyone to the enjoyment of just and favourable conditions of work (article 7 of the ICESCR), the right to form trade unions (article 8 of the ICESCR) have not been addressed in the Australian Government's Report

The award safety net system has been removed and replaced with minimum conditions of employment in the Australian Fair Pay and Conditions Standard. These are simply not commensurate with those that existed under the award system. The 'no disadvantage test' has been abolished when negotiating workplace agreements, thereby permitting a severe reduction in the overall conditions for employees. While the Federal Government did introduce a 'fairness test' in May 2007, it provides significantly less protection than the 'no disadvantage test'. WorkChoices has meant that employers are no longer compelled to bargain collectively with employees, while employers are permitted to offer employees individual 'agreements' on a 'take-it-or leave-it' basis.

One of the critical losses under the WorkChoices legislation is the removal of any remedy for unfair dismissal for many Australian workers. Unfair dismissal is the termination of an employee on 'harsh, unjust or unreasonable grounds'. The abolition of unfair dismissal laws under WorkChoices, has a potential impact on 3.7 million Australians working in business with fewer than 101 employees.³⁰ Workers have thus lost access to a low cost, straightforward tribunal system for the resolution of industrial disputes.

Young people, people living in rural and regional areas, people from culturally and linguistically diverse groups, people with a disability and income support recipients are likely to be disproportionately affected by WorkChoices. There are also concerns that greater vulnerability of workers under WorkChoices and the reduction in access to the workplace for unions will undermine safety standards in the workplace.

(j) Right to Adequate Housing

The Australian Government's Report fails to adequately address the lack of affordable, safe and secure housing available in Australia. The United Nations Special Rapporteur on the Right to Adequate Housing recently concluded that the Australian Government is failing in its obligation to implement the right to adequate housing (article 11 of the ICESCR).³¹ The Special Rapporteur called for immediate action to remedy a national housing crisis that is affecting not just the homeless and the poor, but also increasingly low and middle income households. As well as raising serious concerns about housing conditions for Indigenous people, as discussed above, the Special Rapporteur also expressed concern for women, particularly those fleeing family violence, and for the large urban and rural homeless populations.

The right to housing has been afforded low priority in Australia. Despite Australia's wealth, there are still over 100,000 people that experience homelessness on any given night in Australia, and one in two of those who try to access shelter are turned away due to funding shortages.

³⁰ Australian Bureau of Statistics, May 2004.

³¹ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari – Mission to Australia, UN Doc A/HRC/4/18/Add.2 (11 May 2007).

Affordable, safe and secure housing plays a crucial role in the development of individual lives and society as a whole. Poor housing has long lasting impacts for other fundamental human rights, such as education, employment, physical and mental health and a person's capacity to meaningfully contribute to society.

(k) Recognition of Same-Sex Relationships

In the Report, the Australian Government recognises a recent publication by HREOC of an inquiry into discrimination against same-sex couples regarding financial and work-related entitlements, entitled *Same-Sex: Same Entitlements*.³² This report involved an audit of federal laws relating to financial and work-related entitlements in order to identify those that discriminate against same-sex couples and their children.

However, the Australian Government's Report fails to mention that the HREOC inquiry found 58 federal laws that breached the human rights of same-sex couples, and in some cases the rights of their children in breach of article 2 of the Covenants (right to non-discrimination). Some of the examples of discrimination noted in HREOC's report include:

- at least 20,000 same-sex couples in Australia experience systematic discrimination on a daily basis;
- same-sex couples are not guaranteed the right to take carer's leave to look after a sick partner;
- same-sex couples incur greater costs than opposite-sex couples in order to enjoy the Medicare and PBS Safety Nets or when entering aged care facilities;
- same-sex couples are denied a wide range of tax concessions and certain superannuation and workers' compensation death benefits available to an opposite-sex partner; and
- the same-sex partner of a defence force veteran is denied a range of pensions and concessions available to an opposite-sex partner.

The Report also fails to note that there is no real protection in Commonwealth anti-discrimination laws for people who have been discriminated against or vilified because of their sexuality or gender identity.

(l) Family Law

The *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth) implements a new regime for dealing with arrangements for children in the event of a relationship breakdown. The Act came about as a result of intense lobbying from various interest groups in particular, fathers' rights groups.

The Government has stated that the intention of the Act is to shift the approach to disputes about children away from litigation and towards cooperative parenting. However, the ultimate effect of the amendments is regressive for both children's and women's rights for two main reasons: firstly, it undermines the principle that the best interests of children are the paramount consideration; and

³² Human Rights and Equal Opportunity Commission, *Same-Sex: Same Entitlements*, National Inquiry into Discrimination against People in Same-Sex Relationships: Financial and Work-Related Entitlements and Benefits, 2007.

secondly, it reduces the protection afforded to women and children from family violence and abuse.

Although the Act clearly states that the best interests of children are the paramount consideration in making decisions, when the amendments are considered in detail the effect has been to give greater prominence to the 'rights' and needs of parents and to demote the best interests principle. This is in contravention of articles 23 (protection of the family), 24 (rights of children) of the ICCPR and article 10 (protection of the family) of the ICESCR, as well as Australia's international obligations under the Convention on the Rights of the Child.

The Act attempts to balance the perceived interests of fathers around spending time with their children and the perceived interests of mothers around protecting themselves and their children from family violence and abuse.

The result is legislation with an inherent tension between rights to parental contact and safety. Research undertaken on the previous legislative regime and observation of cases under the new regime strongly suggests that this tension will be resolved in favour of rights to parental contact and at the expense of the need to protect children and other family members from violence and abuse. The Australian Government's Report contains no discussion of the human rights issues concerned with the amendments to the Family Law Act.