

Briefing Paper on Key Human Rights Issues in Australia

— July 2009 —

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1. Introduction

- 1.1 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 some of the current human rights issues ahead of your upcoming visit to Australia.
- 1.2 While this briefing paper is not intended to provide a comprehensive overview of all human rights issues in Australia, we would be very happy to provide you with any further information that you may require.

2. Current Political Context for Human Rights

- 2.1 The current Rudd Government was elected in November 2007 on a strong platform of reform in key areas such as social inclusion, industrial relations, education and social justice.
- 2.2 The former Howard Government had held office for over 10 years. From a human rights perspective, that time represented a regression in Australia's international human rights obligations and engagement with the United Nations. Many government policies, such as the mandatory detention of asylum seekers and the 'Pacific Solution', strict industrial relations laws and the treatment of Australia's Aboriginal peoples, raised serious concerns regarding Australia's compliance with its international human rights obligations.
- 2.3 Since its election over 18 months ago, the Rudd Government has taken a number of significant steps towards the protection and promotion of human rights in Australia, including:
- (a) the conduct of a broad public consultation regarding the legal recognition and protection of human rights in Australia (discussed in further detail below);
 - (b) the signing and ratification of a number of outstanding international human rights treaties, including the Convention on the Rights of Persons with Disabilities, the Optional Protocols to the Convention on the Elimination of All Forms of Discrimination against Women and Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment;
 - (c) announcing its support for the UN Declaration on the Rights of Aboriginal Peoples (which had been opposed by the former Howard Government);
 - (d) committing to more extensive and constructive engagement with the United Nations human rights mechanisms, including by issuing a standing invitation to the Special Procedures of the UN Human Rights Council;
 - (e) issuing a formal parliamentary 'Apology' to the Stolen Generations of Aboriginal children who were forcibly removed from their families during the 20th century;

- (f) committing to achieve equality of health status and life expectancy between Aboriginal and non-Aboriginal Australians by 2030, including ensuring primary health care services and health infrastructure for Aboriginal peoples that are capable of bridging the gap in health standards by 2018;
- (g) reforming and repealing certain aspects of Australia's industrial relations system known as 'Work Choices';
- (h) undertaking key reforms of the immigration system, including:
 - (i) ending the so-called 'Pacific Solution';
 - (ii) removing the system of temporary protection visas for asylum seekers; and
 - (iii) reforming Australia's policy of mandatory immigration detention;
- (i) announcing a strategy to tackle the problem of homelessness in Australia through the development of a comprehensive, long-term plan, as well as developing a 'National Rental Affordability Scheme' to address the issue of lack of housing availability and affordability;
- (j) amending federal laws that discriminated against same-sex couples with respect to financial and other work-related benefits.

2.4 Despite these very welcome developments, there remain a number of significant concerns in relation to the realisation of human rights for many Australians.

3. Recent Reviews of Australia by UN Treaty Monitoring Bodies

3.1 Australia has recently been reviewed by United Nations treaty monitoring bodies for its compliance with both the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights (Covenants)*. Both committees made a range of recommendations regarding strengthening the protection of human rights in Australia, with some of the common themes being:

- (a) the lack of comprehensive legislative protection of human rights in Australia's domestic law;
- (b) the lack of comprehensive equality and non-discrimination legislation;
- (c) the failure to adequately protect the rights of Aboriginal Australians, particularly with respect to improving standards of health and poverty;
- (d) the need to eliminate violence against women;
- (e) the need to improve conditions for asylum seekers, including ending the policy of mandatory detention and improving the conditions of detention; and
- (f) the need to address poverty and homelessness.

- 3.2 The Human Rights Law Resource Centre was involved in the preparation of comprehensive NGO Reports to the UN treaty monitoring bodies regarding Australia's compliance with the Covenants. The reports were prepared together with a coalition of 40 Australian NGOs and endorsed by over 250 organisations. For more detailed information on any of the issues covered in this Briefing Paper, copies of these reports are available on our website at <http://www.hrlrc.org.au/our-work/law-reform/ngo-reports/>.

