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Briefing Paper on Key Issues on the Right to Health in Australia

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About the Human Rights Law Resource Centre

The Human Rights Law Resource Centre (**HRLRC**) is an independent community legal centre that is a joint initiative of the Public Interest Law Clearing House (Vic) Inc and the Victorian Council for Civil Liberties Inc.

The HRLRC provides and supports human rights litigation, education, training, research and advocacy services to:

- (a) contribute to the harmonisation of law, policy and practice in Victoria and Australia with international human rights norms and standards;
- (b) support and enhance the capacity of the legal profession, judiciary, government and community sector to develop Australian law and policy consistently with international human rights standards; and
- (c) empower people who are disadvantaged or living in poverty by operating within a human rights framework.

The four 'thematic priorities' for the work of the HRLRC are:

- (a) the development, operation and entrenchment of Charters of Rights at a national, state and territory level;
- (b) the treatment and conditions of detained persons, including prisoners, involuntary patients and persons deprived of liberty by operation of counter-terrorism laws and measures;
- (c) the promotion, protection and entrenchment of economic, social and cultural rights, particularly the right to adequate health care; and
- (d) the promotion of equality rights, particularly the rights of people with disabilities, people with mental illness and Indigenous peoples.

Contents

1. Introduction	1
1.1 Overview	1
1.2 Structure	1
2. Current Political Context for the Right to Health in Australia	1
3. Legal Protection of the Right to Health in Australia	3
3.1 Legal Protection of Human Rights at the National Level	3
3.2 Legal Protection of Human Rights at the State and Territory Levels	5
4. Recent Reviews of Australia by UN Treaty Monitoring Bodies	5
4.1 ICESCR: Committee on Economic Social and Cultural Rights Review	5
4.2 ICCPR: Human Rights Committee Review	7
4.3 CAT: Committee against Torture Review	7
4.4 CRC: Committee on the Rights of the Child Review	8
4.5 CERD: Committee on the Elimination of Racial Discrimination Review	8
4.6 CEDAW: Committee on the Elimination of Discrimination Against Women Review	9
5. Right to Highest Attainable Standard of Health	9
5.1 Public Health	9
5.2 Indigenous Health	12
5.3 Mental Health Services	15
5.4 Asylum Seekers	16
5.5 Homeless People	18
5.6 Prisoners	19
5.7 Women's Health	23
5.8 Climate Change	24
5.9 Children's Health	25
Annexure A: NGO's working in the Health Arena	1

1. Introduction

1.1 Overview

1. Fundamental human rights issues have been at the core of national political and social policy and debate in Australia in the last decade. This briefing paper provides an overview of the key current human rights issues surrounding the right to the highest attainable standard of physical and mental health ahead of your upcoming visit to Australia.
2. This briefing paper is not intended to provide an exhaustive discussion of all health issues in Australia. However, we would be very happy to provide you with any further information that you may require.

1.2 Structure

3. This briefing paper comprises of 5 sections:
 - (a) Section 2 discusses the current political context of the right to health in Australia.
 - (b) Section 3 discusses the legal protection of rights, including the right to health, in Australia.
 - (c) Section 4 sets out the relevant comments of UN Treaty Monitoring bodies in their various concluding observations and recommendations on Australia.
 - (d) Section 5 details the key issues relating to the enjoyment of the right to health in Australia.
4. In addition, we attach, as an annexure to this briefing paper, a list of key NGOs that work in the health field within Australia that you may consider meeting during your mission.

2. Current Political Context for the Right to Health in Australia

5. As set out in more detail below, responsibility for health care is split between the Commonwealth and State governments. This has resulted in:
 - (a) a certain lack of accountability for the performance of Australia's health care system;
and
 - (b) some gaps and deficiencies in the provision of health care in Australia.

6. In June 2009, the National Health and Hospitals Reform Commission (**NHHRC**) released its report entitled, 'A Healthier Future For All Australians'.¹ The NHHRC was established in February 2008 with a mandate to develop a long-term health reform plan for a modern Australia. The NHHRC report represents the most recent comprehensive assessment of Australia's health care system.
7. The NHHRC report recognised that Australia's health care system has many strengths, but also acknowledged that it is a system under increasing pressure. The report sets out three main objectives, with specific goals to be met in each:
 - (a) Tackling access and equity issues. Key goals specified in this area include:
 - (i) improving health outcomes for Indigenous Australians;
 - (ii) improving care for people with serious mental illness;
 - (iii) supporting people living in rural and remote areas;
 - (iv) improving access to dental healthcare; and
 - (v) reducing waiting lists.
 - (b) Improving the response of the health system to emerging challenges. Key goals specified in this area include:
 - (i) focusing on prevention and early intervention;
 - (ii) integrating health and aged care services; and
 - (iii) improving and refining the "Medicare" system.
 - (c) Creating an agile self-improving health system for long-term sustainability. Key goals specified in this area include:
 - (i) strengthening consumer engagement and input;
 - (ii) improved education for health care workers;
 - (iii) improved communication between health services; and
 - (iv) strengthening the funding and purchasing models.

¹ National Health and Hospitals Reform Commission, *A Healthier Future for All Australians: Final Report: June 2009*, accessed from <
[http://www.nhhrc.org.au/internet/nhhrc/publishing.nsf/Content/1AFDEAF1FB76A1D8CA25760000B5BE2/\\$File/EXEC_SUMMARY.pdf](http://www.nhhrc.org.au/internet/nhhrc/publishing.nsf/Content/1AFDEAF1FB76A1D8CA25760000B5BE2/$File/EXEC_SUMMARY.pdf)> on 28 August 2009.

8. These suggested reforms address many of the issues outlined in our submission below. However, it remains to be seen how the Government will respond to this report and what changes will be made to improve Australia's health care system.

3. Legal Protection of the Right to Health in Australia

3.1 Legal Protection of Human Rights at the National Level

Lack of National Human Rights Law

9. Australia remains the only developed nation without comprehensive constitutional or legislative protection of human rights, whether in the form of a Bill of Rights, a Charter of Rights or a Human Rights Act. This is notwithstanding that Australia is a State Party to the following core international human rights instruments:
- (a) *International Covenant on Civil and Political Rights;*
 - (b) *International Covenant on Economic, Social and Cultural Rights;*
 - (c) *International Convention on the Elimination of all Forms of Racial Discrimination;*
 - (d) *Convention on the Elimination of all Forms of Discrimination against Women;*
 - (e) *Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment;*
 - (f) *Convention on the Rights of the Child;* and
 - (g) *Convention on the Rights of Persons with Disabilities.*
10. However, while Australia is a party to these instruments, it has not acted to incorporate them into domestic law, meaning that at the domestic level they are not directly enforceable or justiciable.
11. In the absence of a comprehensive legislative or constitutional instrument at the national level, the legal protection of human rights in Australia is variously piecemeal and deficient. Australian domestic law on the whole fails to entrench many basic human rights, particularly economic and social rights such as the right to health. On the ground, this means that the state of human rights for many disadvantaged groups in Australia is precarious and vulnerable.
- ##### ***Equal Opportunity and Anti-Discrimination Legislation***
12. At the national level, Australia has legislated to protect the right to non-discrimination on a range of attributes. Enactments in this regard include:

- (a) *Racial Discrimination Act 1975*;
 - (b) *Sex Discrimination Act 1984*;
 - (c) *Disability Discrimination Act 1992*;
 - (d) *Equal Opportunity for Women in the Workplace Act 1999*; and
 - (e) *Age Discrimination Act 2004*.
13. Of these enactments, the *Racial Discrimination Act 1975* provides for the strongest protection of the right to equality, prohibiting discrimination on the basis of race, colour, descent or national or ethnic origin, including in the enjoyment of the right to public health, medical care, social security and social services.²

National Human Rights Consultation

14. On 10 December 2008, the Federal Government announced and initiated a National Human Rights Consultation to consider and report on the legal recognition and protection of human rights in Australia. The Government appointed an independent four person Committee, chaired by Fr Frank Brennan, to undertake this inquiry.
15. The Terms of Reference of the Inquiry require the Committee to consult Australia-wide on the following questions:
- (a) Which human rights (including corresponding responsibilities) should be protected and promoted?
 - (b) Are these human rights currently sufficiently protected and promoted?
 - (c) How could Australia better protect and promote human rights?
16. In the course of the Consultation, the Committee received over 35,000 submissions and conducted over 70 community roundtables across Australia. The Committee is required to report to Government by 30 September on 'the issues raised and the options identified to enhance the protection and promotion of human rights'. The Terms of Reference of the inquiry specifically provide that the 'options identified should preserve the sovereignty of the Parliament and not include a constitutionally entrenched bill of rights'.

² See sections 9 and 10 of the RDA, which refer expressly to Article 5 of CERD.

3.2 Legal Protection of Human Rights at the State and Territory Levels

17. At a state and territory level, both the Australian Capital Territory (**ACT**) and Victoria have enacted human rights legislation. The Victorian *Charter of Human Rights and Responsibilities* and the ACT's Human Rights Act expressly protect only civil and political rights, however it is possible that to the extent that rights are interdependent and interrelated that the civil and political rights contained in those Acts could be used to protect economic, social and cultural rights, including the right to health. For example, the *Charter* and the Human Rights Act do not require the state to pass legislation providing for social security or health care, but, as in other jurisdictions, they may be interpreted so as to ensure that legislation does not violate the prohibition against discrimination contained in s 8(3) of each of these human rights instruments.³
18. This recently occurred in the Victorian case of *Kracke v Mental Health Review Board & Others*⁴. The *Kracke* case concerned the compulsory medical treatment of a man, Mr Kracke, without his consent, and without this treatment having been reviewed by the Mental Health Review Board as required by the *Mental Health Act 1986 (Vic)*. Mr Kracke's right to health was not able to be considered, but the circumstances of his treatment and health care were able to be considered in the context of his right to a fair hearing.

4. Recent Reviews of Australia by UN Treaty Monitoring Bodies

4.1 ICESCR: Committee on Economic Social and Cultural Rights Review

19. In April 2009, the Committee on Economic Social and Cultural released its Concluding Observations on Australia. It raised a number of health issues, including:
 - (a) The impact of migration laws, and specifically negative migration law decisions which discriminate on the basis of disability or health conditions, on the standard of living for

³ See, for example, the discussion of Denise Meyerson, 'Equality guarantees and distributive inequity' (2008) 19 *PLR* 32.

⁴ [2009] VCAT 646 (23 April 2009). For a case summary of this case and a link to the full text of the decision, see <http://www.hrlrc.org.au/content/topics/esc-rights/kracke-mental-health-review-board/>

- persons with disabilities. The Committee expressed concern that these laws have a particularly negative impact on the families of asylum seekers.⁵
- (b) The retention of the mandatory detention policy and, specifically, the impact of prolonged and arbitrary detention on the mental health of asylum seekers. The Committee encouraged Australia to implement the 'seven values'⁶ policy for immigration detention reform and to repeal the mandatory detention policy.⁷
 - (c) The negative impact of climate change on the right to an adequate standard of living, including on the right to food and water (which are underlying determinants of the right to health). The Committee noted the particular impact of climate change on Indigenous populations, and recommended that Australia take a human rights approach to climate change.⁸
 - (d) The gap between the key health indicators performance of Indigenous and non-Indigenous people. The Committee called on Australia to take immediate steps to improve the health situation of Indigenous people, and to pay particular attention to the health of Indigenous women and children. They said this should be done by, 'implementing a human rights framework that ensures access to the social determinants of health such as housing, safe drinking water, electricity and effective sanitation systems'.⁹
 - (e) The high rates of drug abuse and sexually transmitted diseases amongst the prison population.¹⁰
 - (f) The lack of support for persons with mental health problems. In particular, the Committee noted that Indigenous peoples, prisoners and asylum seekers in detention

⁵ *Concluding Observations of the Committee on Economic Social and Cultural Rights: Australia*, [16], UNDoc E/C.12/AUS/CO/4, (2009). (**CESCR Concluding Observations**)

⁶ The 'seven values' policy was set out in a speech by Senator Chris Evans, Minister for Immigration and Citizenship: Chris Evans, *New Directions in Detention – Restoring Integrity to Australia's Immigration System*, speech at Australia National University, Canberra, 29 July, 2008.

⁷ CESCR Concluding Observations, at [25].

⁸ CESCR Concluding Observations, at [27].

⁹ CESCR Concluding Observations, at [28].

¹⁰ CESCR Concluding Observations, at [29].

have difficulty accessing mental health services. The Committee recommended the allocation of further resources for mental health services.¹¹

4.2 ICCPR: Human Rights Committee Review

20. In May 2009, the Human Rights Committee released its Concluding Observations on Australia. It raised a number of health issues, including:
- (a) The prevalence of violence against women, particularly Indigenous women;¹²
 - (b) The 'situation of homeless persons, in particular Indigenous people', with the Committee recommending that Australia 'increase its efforts in order to ensure that social, economic and other conditions do not deprive homeless persons of the full enjoyment of the rights enshrined in the Covenant'.¹³
 - (c) Reports of the excessive use of electro-muscular disruption devices (or "TASERs") by police forces in certain Australian states and territories.¹⁴

4.3 CAT: Committee against Torture Review

21. In May 2008, the Committee against Torture published its Concluding Observations on Australia.¹⁵
22. The Committee expressed significant concern about the right to health of persons deprived of liberty, including in relation to:
- (a) overcrowding in prisons;
 - (b) the 'insufficient provision of mental health care in prisons and reports indicating that mentally ill inmates are subjected to extensive use of solitary confinement and subsequent increased risks of suicide attempts';

¹¹ CESCR Concluding Observations, at [30].

¹² *Concluding Observations of the Human Rights Committee on Australia*, [17], UN Doc CCPR/C/AUS/CO/5 (2009) (**HRC Concluding Observations**).

¹³ HRC Concluding Observations, at [18].

¹⁴ HRC Concluding Observations, at [21].

¹⁵ *Concluding Observations of the Committee against Torture: Australia*, UN Doc CAT/C/AUS/CO/3 (2008) (**CAT Concluding Observations**).

- (c) the 'continued reports of Indigenous deaths in custody due to causes that are not clearly determined'; and
 - (d) 'the inadequate mental health care for detained asylum seekers'.¹⁶
23. The Committee made a range of concrete recommendations in this regard, including particularly the provision of 'adequate mental health care for all persons deprived of their liberty'¹⁷ and that 'as a matter of priority, ensure that asylum-seekers who have been detained are provided with adequate physical and mental health care, including routine assessments'.¹⁸

4.4 CRC: Committee on the Rights of the Child Review

24. In its 2005 Concluding Observations, the Committee on the Rights of the Child raised concerns about the budgetary allocation for childcare and well-being, noting that increases in expenditure had not flowed through to Indigenous children and other vulnerable groups who continued to need considerable improvement in their standard of living, health and education. The Committee recommended that Australia prioritize budgetary allocation to ensure the implementation of the economic, social and cultural rights, including the right to health, of disadvantaged children.¹⁹

4.5 CERD: Committee on the Elimination of Racial Discrimination Review

25. The Committee on the Elimination of Racial Discrimination raised concerns about the enjoyment of economic, social and cultural rights in its 2005 Concluding Observations. The Committee recommended, 'that decisive steps be taken to ensure that a sufficient number of health professionals provide services to Indigenous peoples, and that the State party set up benchmarks for monitoring progress in key areas of Indigenous disadvantage'.²⁰

¹⁶ CAT Concluding Observations, at [23], [25].

¹⁷ CAT Concluding Observations, at [23].

¹⁸ CAT Concluding Observations, at [25].

¹⁹ *Concluding Observations of the Committee on the Rights of the Child: Australia*, [17 - 18], UN Doc CRC/C/15/Add.268 (2005).

²⁰ *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Australia*, [19], UN Doc CERD/C/AUS/CO/14 (2005).

4.6 CEDAW: Committee on the Elimination of Discrimination Against Women Review

26. In 2006, the Committee on the Elimination of Discrimination against Women recommended that Australia take necessary action to ensure that bulk billing for health services is available in rural areas.²¹

5. Right to Highest Attainable Standard of Health

5.1 Public Health

27. Provision of public health care in Australia is suffering from chronic under funding, a decaying public hospital system, rising medical costs, inadequate coverage, and inaccessibility — particularly for disadvantaged and marginalised people. Recent cases indicate serious problems regarding the lack of public funding and, in some circumstances, the competency of the health sector.

Prevalence and Access

28. Australia generally enjoys a high level of health and life expectancy; however, there are discrepancies among particular population groups. People living in areas of high socio-economic disadvantage²² are more likely to have higher mortality and significantly poorer health, but are less likely to utilise or have access to early intervention measures.²³
29. Indigenous Australians in particular have a significantly lower life expectancy and poorer health than non-Indigenous Australians. Indigenous Australians, together with people in rural and remote areas, people with disability, homeless people, refugees and migrants (and their families) and people from non-English speaking backgrounds, all experience particular barriers to accessing health services.

²¹ *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Australia*, UN Doc CEDAW/C/AUL/CO/5 (2006) [27].

²² As classified by SEIFA (Socio-Economic Indexes for Areas): quartiles relate to the population in each area who lived in census collectors' districts that were among the 25 per cent least disadvantaged, and the 25 per cent most disadvantaged, Australian Institute of Health and Welfare population database (2005).

²³ Australian Institute of Health and Welfare, *Australia's Health 2006*, 232–5.