4. Lack of Entrenchment of Human Rights

- 4.1 Australia remains the only developed nation without comprehensive constitutional or legislative protection of human rights.
- 4.2 The *Australian Constitution* provides very limited protection for rights, including:
- (a) prohibition against the Commonwealth giving preference to a particular religion over others;¹
 - (b) freedom from discrimination on the basis of state residence;²
 - (c) trial by jury;³
 - (d) acquisition of property on just terms;⁴ and
 - (e) some rights that can be implied from the provisions of the Constitution, such as freedom of political expression and the right to vote.⁵
- 4.3 Aside from the few guarantees found in the *Australian Constitution*, Australian parliaments have failed to provide clear and effective protection of many basic human rights. While there are a number of pieces of legislation that protect certain human rights, such as various pieces of equality and non-discrimination legislation, Australian domestic law on the whole fails to comprehensively entrench many basic human rights.
- 4.4 At a state and territory level, both the Australian Capital Territory (**ACT**) and Victoria have introduced human rights legislation in those jurisdictions, however those instruments protect only civil and political rights. The ACT's *Human Rights Act 2004* was recently amended to provide an independent cause of action for a breach of rights covered by the Act, however the Victorian *Charter of Human Rights and Responsibilities Act 2006* has no such right and an action can only be brought in conjunction with an already existing cause of action.

¹ Australian Constitution, s 116.

² Australian Constitution, s 117.

³ Australian Constitution, s 80.

⁴ Australian Constitution, s 51(xxxi).

⁵ See *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106, *Theophanous v Herald and Weekly Times Ltd* (1994) 182 CLR 104; *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520; and *Roach v Australian Electoral Commission & Anor* [2007] HCA 43.

National Human Rights Consultation

- 4.5 On 10 December 2008, the Federal Attorney-General announced a broad ranging inquiry into the protection of human rights in Australia. An independent Consultation Committee was appointed to ask the Australian community to consider the following questions:
- (a) Which human rights should be protected and promoted?
 - (b) Are these human rights already sufficiently protected and promoted?
 - (c) How could Australia better protect and promote human rights?⁶
- 4.6 The Consultation Committee conducted community consultation ‘roundtables’ around the country and invited written submissions to be made by members of the public. Submissions closed on 15 June 2009 and the Committee is scheduled to report to the Australian Government by 30 September 2009.
- 4.7 The Consultation Committee received close to 40,000 written submissions — significantly more than any other public consultation in Australia’s history. The majority of these submissions were the result of on-line campaigns conducted by organisations such as Amnesty International Australia, GetUp (a not for profit organisation designed to build participation in the Australian political system by conducting on-line campaigns) and the conservative Australian Christian Lobby.
- 4.8 The National Human Rights Consultation has been important in generating widespread debate about human rights protection in Australia. While the submissions, in large part, reveal widespread support for the need for enhanced protection of human rights in Australia, there has also been significant opposition to the need for comprehensive human rights legislation.
- 4.9 The consultation process generated some intense media interest, particularly around issues such as:
- (a) the role of the judiciary in any Human Rights Act, with many views being expressed about concerns with transferring power from the parliament to ‘unelected judges’;
 - (b) whether any enhanced legislative protection of rights should also include the protection of social and economic rights; and
 - (c) concerns of religious advocates about the effect of the protection of other human rights eroding religious freedoms.
- 4.10 While the national consultation has been an important and useful process in raising awareness within the community about human rights, the lack of community education about human rights, or a ‘human rights culture’, remains a major issue in Australia.

⁶ The consultation’s Terms of Reference’ are available at http://www.humanrightsconsultation.gov.au/www/nhrcc/nhrcc.nsf/Page/Terms_of_Reference.

- 4.11 The Human Rights Law Resource Centre made two substantial submissions to the National Human Rights Consultation. The first submission, entitled *A Human Rights Act for All Australians*, calls for the enactment of a Human Rights Act that:
- (a) is a legislative/dialogical model that retains parliamentary sovereignty;
 - (b) protects all the rights derived from the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*;
 - (c) establishes a free-standing cause of action; and
 - (d) provides for a full range of judicial and non-judicial remedies.
- 4.12 The HRLRC also made a second, supplementary submission, entitled *Engage, Educate, Empower*, which considers a range of measures and initiatives to strengthen and complement the protection that would be afforded by a Human Rights Act. The submission makes recommendations for reform in the following areas:
- (a) the role, power and resourcing of the Australian Human Rights Commission;
 - (b) human rights education;
 - (c) access to justice;
 - (d) support for and engagement with human rights NGOs;
 - (e) international engagement; and
 - (f) business and human rights.
- 4.13 The HRLRC's submissions, together with other selected key submissions, are available at <http://www.hrlrc.org.au/our-work/focus/national-consultation/>.
- 4.14 Further information on the National Human Rights Consultation itself is available at <http://www.humanrightsconsultation.gov.au/>.

5. Aboriginal Australians

- 5.1 A significant gap exists between Aboriginal and non-Aboriginal Australians relating to, among other things, standards of living and health, political participation, administration of justice, land rights, access to adequate housing and education.
- 5.2 On 13 February 2008, Prime Minister Kevin Rudd opened Parliament with an official and bipartisan Apology to Australia's Aboriginal people for the laws and policies that inflicted on them great pain and suffering, in particular the policy of removal of Aboriginal and Torres Strait Islander children from their families, communities and country. However, despite this welcome acknowledgement of the issues facing Australia's Aboriginal people, many significant human rights issues remain.

Standard of Health

- 5.3 The state of Aboriginal health in Australia results from and represents serious human rights breaches. Many Aboriginal Australians do not have the benefit of equal access to primary health care and many Aboriginal communities lack basic determinants of the right to life, such as adequate housing, safe drinking water, electricity and effective sewerage systems.
- 5.4 Average life expectancy for Aboriginal Australians is 17 years shorter than that of non-Aboriginal Australians. The infant mortality rate is also significantly higher, with statistics showing that in 1999-2003, the infant mortality rate for Aboriginal infants was 3 times that of non-Aboriginal infants.⁷

Political Representation and Self Determination

- 5.5 In 2004, Australian national indigenous representative body, the Aboriginal and Torres Strait Islander Commission (**ATSIC**), was abolished. ATSIC was the main policy-making body in domestic Aboriginal affairs and also represented the interests of Aboriginal Australians internationally. While the Australian Government is undertaking consultations regarding a replacement body, Aboriginal Australians remain without an effective representative body.

Intervention into Northern Territory Aboriginal Communities

- 5.6 In June 2007, the Northern Territory Government released a report detailing the 'extent, nature and factors contributing to sexual abuse of Aboriginal children' and the obstacles and challenges associated with effective child protection mechanisms.⁸ The report made 97 recommendations, which were intended to offer advice to the Northern Territory Government on how to best support and empower Aboriginal communities to prevent child sexual abuse.
- 5.7 In response, the then Federal Government announced a 'national emergency intervention' into Aboriginal communities in the Northern Territory (**Northern Territory Intervention**) and passed an extensive legislative package that raises significant concerns in relation to Australia's international obligations. The Northern Territory Intervention consists of a range of extraordinary measures, including the compulsory acquisition of land, quarantining of social security payments, the banning of alcohol and the deployment of military and police in traditional lands. There was very little relationship between the recommendations to the Northern Territory Government contained in the *Little Children are Sacred* report and the then Federal Government's 'national emergency legislation'. These measures have largely been continued by the current Australian Government.

⁷ Ibid.

⁸ Ibid, 5.

- 5.8 The Northern Territory Intervention legislation was passed without any consultation with Aboriginal people and suspends the operation of the *Racial Discrimination Act 1975* (Cth). The broad legislative measures target, and impact specifically on, Aboriginal people and has been described by the Australian Human Rights Commission as ‘punitive and racist’.⁹
- 5.9 The current Australian Government has indicated its intention to reinstate the operation of the *Racial Discrimination Act* and engage in direct consultation with affected Aboriginal communities. While legislation modifying the Northern Territory Intervention measures is expected to be introduced in September or October 2009, it remains unclear as to the precise nature of the changes to be implemented.