Public Health Funding

30. Australia enjoys relatively high levels of government funding for health services, which has increased in recent years. In 2006-7 the total health expenditure was \$94 billion which represented about 9 per cent of GDP.²⁴ Nevertheless, resource use could be more efficient if coordination between the federal and state governments was improved.²⁵
31. Medicare, Australia's universal public health system, is intended to ensure that there is no out-of-pocket expense for patients if their doctor offers bulk-billing²⁶ through the Medicare rebate. Additionally, the Pharmaceutical Benefits Scheme subsidises approximately 80 per cent of prescription drugs dispensed in Australia.²⁷ However, there is a shortfall of doctors in rural and regional areas and it is frequently more difficult to find a doctor who bulk bills in these areas.
32. The proportion of Australians with private health insurance has been increasing since 1997 due to a number of government initiatives. Most significant of these is the 30 per cent government rebate on private health insurance, which accounts for \$2 billion of government health expenditure per annum.²⁸ Currently the rebate is not means-tested, and it largely benefits high-income households.²⁹ The Government is currently considering plans to introduce a means test for this rebate.³⁰
33. The private health insurance rebate does not appear to have increased the proportion of funds available to the health system.³¹

²⁴ Australian Institute of Health And Welfare, *Health Expenditure Australia 2006-07*, accessed from < <http://www.aihw.gov.au/publications/hwe/hea06-07/hea06-07.pdf> > 25 August 2009, p.xii.

²⁵ Organisation for Economic Co-operation and Development, *Economic Surveys — Australia 2006* (2006) 15.

²⁶ Productivity Commission, *Report on Government Services 2007* (2007) 10.20. Bulk billing is a government-subsidised method of payment where the doctor or other health professional bills the government directly for the service. The government covers 85 per cent of the cost of the service.

²⁷ *Ibid* 10.3.

²⁸ Jongsay Yong et al, *The Income Distributive Implications of Recent Private Health Insurance Policies in Australia* (2006).

²⁹ *Ibid* 14.

³⁰ Nicola Roxon, *Private Health Insurance Stronger Than Ever*, Media Release 18 August 2009, accessed from < <http://www.health.gov.au/internet/ministers/publishing.nsf/Content/mr-yr09-nr-nr125.htm?OpenDocument&yr=2009&mth=8> > on 25 August 2009.

³¹ Professor John Deeble, National Centre for Epidemiology and Population Health, *The Private Health Insurance Rebate: Report to State and Territory Health Ministers* (2003) 1.

Surgery Waiting Lists

34. The median waiting time for elective surgery in 2006-2007 was 32 days. At that time, 3.1 per cent of patients waited more than 365 days to be admitted to hospital.³²
35. The private health sector accounts for 55.8 per cent of all surgical episodes.³³ Government funding, which supports the private health sector through the private health insurance rebate, would be better directed to ensuring medically necessary care is available through hospitals as a whole rather than supporting the private health system.

Lack of Dental Services

36. Dental care is not covered by Medicare. The Australian Council of Social Service estimates that costs of dental services have risen by 45-50 per cent since 1999, leaving at least 500,000 people on waiting lists for public dental care.³⁴ An estimated 40 per cent of Australians are unable to access dental care when they need it.³⁵
37. As discussed above, the National Health and Hospitals Reform Commission has recently recommended that a Medicare style system be introduced with respect to the provision of dental care in Australia.³⁶

Health Education

38. There is, generally a lack of human rights education in Australia. This fact was noted by the Committee on Economic Social and Cultural Rights in their recent concluding observations, and the Committee recommended a human rights training program be introduced amongst both professionals and government in Australia.³⁷
39. Given that the right to health is an important economic, social and cultural right, it seems logical that this training program should extend to health care professionals.

³² Australian Institute of Health and Welfare, *Australian Hospital Statistics 2006–07*, (2008)

³³ B Nichol, 'Hospitals Then and Now: Changes Since the Start of Medicare' (2007) 31 *Australian Health Review* 31, s 7.

³⁴ Australian Council of Social Service, *A Fair Go for All Australians: International Comparisons, 2007: 10 Essentials* (2007) 26.

³⁵ Australian Council of Social Service, *Fair Dental Care for Low Income Earners* (2006) 11.

³⁶ See discussion above in section 2 of this briefing paper.

³⁷ *Concluding Observations of the Committee on Economic Social and Cultural Rights: Australia*, [34], UN Doc E/C.12/AUS/CO/4, (2009)

5.2 Indigenous Health

40. The state of Indigenous health in Australia results from and represents serious human rights breaches. 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.
41. The crisis in Indigenous health in Australia is reflected in the following statistics:
- (a) Life expectancy for Indigenous Australian males is 59 years, almost 18 years less than the 77.0 years expected for all Australian males, while life expectancy for Indigenous Australian females is 65 years, around 18 years less than the expectation of 82 years for all Australian females.³⁸
 - (b) Life expectancy for Indigenous Australians is between 8 and 15 years less than that of Indigenous populations in Canada, the United States and New Zealand.³⁹
 - (c) In 2001–2005, the infant mortality rate for Indigenous infants was three times that of non-Indigenous infants.⁴⁰
 - (d) Indigenous Australians are eight times more likely to die from diabetes, three times more likely to die from circulatory disease, four times more likely to die from chronic kidney disease and have one of the highest rates of rheumatic heart disease in the world.⁴¹
 - (e) Indigenous people have a higher rate of ear and hearing problems, across all age groups, than do non-indigenous people.⁴²
 - (f) In 2001–2005, the leading causes of death for Indigenous peoples in Queensland, South Australia, Western Australia and the Northern Territory included chronic diseases of the circulatory system and cancer.⁴³

³⁸ Australian Institute of Health and Welfare, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008* (2009).

³⁹ Human Rights and Equal Opportunity Commission, *A Statistical Overview of Aboriginal and Torres Strait Islander Peoples in Australia* (August 2006) available at http://www.hreoc.gov.au/social_justice/statistics/index.html.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Australian Institute of Health and Welfare, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008* (2009).

⁴³ Australian Institute of Health and Welfare, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008* (2009).

- (g) The number of Indigenous Australians diagnosed with AIDS more than doubled in the four years to 2005.⁴⁴
 - (h) Intentional self-harm was the leading cause of death from external causes for Indigenous males for the 2001–2005 year period. The suicide rate was almost three times that for non-Indigenous males, with the major differences occurring in younger age groups.⁴⁵
42. The Committee on the Elimination of Racial Discrimination has previously recommended that Australia intensify its efforts to eradicate the disparities faced by Indigenous peoples in relation to, among other areas, health.⁴⁶ The Committee also recommended that decisive steps be taken to ensure that a sufficient number of health professionals provide services to Indigenous people.
43. The Government has announced its program entitled 'Closing the Gap' as its major response to Indigenous disadvantage in Australia across a range of portfolio areas, including health. In February 2009, a Government Report entitled *Closing the Gap on Indigenous Disadvantage: The Challenge for Australia* stated that National Partnerships on Indigenous Health Outcomes (partnerships between state and federal governments) would commit \$1.57 billion over four years 'to reduce the biggest health risk factors such as smoking, to improve chronic disease management and follow up and to expand the capacity of the health workforce to tackle chronic disease in the Indigenous population.'⁴⁷ This constitutes the biggest single injection of new funding by an Australian government to improve Indigenous health outcomes.⁴⁸

Indigenous Children

44. However, whilst the significant commitment of funding is to be welcomed, reports from bodies such as the Australian Medical Association (**AMA**) suggest these funds are inadequate. In November 2008, the AMA released its annual report card presenting a snapshot of the health

⁴⁴ US Centers for Disease Control and Prevention, *Australia: AIDS Rates Rising in Indigenous Communities* (26 August 2005) available at <http://www.thebody.com/content/art25660.html>.

⁴⁵ Australian Institute of Health and Welfare, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008* (2009).

⁴⁶ *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Australia*, UN Doc CERD/C/AUS/CO/14 (2005) [19].

⁴⁷ Australian Government, 'Closing the Gap on Indigenous Disadvantage: The Challenge for Australia', February 2009, 20 at http://www.fahcsia.gov.au/sa/indigenous/pubs/general/Documents/closing_gap_indigenous_disadvantage/closing_the_gap.pdf.

⁴⁸ Human Rights Commission, 'Health equality for Indigenous Australians a step closer: Close the Gap Coalition welcomes COAG funding' (Press release, 30 November 2008).

of Indigenous children.⁴⁹ Dr Capolingua, President of the AMA, said the AMA report 'presents a disturbing picture of health conditions and outcomes more commonly associated with the Third World than with a wealthy nation such as ours'.⁵⁰ Indigenous children are:

- (a) more likely to be stillborn, to be born pre-term, to have low birth weight, or die in the first month of life;
 - (b) two to three times more likely to die in the first year of life;
 - (c) eleven times more likely to die from respiratory causes;
 - (d) at a much higher risk of suffering from infectious and parasitic diseases, respiratory and circulatory problems, hearing loss, rheumatic fever, dental cavities, injuries and clinically-significant emotional and behavioural difficulties;
 - (e) nearly 30 times more likely to suffer from nutritional anaemia and malnutrition up to four years of age; and
 - (f) cared for by substantially fewer adults, who had serious health risks themselves.⁵¹
45. The report emphasised that rectifying the health gap in children can only be done by comprehensively addressing the broader contextual factors and intergenerational health influences that affect Indigenous children.

⁴⁹ Australian Medical Association, *AMA Report Card Series 2008 – Indigenous and Torres Strait Islander Health, Ending the Cycle of Vulnerability: The Health of Indigenous Children* (2008), available at <http://www.ama.com.au/system/files/node/4335/AMA+Indigenous+Health+Report+Card+2008.pdf>.

⁵⁰ Australian Medical Association, 'Ending the Cycle of Vulnerability - AMA Indigenous Health Report Card 2008' (Press release, 27 November 2008).

⁵¹ Australian Medical Association, *AMA Report Card Series 2008 – Indigenous and Torres Strait Islander Health, Ending the Cycle of Vulnerability: The Health of Indigenous Children* (2008), 1, available at <http://www.ama.com.au/system/files/node/4335/AMA+Indigenous+Health+Report+Card+2008.pdf>.

Indigenous Women

46. Indigenous women continue to experience much higher levels of ill-health, disease and death than non-Indigenous women.⁵² Communicable and chronic diseases are diagnosed at much higher rates than for non-Indigenous women, and health risk factors⁵³ and mental health problems are also apparent on a much greater scale among Indigenous women than in the broader community.⁵⁴
47. Indigenous women are more likely to have an unhealthy standard of living, and to suffer from intersecting social issues, including larger families and overcrowded housing, less access to water and utilities, less access to medical and other services, and to experience more stressors such as eviction, job loss, violence and death of family members.⁵⁵

Possible Reform to Indigenous Health Services

48. The National Health and Hospitals Reform Commission has recommended the establishment of a National Aboriginal and Torres Strait Islander Health Authority (**NATSIHA**). The NATSIHA would be responsible for administering the expenditure of aggregated State and Commonwealth funding to improve health outcomes for Indigenous Australians. In particular, the NATSIHA would work to address poor nutrition in the Indigenous community, as this is recognised as an important determinant in Indigenous health.⁵⁶

5.3 Mental Health Services

49. Funding for mental health services and research must be increased to match the level of actual need. In Australia, mental illness causes 13 per cent of the burden of disease in the health system but receives only 7 per cent of funding. Only 4 per cent of health research funding in Australia is directed to mental health related research.⁵⁷ People with mental illness

⁵² Human Rights and Equal Opportunity Commission, *A Statistical Overview of Aboriginal and Torres Strait Islander Peoples in Australia* (August 2006) chapter 4 available at http://www.hreoc.gov.au/social_justice/statistics/index.html.

⁵³ Health risk factors include smoking and obesity: *ibid* chapter 4(f).

⁵⁴ For a simple analysis of the comparative health statistics, see Australian Bureau of Statistics, *The Health and Wellbeing of Aboriginal and Torres Strait Islander Women: A Snapshot, 2004–05* (2007) available at <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4722.0.55.001>.

⁵⁵ *Ibid*.

⁵⁶ National Health and Hospitals Reform Commission, *A Healthier Future for All Australians: Final Report: June 2009*, accessed from < [http://www.nhhrc.org.au/internet/nhhrc/publishing.nsf/Content/1AFDEAF1FB76A1D8CA25760000B5BE2/\\$File/XEC_SUMMARY.pdf](http://www.nhhrc.org.au/internet/nhhrc/publishing.nsf/Content/1AFDEAF1FB76A1D8CA25760000B5BE2/$File/XEC_SUMMARY.pdf) > on 28 August 2009.

⁵⁷ See Mental Health Council of Australia, *Time for Service* (2007).

- are significantly over-represented in key measures of disadvantage such as homelessness, unemployment, poverty, and substance abuse.
50. People with a mental illness are overrepresented in all types of custody, including the criminal justice system and the immigration detention system. These issues are discussed in detail below at sections 5.4 and 5.6 of this briefing paper.
 51. The right of people with mental illness to live, work and participate in the community to the full extent of their capabilities is compromised by a lack of available community based services and care options. It is a central principle of the international human rights framework that all people have the right, and should have the opportunity without discrimination, to participate in public affairs and, in particular, in decision-making processes that affect them.
 52. Within mental health services, there is still too great a use of aversive treatments with harmful side effects and reliance on involuntary treatment regimes.⁵⁸ Many people are stigmatised, distressed and debilitated by harmful side effects of treatment.
 53. The compatibility of involuntary treatment regimes and the right to adequate and appropriate healthcare may be improved through the availability of legally recognised Advance Directives. Advance Directives are prepared by people when they are well and allow that person to articulate their treatment preferences or nominate another person to make particular decisions.⁵⁹ They provide for appropriate and individualised healthcare.
 54. In 2006, a Senate Committee inquiry into the mental health sector in Australia recommended that, as a matter of priority, state and territory governments should consider making advance directives available to people who suffer from mental illness. To date, advance directives have not been granted legal recognition in any Australian jurisdictions.
 55. The Council of Australian Governments (**COAG**) released a National Action Plan on Mental Health in July 2006⁶⁰. The plan focused on early identification and treatment of mental illnesses and set out a number of key outcomes for mental health care in Australia. The plan represents a commitment by the Commonwealth, State and Territory governments to address mental health issues. However, on the ground, more remains to be done.

5.4 Asylum Seekers

Health Issues for Asylum Seekers in Detention

⁵⁸ In its 2008 Consultation Paper 'Because Mental Health Matters' Victoria's Department of Human Services acknowledged the need to create a more "consumer-focused, voluntary treatment system"- see pages 79 and 83.

⁵⁹ Vivienne Topp and Martin Thomas, 'Advance Directive for Mental Health', (2008) *New Paradigm*.

56. Long-term detention, by its nature, is widely recognised as having a seriously debilitating effect on the mental health of detainees. For example, according to the Royal Australian College of General Practitioners, while many refugees are in good health, some specific health problems facing refugees include: psychological disorders such as post traumatic stress disorder, anxiety, depression and psychosomatic disorders; poor oral health; delayed growth of children; or under recognised and under managed hypertension, diabetes and chronic pain.⁶¹ Indeed, aside from detention, the stresses of migration and settlement generally experienced by migrants may affect mental well-being.⁶²
57. It has been reported that that mental health of detainees deteriorates significantly during immigration detention, and numerous instances of self-harming behaviour have been documented, including among children.⁶³ Detainees must receive an adequate standard of psychiatric care given the compounded risks of distress and increased vulnerability to mental illness in detention.⁶⁴ In 2008, the Australian Human Rights Commission renewed its call to repeal Australia's mandatory detention laws in order to limit the long term mental health impact on detainees by removing them from detention as soon as possible.⁶⁵

Health Issues for Asylum Seekers in the Community:

58. Over half of the asylum seekers in one study experienced major stress related to either the fear of being sent home or of being unable to return home in an emergency.⁶⁶ Separation from family, unemployment, and bureaucratic difficulties were other factors cited.⁶⁷
59. On 9 August 2008 the Australian Government abolished temporary protection visas for refugees.⁶⁸ This is a welcome improvement to the right of many asylum seekers in the

⁶⁰ Council of Australian Governments, *National Action Plan on Mental Health 2006 – 2011* (2006).

⁶¹ Royal Australian College of General Practitioners, *Refugee and Asylum Seeker Resources: Health Care For Refugees And Asylum Seekers* (2002) available at <http://www.racgp.org.au/refugeehealth>.

⁶² Mental Health Council of Australia, *The National Action Plan for Promotion, Prevention and Early Intervention for Mental Health, 2000* (2003).

⁶³ Human Rights and Equal Opportunity Commission, *A Last Resort? National Inquiry into Children in Immigration Detention* (2004).

⁶⁴ *Ibid* 260.

⁶⁵ See generally, Human Rights and Equal Opportunity Commission, *Summary of Observations following the Inspection of Mainland Immigration Detention Facilities 2007* (2008).

⁶⁶ Derek Silove and Zachary Steel, *The Mental Health and Well-Being of On-Shore Asylum Seekers in Australia*, (1998) 34.

⁶⁷ Robert Schweitzer, Lisa Buckley and Donata Rossi, 'The Psychological Treatment of Refugees and Asylum Seekers: What Does the Literature Tell Us?' (2002) 21 *Mots Pluriels* 1.

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

60. Despite these welcome reforms, further changes are needed to ensure that all asylum seekers in the community receive adequate nutrition and healthcare while their immigration status is waiting to be resolved. Many asylum seekers on Bridging Visas still cannot access work, welfare benefits or healthcare.⁶⁹ Bridging visa holders who are not allowed to work are also ineligible for healthcare entitlements under Medicare and the Pharmaceutical Benefits Scheme, leaving them without the support of Australia's public health system.