Other Issues Facing Aboriginal Australians

Rights and Access to Traditional Lands and Preservation of Aboriginal Culture:

- 5.10 Despite significant developments in the recognition of Aboriginal land rights in the early 1990s, native title legislation continues to provide for onerously high standards of proof for Aboriginal people to prove a relationship with their traditional lands.¹⁰

The ‘Stolen Generations’

- 5.11 Although the Rudd Government has issued an ‘Apology’ to the ‘Stolen Generations’, it has not committed to making adequate reparations, in particular compensation, for the harm and suffering caused by previous government policies and programs. It is estimated that at least 100,000 Aboriginal children were affected by the forced removal policies operating between 1910 and 1970.¹¹
- 5.12 The current Australian Government is considering establishing a National Healing Foundation, but there is, as yet, little detail as to the role of this foundation other than that it will consider the needs of Aboriginal Australians more broadly, with a focus on the Stolen Generation.¹²

Adequate Housing for Aboriginal Australians

- 5.13 Aboriginal 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 Aboriginal communities during his country visit to

⁹ Russell Skelton, ‘Rights Watchdog Proposes Overhaul of Howard’s Emergency Intervention’, *The Age* (Melbourne), 12 February 2008 at <http://www.theage.com.au/news/national/pressure-to-overhaul-intervention/2008/02/11/1202578694335.html>.

¹⁰ The Australian Government made amendments in 1998 and 2006, and is likely to make further amendments in 2009, that wind back some of the protections previously afforded to Aboriginal peoples.

¹¹ 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).

¹² The Hon Jenny Macklin, ‘Media Release: National Healing Foundation consultations start on National Sorry Day’, *Jenny Macklin*, 26 May 2009, available at http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/jr_m_healingfoundation_26may09.htm.

Australia in 2006, describing it as a ‘humanitarian tragedy’. 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 Aboriginal Australians.

6. Women’s Rights

Equality and Non-Discrimination

6.1 The *Sex Discrimination Act 1984* (Cth) fails to provide the legislative framework necessary to address direct or systemic discrimination and to promote substantive equality for women. In general, the legislation is limited in the fields of activity that it covers and the types of conduct to which it applies.¹³ As a result, women continue to be significantly disadvantaged in relation to the realisation of many human rights, particularly a lack of representation of women in both the public and private sectors, the widespread issue of violence against women, the continuing pay gap that exists between women and men, and the absence of a national paid maternity leave scheme. A Parliamentary review of the effectiveness of the *Sex Discrimination Act* made 43 recommendations about how better to ensure gender equality in Australia, however the Australian Government is yet to respond to these recommendations.

Violence against Women

6.2 Violence against women continues to occur at appalling levels in Australia. Statistics indicate that 19 per cent of all women experience sexual violence during their lifetime; 33 per cent of all women experience at least one incident of physical violence during their lifetime;¹⁴ and approximately half of female homicide victims are killed as a result of a domestic dispute.¹⁵ Violence against women is a particularly serious issue in many Aboriginal communities.¹⁶

6.3 Currently, the primary government response requires women to leave their homes. This causes particular issues for Aboriginal women living in remote or rural communities who may be required to leave their family and communities. Only the needs of a small proportion of women in need are met by temporary housing refuges and women who leave their homes often struggle to find adequate long-term accommodation. While the federal and state and territory governments have prioritised the issue of violence against women, much remains to be done.

¹³ Elizabeth Evatt, ‘Falling Short on Women’s Rights: Mis-Matches between SDA and the International Regime’ (Speech delivered at the Castan Centre for Human Rights Law, Monash university, Melbourne, 3 December 2004).

¹⁴ Australian Bureau of Statistics, *Personal Safety Survey Australia 2005* (2005), ABS Catalogue No 4906.0 (2005).

¹⁵ Jenny Mouzos, ‘Homicide in Australia: 2003–2004 National Homicide Monitoring Program (NHMP) Annual Report’ (2005) Australian Institute of Criminology.