5.5 Homeless People

61. According to the most recent census of the Australian Bureau of Statistics, there are over 105,000 people who are homeless across Australia.
62. Poor health has been demonstrated to be a contributor to and consequence of homelessness.⁷⁰ While homelessness exacerbates and complicates the treatment of many health problems, some health problems are consequences of homelessness.⁷¹
63. At a 2006 Homelessness Consumer Forum in Melbourne, 51 per cent of people surveyed reported that they became homeless as a result of mental health problems and a lack of access to health care, 62 per cent stated that their mental health had worsened as a result of their experience of homelessness, and 78 per cent of people indicated that they had ongoing physical or mental health issues.⁷² These findings are echoed in other parts of the country.⁷³
64. Identified barriers to adequate health care for people experiencing homelessness include, among others, financial barriers, lack of transportation to medical facilities, competing needs

⁶⁸ Department of Immigration and Citizenship, 'Fact Sheet 68 - Abolition of Temporary Protection visas (TPVs) and Temporary Humanitarian visa (THVs), and the Resolution of Status (subclass 851) visa' (2008), available at http://www.immi.gov.au/media/fact-sheets/68tpv_further.htm; Senator Evans, 'Budget 2008-09 – Rudd Government scraps Temporary Protection Visas' (Press Release, 31 May 2008), available at <http://www.minister.immi.gov.au/media/media-releases/2008/ce05-buget-08.htm>.

⁶⁹ Department of Immigration and Citizenship, 'Fact Sheet 62 – Assistance for Asylum Seekers in Australia' (2008), available at <http://www.immi.gov.au/media/fact-sheets/62assistance.htm>.

⁷⁰ Adrienne Lucy, 'South Eastern Sydney Area Health Service Homelessness Health Strategic Plan 2004–09' (2004) 17(8) *Parity* 6.

⁷¹ Institute of Medicine (US), *Homelessness, Health and Human Needs* (1998) 39.

⁷² Statistics derived from questionnaires undertaken at the Melbourne Consumer Forum, Melbourne Town Hall, August 2006.

- where basic subsistence needs in relation to food, accommodation and income take precedence over health care, and lack of health insurance.⁷⁴
65. In December 2008, the Australian government released a White Paper on homelessness.⁷⁵ The paper set out an action plan to halve homelessness by 2020 and improve housing affordability for vulnerable Australians. The White Paper commits the Australian Government to provide \$800 million over five years to fund a range of initiatives, including delivering community based mental health services to 1,000 'difficult to reach' Australians, including people who are homeless.⁷⁶ The White Paper also commits to increasing 'the supply of affordable housing and specialist housing models that link accommodation and support.'⁷⁷ In this regard, the White Paper proposes that housing services be complemented with 'wrap-around support that addresses' people's complex needs.⁷⁸
66. Despite this significant commitment, the White Paper fails to explicitly recognise homelessness as a human rights issue or commit Australia to ensure the core minimum necessities for a dignified life.

5.6 Prisoners

Mental Health in Prison

67. Rates of major mental illnesses are between three and five times higher in the prison population than in the general Australian community.⁷⁹ There is both a causal and consequential link between imprisonment and mental illness. People with mental illness are more likely to be incarcerated, particularly having regard to the lack of support provided by the poorly resourced community mental health sector, and people in prison are more likely to develop mental health problems.⁸⁰ Additional concerns include:

⁷³ See, for example: T Hodder, M Teeson and N Buhrich, 'Down and Out in Sydney — Prevalence of Mental Disorders in Sydney' in St Vincent de Paul (ACT/NSW), *A Long Road to Recovery* (2001).

⁷⁴ L Gelberg et al, *Health, Homelessness and Poverty: A Study of Clinic Users* (1996) 2325–30; National Mental Health Working Group, *Homelessness and Mental Illness: Bridging the Gap — Discussion Paper* (2003) 5; Margaret Eberle et al, *Homelessness: Causes and Effects — A Review of the Literature* (2001) 16–17.

⁷⁵ Commonwealth of Australia, *The Road Home* (2008), available at http://www.facs.gov.au/housing/homelessness_white_paper/the_road_home.pdf.

⁷⁶ Ibid, x.

⁷⁷ Ibid, xi.

⁷⁸ Ibid.

⁷⁹ J P R Ogloff et al, 'The Identification of Mental Disorders in the Criminal Justice System', *Trends and Issues in Crime and Criminal Justice* (No 334, Australian Institute of Criminology, 2007) 1.

⁸⁰ Ibid.

- (a) Procedures for detecting and treating mental illness in the criminal justice system are largely inadequate;⁸¹
 - (b) Mental health screening usually forms part of a larger health screening process and is conducted upon admission. However, in no Australian jurisdiction is there a formal ongoing assessment or screening service that monitors prisoners' mental health needs.⁸²
 - (c) In some cases, the response of the system to mental illness was not treatment but brutality or an increase in harshness or length of detention,⁸³ and
 - (d) Children with mental illnesses and/or intellectual deficiencies are over-represented in the juvenile justice system.⁸⁴
68. A 'snapshot' of prisoners in Victoria indicates that approximately half of all prisoners in custody have two or more characteristics of serious disadvantage. Characteristics of severe disadvantage include being of Aboriginal or Torres Strait Islander descent, being unemployed, having an intellectual disability, having drug or alcohol issues, having previously been admitted to a psychiatric institution, or being homeless.⁸⁵
69. There is significant evidence that mental health care in Australian prisons is manifestly inadequate and may amount to a level of neglect that constitutes degrading treatment or punishment. The conditions under which seriously mentally ill people are kept is not conducive to well being and recovery and is rudimentary at best. 'Rarely are proper provisions made'⁸⁶ and mentally ill people detained are frequently denied treatment.⁸⁷ In some cases, the response of the system to mental illness was not treatment but brutality or an increase in harshness or length of detention.⁸⁸ Even methods such as 'dry cells', designed to prevent

⁸¹ James Ogloff & Michael Davis, *The Identification of Mental Disorders in the Criminal Justice System* (2006).

⁸² James Ogloff & Michael Davis, *The Identification of Mental Disorders in the Criminal Justice System* (2006).

⁸³ 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).

⁸⁴ UN Committee on the Rights of the Child, *Concluding Observations: Australia*, UN Doc CRC/C/15/Add.268 (2005) [73].

⁸⁵ Department of Premier and Cabinet, State of Victoria, *Growing Victoria Together Progress Report* (2005–06) Appendix B — Service Delivery, 358.

⁸⁶ Forensicare, *Submission to Senate Select Committee on Mental Health* (2005) 4, 5, 19 and 20 available at http://www.aph.gov.au/SEnate/committee/mentalhealth_ctte/submissions/sub306.pdf.

⁸⁷ 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).

⁸⁸ *Ibid.*

- suicide, are seen by prisoners as a form of punishment and are not considered conducive to improving a prisoner's mental health.⁸⁹
70. The use of solitary confinement (or 'segregation') as a management tool for people incarcerated in Australian prisons is widespread. It may cause or significantly exacerbate symptoms of mental illness, such as paranoia.⁹⁰ Anecdotal evidence suggests inmates may be locked up for 22 or 23 hours a day in their cells, provided with incorrect, or inappropriate medications, and with limited access to mental health professionals.⁹¹
71. It is very common for mentally ill prisoners displaying acute and disturbing psychiatric symptoms to be placed in a 'management and observation cell' (or 'Muirhead cell') as a management strategy rather than for health reasons.⁹²
72. However, in the National Action Plan on Mental Health, the Council of Australian Governments has identified the need to improve mental health facilities for prisoners, and has committed to funding forensic facilities within the prisons.⁹³ Whilst it would be preferable to increase community care, the increase in forensic facilities marks a step towards improved mental health care for prisoners.

Women in Prison

73. Women in prison present with significant health needs. Recent research conducted in New South Wales, Queensland and Western Australia indicates that more than half of the women inmates had been diagnosed with a mental health condition and that between 30 per cent and 40 per cent had attempted suicide at some time.⁹⁴ Women labelled with an intellectual,

⁸⁹ *Mental Health Fact Sheet*, Justice Action, (2009), accessed from < http://www.justiceaction.org.au/index2.php?option=com_content&do_pdf=1&id=135 > on 28 August 2009.

⁹⁰ NSW Deputy State Coroner, *Inquest into the Death of Scott Ashley Simpson* (2006) available at [http://www.agd.nsw.gov.au/lawlink/Coroners_Court/ll_coroners.nsf/vwFiles/SimpsonInquest.doc/\\$file/SimpsonInquest.doc](http://www.agd.nsw.gov.au/lawlink/Coroners_Court/ll_coroners.nsf/vwFiles/SimpsonInquest.doc/$file/SimpsonInquest.doc).

⁹¹ Elizabeth Wynhausen, 'Jailed in Body and Mind', *The Australian* (Sydney), 28 August 2006.

⁹² Forensicare, *Submission to Senate Select Committee on Mental Health* (May 2005) 21 available at http://www.aph.gov.au/SEnate/committee/mentalhealth_cte/submissions/sub306.pdf; Commonwealth of Australia, *Official Committee Hansard*, Senate Select Committee on Mental Health, 6 July 2005, 48–9.

⁹³ Council of Australian Governments, *National Action Plan on Mental Health 2006 – 2011* (2006).

⁹⁴ Australian Bureau of Statistics, *Australian Social Trends, 2004: Crime and Justice: Women in Prison* (2004) available at <http://www.abs.gov.au/Ausstats/abs@.nsf/7d12b0f6763c78caca257061001cc588/781c132ae9185bedca256e9e002975fc!OpenDocument>.

- psychiatric or learning disability are more likely to be classified as maximum-security prisoners.⁹⁵ Substance abuse and rates of infectious disease are also reported to be high.
74. An additional concern is the practice of strip searching, which has a particular impact on female prisoners. Between 40 and 89 per cent of any female prison population are victims and survivors of sexual or physical violence and abuse.⁹⁶ The practice of strip searching can reinvolve and replicate previous experiences of such abuse and the consequent trauma.⁹⁷ In many instances, women prisoners may forego visits from family or external medical treatment in order to reduce the number of searches.⁹⁸
75. Current policies regarding strip searching of prisoners and visitors do not require that the search be conducted in a manner that represents a permissible limitation on human rights. They do not require prison officers to seek alternatives, nor do they appropriately balance security concerns with the potential harm caused by the search.

Indigenous Women Prisoners

76. Indigenous women prisoners are the fastest growing prison population.⁹⁹ In the decade to 2005, the Indigenous women prisoner population has increased by 420 per cent.¹⁰⁰

Transmission of Disease

77. Prisoners face major health issues, including high rates of injecting drug use and high rates of sexually transmitted diseases.¹⁰¹

⁹⁵ See Sisters Inside, *Submission* (2004); Federation of Community Legal Centres (Vic) and Victorian Council of Social Service, *Request for a Systematic Review of Discrimination against Women in Victorian Prisons* (2005) available at <http://www.sistersinside.com.au/media/VICComplaint.pdf>.

⁹⁶ See, eg, B A Hockings et al, Department of Corrective Services, *Queensland Women Prisoners' Health Survey* (2002) 52-3; Barbara Denton, *Dealing: Women in the Drug Economy* (2001); Department of Justice, Western Australia, *Profile of Women in Prison* (2002); Debbie Kilroy, 'When Will You See the Real Us?' Women in Prison', (2001) *Women in Prison Journal* 39. 'Sexual assault' figures here do not include strip searches.

⁹⁷ Federation of Community Legal Centres and Victorian Council of Social Service, *Request for a Systemic Review of Discrimination against Women in Victorian Prisons* (2005), available at <http://www.vals.org.au/news/submissions/33%20ExecutiveSummaryFinal%20Discrimination%20against%20women%20in%20prison.pdf>

⁹⁸ Anti-Discrimination Commission Queensland, *Women in Prison: A Report by the Anti-Discrimination Commission Queensland* (2006) 52-3; Amnesty International, *'Not Part of My Sentence': Violations of Human Rights of Women in Custody* (1999) 24-5.

⁹⁹ Human Rights and Equal Opportunity Commission, *A Statistical Overview of Aboriginal and Torres Strait Islander Peoples in Australia* (2006) chapter 9(b) available at http://www.hreoc.gov.au/social_justice/statistics/index.html.

¹⁰⁰ This compares with an increase over the same decade of 110 per cent in the male Indigenous prison population, and of 45 per cent in the general male prison population. In March 2004, the incarceration rates of indigenous women nationally were 20.8 times that of non-Indigenous women: *ibid*.

¹⁰¹ Australian Institute of Health and Welfare, *Australia's Health 2006* (2006) 249.

78. A report released in December 2008 reveals that, between 2004 and 2008, only 1.5 per cent of Victorian prisoners who were believed to have Hepatitis C were treated for the virus.¹⁰² This is despite the virus being said to be 'out of control' in Australian prisons¹⁰³ and the fact that treatment for Hepatitis C is readily available in most cases. The statistics were released by St Vincent's Hospital, which provides health care to prisoners in 13 of the 14 jails in Victoria. The chief executive of the Hepatitis C Council of Victoria said the extremely low treatment rate was disturbing, given the risk of prisoners infecting each other and members of the community when they leave prison.¹⁰⁴ Research has shown that 75 per cent of injecting drug users continue to inject in jail, usually with crude and blunt injecting equipment.¹⁰⁵

5.7 Women's Health

Access to IVF

79. The availability of access to reproductive technology has been the subject of ongoing community debate, with infertility affecting approximately 15 per cent of Australian couples of reproductive age. Currently, different states and territories have different regimes operating in relation to access to reproductive technologies. This means that access to fertility treatments varies across Australia and that there is not equal access to IVF or assisted reproductive technology (**ART**).
80. All states and territories other than South Australia and Victoria currently allow lesbian couples access to IVF and ART, although access in Victoria will be effective from January 2010.¹⁰⁶ Only the ACT and Western Australia allow access to IVF by surrogates of gay male couples,¹⁰⁷ while Victoria will allow it from January 2010.¹⁰⁸
81. The right to access IVF and ART, are important aspects of the right to health, and should be protected by Federal legislation in Australia.

¹⁰² Julia Medew, 'Prisoners go Untreated as Hepatitis C Sweeps Jails', *The Age* (Melbourne), 29 December 2008, available at <http://www.theage.com.au/national/prisoners-go-untreated-as-hepatitis-c-sweeps-jails-20081228-767n.html?page=-1>.

¹⁰³ Australian Hepatitis Council, Media Release (1 September 2005), available at http://www.hepatitisaustralia.com/documents/mediarelease_050901.pdf.

¹⁰⁴ Medew, above n 102.

¹⁰⁵ *Ibid.*

¹⁰⁶ *Assisted Reproductive Treatment Act 2008* (Vic). Note that in South Australia the *Reproductive Technology (Clinical Practices) (Miscellaneous) Amendment Bill 2008* was introduced and is currently under consideration by the South Australian parliament.

¹⁰⁷ See Human Rights and Equal Opportunity Commission, *Same-Sex: Same Entitlements Report*, Chapter 5, available at http://www.hreoc.gov.au/Human_Rights/samesex/report/Ch_5.html.

Violence against Women

82. While the federal and state and territory governments have prioritised addressing the issue of violence against women, including in particular through the 'Women's Safety Agenda' initiative, violence against women continues to occur at appalling levels in Australia.
83. Violence against women is a serious issue in many Indigenous communities. In the Northern Territory, the rate of domestic violence against Indigenous females recorded by the Northern Territory Police is nearly 17 times greater than the rate for non-Indigenous females.¹⁰⁹ In Queensland, Western Australia, South Australia and the Northern Territory, it is estimated that Indigenous females are around 35 times more likely to be hospitalised as a result of family violence and ten times more likely to die from assault than non-Indigenous females.¹¹⁰
84. In establishing the National Council to Reduce Violence Against Women and Children, the current Australian Government has taken some important steps in preventing violence against women. It has recognised the links between homelessness and family violence and committed to a 'comprehensive' approach to address homelessness.¹¹¹ The National Council to Reduce Violence Against Women and Children is currently developing a National Plan of Action to Reduce Violence Against Women and Children. However, to be effective, this program requires additional funding.

5.8 Climate Change

85. It is clear that climate change is directly related to the right to health as it impacts on, amongst other things, the availability of food and water.¹¹² The World Health Organisation has predicted that global warming may already be responsible for more than 160,000 deaths a year from malaria and malnutrition, and that the number could double by 2020.¹¹³

¹⁰⁸ *Assisted Reproductive Treatment Act 2008* (Vic).

¹⁰⁹ Productivity Commission's Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2007* (2007) 119, available at <http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2007>.

¹¹⁰ Fadwa Al-Yaman, Mieke Van Doeland and Michelle Wallis, *Family violence among Aboriginal and Torres Strait Islander peoples* (2006) 54, 66, available at <http://www.aihw.gov.au/publications/index.cfm/title/10372>.

¹¹¹ Australian Government, *Homelessness: A New Approach* (2008) available at [http://www.facsia.gov.au/internet/facsinternet.nsf/vIA/new_approach/\\$File/homelessness_a_new_approach.pdf](http://www.facsia.gov.au/internet/facsinternet.nsf/vIA/new_approach/$File/homelessness_a_new_approach.pdf).

¹¹² See, for example, Committee on Economic, Social and Cultural Rights, *General Comment No. 15 (2002): The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, [28], E/C.12/2002/11, (2002).

¹¹³ Shaoni Bhattacharya, 'Global Warming kills 160,000 a year', *New Scientist*, 1 October 2003.

86. In Australia, there is a risk that global warming will aid the range and spread of tropical diseases. Research has suggested that warmer climatic conditions provide a more hospitable environment for disease carrying mosquitoes which will make preventing the spread of disease more difficult.¹¹⁴ Some research shows that climate changes predicted by 2050 will increase suitable mosquito habitat across much of Australia,¹¹⁵ thus impacting negatively on the enjoyment of the right to health in Australia.

5.9 Children's Health

Forced Sterilisation of Children with Disability

87. The Committee on the Rights of the Child has expressed serious concern about the practice of forced sterilisation of children with disability, particularly girls with disability, and has emphasised that forced sterilisation 'seriously violates the right of the child to her or his physical integrity and results in adverse life-long physical and mental health effects'.¹¹⁶
88. The Australian Human Rights Commission has highlighted the need for uniform national standards prescribing the circumstances in which children can be sterilised and recommended that the Commonwealth and State Attorneys-General debate possible avenues of legislative reform to achieve increased accountability in relation to sterilisation decisions, such as, for example, through increased judicial oversight.¹¹⁷
89. Despite this, Australian legislation still fails to prohibit forced sterilisation and there are no uniform national standards in place.

¹¹⁴ See Human Rights and Equal Opportunity Commission, *Background Paper: Human Rights and Climate Change* (2008), 6, available at http://www.hreoc.gov.au/pdf/about/media/papers/hrandclimate_change.pdf.

¹¹⁵ Research reported in 'Climate changes in Australia will increase dengue fever', *Medical-Net*, 29 January 2009, <http://www.news-medical.net/?id=45364>.

¹¹⁶ Committee on the Rights of the Child, *General Comment No 9 (2006): The Rights of Children with Disabilities*, [60], UN Doc CRC/C/GC/9 (2007). See also Committee on the Rights of the Child, *Concluding Observations: Australia*, [46(e)], UN Doc CRC/C/15/Add.268 (2005).

¹¹⁷ Human Rights and Equal Opportunity Commission, *The Sterilisation of Girls and Young Women in Australia: Issues and Progress* (2001), available at http://www.hreoc.gov.au/disability_rights/sterilisation/index.html, chapter 6.

Domestic Violence and Children

90. Up to one-quarter of young people in Australia have experienced or witnessed an incident of physical or domestic violence against their mother or stepmother.¹¹⁸ The issue of domestic violence is discussed in further detail above in section 5.7 of this briefing paper.
91. While the federal and state and territory governments have prioritised addressing the issue of violence against women, there is no targeted approach which addresses the particular needs of children living in situations of domestic violence. This is particularly concerning given that witnessing parental domestic violence has emerged as the strongest predictor of perpetration of violence in young people's own intimate relationships.¹¹⁹

¹¹⁸ These findings come from a survey of 5,000 Australians aged between 12 and 20 from all States and Territories in Australia: David Indermur, 'Young Australians and Domestic Violence' (Trends and Issues in Crime and Criminal Justice No.19, 2001).

¹¹⁹ Ibid 5.

Annexure A: NGO's working in the Health Arena

Set out below is a list of NGO's working in the health arena. We think it may be useful for you to meet with these organisations whilst you are in Australia. To this end, we would be happy to facilitate a round table discussion with these organisations if this would be of use to you.

Organisation	Brief Overview & Website Link	Contact Details
Dr Alex Wodak St Vincent's Hospital	Dr Alex Wodak is a physician and has been Director of the Alcohol and Drug Service, St Vincent's Hospital since 1982. http://www.stvincents.com.au/index.php?option=com_content&task=view&id=469&Itemid=516	Dr Alex Wodak c/o St Vincent's Hospital 390 Victoria Street Darlinghurst NSW 2010 Phone: +61 2 8382 1111 Fax: +61 2 9332 4142

Organisation	Brief Overview & Website Link	Contact Details
Amnesty International Australia	<p>Amnesty International Australia is part of the global movement defending human rights and dignity. They work with people in Australia and our region to demand respect for human rights and protect people facing abuse. To do this, they mobilise people, campaign, conduct research and raise money for their work.</p> <p>http://www.amnesty.org.au/wiki/Category:About/</p>	Amnesty International Australia Level 1, 79 Myrtle St CHIPPENDALE NSW 2008 Phone: 1300 300 920 (from Aust) Fax: +61 2 8396 7663
ANEX	<p>Anex is a community-based, not for profit organisation, that promotes and supports Needle and Syringe Programs (NSPs) and the evidence-based approach of harm reduction. They strive for a supported and effectively resourced NSP sector that is perceived as part of the solution to drug-related issues.</p> <p>http://www.anex.org.au/about.htm</p>	Anex Suite 1 Level 2 600 Nicholson Street Fitzroy North, Victoria, 3068 Phone: +61 3 9486 6399 Fax: +61 3 9486 7844 Email: info@anex.org.au
Asylum Seeker Resource Centre	<p>The ASRC is the largest provider of aid, advocacy and health services for asylum seekers in Australia. They work directly with asylum seekers, both living in our community and detention, to provide direct aid and support as they seek refugee status in Australia.</p> <p>http://www.asrc.org.au/about_us.html</p>	Asylum Seeker Resource Centre 12 Batman Street WEST MELBOURNE VIC 3003 Phone: + 61 3 9326 6066 Fax: + 61 3 9326 5199

Organisation	Brief Overview & Website Link	Contact Details
<p>Australian Council of Social Service</p>	<p>The Australian Council of Social Service (ACOSS) is the peak council of the community services and welfare sector. Established in 1956, ACOSS is the national voice for the needs of people affected by poverty and inequality.</p> <p>http://www.acoss.org.au/About.aspx?displayID=1</p>	<p>ACOSS Level 2, 619 Elizabeth Street REDFERN NSW 2016 Phone: + 61 2 9310 6200 Fax: + 61 2 9310 4822</p>
<p>Australian Federation of Disability Organisations</p>	<p>The Australian Federation of Disability Organisations (AFDO) has been established as the primary national voice to Government that fully represents the interests of all people with disability across Australia. The mission of AFDO is to champion the rights of people with disability in Australia and help them participate fully in Australian life.</p> <p>http://www.afdo.org.au/node/1</p>	<p>AFDO 2nd Floor, 247 Flinders Lane MELBOURNE VIC 3000 Phone: + 61 3 9662 3324 Fax: + 61 3 9662 3325</p>
<p>Australian Health Promotion Association</p>	<p>The Health Promotion Association's major objectives include providing opportunities for members' professional development, increasing public and professional awareness of the roles and functions of health promotion practitioners, advocacy and contributing to discussion, debate and decision-making on health promotion policy and programs.</p> <p>http://healthpromotion.org.au/aboutus.html</p>	<p>Aust. Health Promotion Association c/- University of the Sunshine Coast MAROOCHYDORE, QLD, 4558 Phone : +61 7 5430 2873 Fax : +61 7 5430 1276 Email: ahp@usc.edu.au</p>

Organisation	Brief Overview & Website Link	Contact Details
Australian Injecting and Illicit Drug Users League (AIVL)	AIVL is the national peak organisation representing the State and Territory-based Drug User Organisations and issues of national significance for illicit drug users. http://www.aivl.org.au/	AIVL Sydney Building Level 1/112-116 Alinga Street Canberra ACT 2600 Phone: + 61 2 6279 1600 Fax: +61 2 6279 1610
Australian Red Cross	Red Cross is committed to helping those in need in our community, from providing breakfast for hungry children every day to supporting the elderly and isolated in their own homes. Australian Red Cross is part of the world's largest humanitarian organisation, with more than 100 million volunteers in 186 countries. They are independent of government and have no political, religious or cultural affiliation. http://www.redcross.org.au/aboutus_default.htm	Australian Red Cross 23-47 Villiers Street NORTH MELBOURNE VIC 3051 Phone: + 61 3 8327 7700 Fax: + 61 3 8327 7711
Australian Society for HIV Medicine Inc	ASHM was incorporated in 1990 to represent medical practitioners working in the HIV sector. Over time ASHM has broadened its membership to include health care workers and other graduates working in the HIV sector. http://www.ashm.org.au/	Aust. Society for HIV Medicine Inc. Level 7, 46-56 Kippax St SURRY HILLS NSW 2010 Phone: +61 2 8204 0700 Fax: +61 2 9212 2382 Email: ashm@ashm.org.au

Organisation	Brief Overview & Website Link	Contact Details
Children by Choice	<p>Children by Choice is committed to providing unbiased information on all unplanned pregnancy options to Queensland women and their families. They offer referrals for abortion, adoption and parenting.</p> <p>http://www.childrenbychoice.org.au/nwww/aboutus.htm</p>	<p>Children by Choice 237 Lutwyche Road WINDSOR QLD 4030 Phone: + 61 7 3357 5570 Fax: + 61 7 3857 6246 Email: info@childrenbychoice.org.au</p>
Disability Discrimination Legal Service (DDLS)	<p>The Disability Discrimination Legal Service Inc (DDLS) is a statewide independent community legal centre that specializes in disability discrimination legal matters.</p> <p>www.communitylaw.org.au/ddls/</p>	<p>DDLS Ross House Association, Inc . 2nd Floor, 247 Flinders Lane Melbourne, VIC 3000 Phone: +61 3 9654 8644 Fax: + 61 3 9639 7422</p>
Family Planning NSW	<p>Family Planning NSW has been providing reproductive and sexual health services in New South Wales for 80 years. They are an independent, not-for-profit organisation responsible to a voluntary board of directors.</p> <p>http://www.fpnsw.org.au/about/</p>	<p>Family Planning NSW 328-336 Liverpool Rd ASHFIELD NSW 2131 Phone: +61 2 8752 4300 Fax: + 61 2 8752 4392</p>

Organisation	Brief Overview & Website Link	Contact Details
Foundation for Aboriginal and Islander Research Action	<p>The Foundation for Aboriginal and Islander Research Action (FAIRA) is a community organisation owned and managed by Aboriginal and Torres Strait Islander people. It is based in Brisbane, but aims to be relevant to the interests of Aboriginal and Torres trait Islander people throughout Queensland.</p> <p>http://www.nrw.qld.gov.au/cultural_heritage/resources/faira.html</p>	FAIRA Level 11 53 Albert Street BRISBANE QLD 4000 Phone: + 61 7 3227 6626 Fax: + 61 7 3227 8758 Email: les.malezer@gmail.com
Health Issues Centre	<p>Health Issues Centre is an independent, not-for-profit organisation that began in 1985 to promote equity and consumer perspectives in the Australian health system. Their mission is to improve the health outcomes for Australians, especially those who are disadvantaged. The focus of Health Issues Centre's work is mainly in Victoria but they take a national approach where appropriate. They work with a wide range of consumers, health providers, researchers, governments and other health organisations to achieve their goals.</p> <p>http://www.healthissuescentre.org.au/aboutus/</p>	Health Issues Centre Level 5, Health Sciences 2 La Trobe University Victoria, 3086 Phone: +61 3 9479 5827 Fax: +61 3 9479 5977
Homelessness Australia	<p>Homelessness Australia is the national peak body working to prevent and respond to homelessness in Australia.</p> <p>http://www.homelessnessaustralia.org.au/site/index.php</p>	Homelessness Australia 7/114 Maitland St HACKETT ACT 2602 Phone: + 61 2 6247 7744 Fax: + 61 2 02 6247 1649

Organisation	Brief Overview & Website Link	Contact Details
Justice Action	<p>Justice Action is a community based organisation of criminal justice activists. They are prisoners, academics, victims of crime, ex-prisoners, lawyers and general community members. They believe that meaningful change depends upon the free exchange of information, and communities taking responsibility.</p> <p>http://www.justiceaction.org.au/index.php?option=com_content&task=view&id=80&Itemid=360</p>	<p>Justice Action Trades Hall - Lv 2, Suite 204 4 Goulburn St SYDNEY NSW 2000 Phone: +612 9283 0123 Fax: +612 9283 0112</p>
Marie Stopes International	<p>Marie Stopes International Australia (MSIA) is a sexual and reproductive health not-for-profit organisation, working with women and their families in the Asia-Pacific region, and with Australian Aboriginal and Torres Strait Islander communities.</p> <p>http://www.mariestopes.org.au/</p>	<p>Marie Stopes International GPO Box 3308 MELBOURNE VIC 3001 Phone: +61 3 9658 7537 Email: info@mariestopes.org.au</p>
Mental Health Legal Centre	<p>The Mental Health Legal Centre provides a free and confidential legal service to anyone who has experienced mental illness in Victoria where their legal problem relates to their mental illness.</p> <p>http://www.communitylaw.org.au/clc_mentalhealth/cb_pages/the_legal_centre.php</p>	<p>MHLC Level 9, 10-16 Queen Street Melbourne Vic 3000 Phone: +61 3 9629 4422 Fax: +61 3 9614 0488 Email: mental_health_vic@clc.net.au</p>

Organisation	Brief Overview & Website Link	Contact Details
Multicultural Centre for Women's Health	<p>Multicultural Centre for Women's Health(MCWH) is a women's health organisation which is committed to improving the health of immigrant and refugee women around Australia. MCWH is for all women from immigrant communities, including refugee and asylum seekers and women from both emerging and established communities. They provide national leadership and excellence in multilingual health education, advocacy, training, and research with specific expertise in sexual, reproductive, occupational, and mental health.</p> <p>http://www.mcwh.com.au/</p>	MCWH Suite 207, Level 2 Carringbush Building 134 Cambridge St COLLINGWOOD Victoria 3066 Phone: + 61 3 9418 0999 Fax: + 61 3 9417 7877
NSW Disability Discrimination Legal Centre (DDLC)	<p>The NSW DDLC was set up in 1994 to help people with disability to use disability discrimination laws. They provide accurate and easy to comprehend advice to people with disability in NSW who want to make a complaint of disability discrimination.</p> <p>http://www.ddlcnsw.org.au/index.php</p>	DDLC PO Box 989 Strawberry Hills NSW 2012 Phone: 1800 800 708 (NSW Only) Fax: +61 2 9310 7788
People with Disability Australia Inc	<p>People with Disability Australia Incorporated (PWD) is a national peak disability rights and advocacy organisation. Its primary membership is made up of people with disability and organisations primarily constituted by people with disability. PWD also has a large associate membership of other individuals and organisations committed to the disability rights movement.</p> <p>http://www.pwd.org.au/aboutpwd.html</p>	People with Disability Australia Inc 52 Pitt Street REDFERN NSW 2016 Phone: +61 2 9370 3100 Fax: +61 2 9318 1372

Organisation	Brief Overview & Website Link	Contact Details
Sisters Inside Inc	<p>Sisters Inside Inc. is an independent community organisation, which exists to advocate for the human rights of women in the criminal justice system, and to address gaps in the services available to them.</p> <p>http://www.sistersinside.com.au/</p>	<p>Sisters Inside Inc Level 2, 53 Tribune Street SOUTH BRISBANE QLD 4101 Phone: +617 3844 5066 Fax: +617 3844 2788</p>
Victoria Aboriginal Community Controlled Health Organisation (VACCHO)	<p>VACCHO represent the collective of all Aboriginal community controlled health organisations around Victoria. Each of their members is an Aboriginal community controlled organisation: most are multi functional community organisations with health as a key part of their responsibility and some come from groups offering full health services. Each member of VACCHO is independent and is represented by their own spokesperson sent by their local community. Every state has a similar set-up and together we form the National Aboriginal Community Controlled Health Organisation (NACCHO) to operate at the national level. VACCHO is not a direct service provider.</p> <p>http://www.vaccho.org.au/</p>	<p>VACCHO 5-7 Smith Street Fitzroy VIC 3065 Phone: +61 3 9419 3350 Fax: + 61 3 9417 3871</p>

Organisation	Brief Overview & Website Link	Contact Details
Victorian Alcohol and Drug Association Inc (VAADA)	<p>VAADA is the peak body representing Alcohol and Other Drug (AOD) services in Victoria; and provides leadership, representation, advocacy and information to both AOD and non AOD related sectors. VAADA's purpose is to ensure that the issues for people experiencing the harms associated with alcohol and other drug use and the organisations that support them are well represented in policy and program development and public discussion.</p> <p>http://www.vaada.org.au/</p>	<p>VAADA 211 Victoria Parade COLLINGWOOD VIC 3066 Phone: + 61 3 9416 0899 Fax: + 61 3 9416 2085 Email: vaada@infoxchange.net.au</p>
Victorian Foundation for the Survivors of Torture	<p>The Victorian Foundation for Survivors of Torture (VFST), or 'Foundation House' as it is also known, provides a range of services to people from refugee backgrounds whom have survived torture or war related trauma. Foundation House provides direct services to clients in the form of counselling, advocacy, family support, group work, psycho-education, information sessions and complementary therapies. Direct services to clients are coupled with referral, training and education roles aimed at developing and strengthening the resources of various communities and service providers.</p> <p>http://www.survivorsvic.org.au/about/index.htm</p>	<p>Foundation House 6 Gardiner Street BRUNSWICK VIC 3056 Phone: + 61 3 9388 0022 Fax: + 61 3 9387 0828</p>

Organisation	Brief Overview & Website Link	Contact Details
Victorian Institute of Forensic Mental Health	<p>Forensicare is responsible for the statewide provision of adult forensic mental health services in Victoria. Forensicare is governed by a ten member Council that is responsible to the Minister for Health and provides specialist clinical services, together with a court service, research, training, professional education and services for victims of crime.</p> <p>http://www.forensicare.vic.gov.au/CA2570BA0083006F/HomePage?ReadForm&1=Home~&2=~&3=~.</p>	<p>Vic. Institute of Forensic Mental Health Locked Bag 10 FAIRFIELD VIC 3078 Phone: + 61 3 9495 9100 Fax: +61 3 9495 9199 Email: info@forensicare.vic.gov.au</p>
Women's Health Victoria	<p>Women's Health Victoria is a statewide women's health promotion, information and advocacy organisation. They work with health professionals and policy makers to influence and inform health policy and service delivery for women.</p> <p>http://www.whv.org.au/</p>	<p>Women's Health Victoria Level 1, 123 Lonsdale Street Melbourne, Victoria 3000 Phone: +61 3 9662 3755 Fax: +61 3 9663 7955</p>