¹⁶ Australian Bureau of Statistics, *The Health and Wellbeing of Aboriginal and Torres Strait Islander Women: A Snapshot*, 2004–05, ABS Catalogue No 4722.0 (2007), available at <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4722.0.55.001>.

Pay Equity and Paid Maternity Leave

- 6.4 While substantial gains have been made over past decades to reduce the pay gap between men and women, women continue to receive lower wages than men in Australia. Women earn on average 18.4 per cent less than men;¹⁷ and are almost twice as likely to be under-employed than men.¹⁸
- 6.5 Australia remains one of only two OECD countries without a paid maternity leave scheme. Recently, the Rudd Government announced the implementation of a paid parental leave scheme, which will provide up to 18 weeks of paid parental leave at the minimum wage for a child born on or after 1 January 2011.¹⁹
- 6.6 While the move marks a step in the right direction, concerns with the proposed paid parental leave scheme include that:
- (a) the scheme only applies to the primary carer (usually the mother) and not parents;
 - (b) the delayed implementation of the scheme means that it is subject to the Rudd Government winning the next election and having adequate financing at the date that scheme is due to start; and
 - (c) eligibility for the scheme is means tested.

7. Immigration Law, Policy and Practice

Mandatory Detention of Asylum Seekers

- 7.1 Since 1992, successive Australian Governments have maintained a policy of indefinite mandatory detention of asylum seekers. This regime is manifestly arbitrary in that: there is no consideration of the particular circumstances of each detainee's case; detention is not demonstrated or evidenced to be the least invasive means of achieving the government's policy objectives; and substantive judicial review of the lawfulness of detention is non-existent or inadequate.
- 7.2 While the current Australian Government has announced changes to Australia's asylum seeker policy, they have maintained the central pillar of mandatory immigration detention. As a result, the *Migration Act 1958* (Cth) continues to provide, for example, that a stateless asylum seeker who cannot be removed from Australia despite cooperating with authorities may be kept in immigration detention for the rest of their life.²⁰

¹⁷ Australian Bureau of Statistics, *Employee Earnings, Benefits and Trade Union Membership*, ABS Catalogue No 6310.0 (2007).

¹⁸ Australian Bureau of Statistics, *Australian Labour Market Statistics*, ABS Catalogue No 6105.0 (2003).

¹⁹ 'Australia's Paid Parental Leave Scheme Supporting working Australian families', *Department of Education, Employment and Workplace Relations*, available at <http://home.deewr.gov.au/Budget/documents/PPLBooklet.pdf>, 1.

²⁰ See *Al-Kateb v Godwin* (2004) 219 CLR 562.

Children in Immigration Detention

7.3 While recent reforms to Australia's immigration policy are significant and positive, refugee and asylum seeker children and families remain inadequately protected. In particular, the non-detention of children is not legislatively guaranteed and children are still being held in closed detention facilities and on Christmas Island.²¹ The system of detaining children in immigration detention is fundamentally inconsistent with the *Convention on the Rights of the Child*.²²

Conditions in Immigration Detention

7.4 Aspects of immigration detention conditions raise serious concerns, including the prolonged and indeterminate periods of detention, detainees' lack of access to legal advice and information, overcrowding, separation of families, deleterious mental health effects and a lack of access to adequate health care.

7.5 Of particular concern is the fact that the Australian Government has recently re-opened immigration detention centres on Christmas Island, including a new detention centre that 'looks and feels like a high-security prison'.²³ The remoteness of the Christmas Island facility — located more than 2,600 kilometres from Perth, Western Australia — exacerbates the lack of access to services described above.

Lack of Available Remedies

7.6 The former Australian Government implemented a consistent and sustained policy over a number of years to drastically scale back the remedies available to detained persons and to minimise the scope of judicial and other review available in relation to administrative decisions made under the *Migration Act*. In addition, practices relating to the excision of land from Australia's migration zone and limited avenues of review for individuals with adverse security assessments also raise concerns.

²¹ Australian Human Rights Commission, *2008 Immigration Detention Report: Summary of Observations following Visits to Australia's Immigration Detention Facilities* (2008), available at http://www.hreoc.gov.au/human_rights/immigration/idc2008.html.

²² Human Rights and Equal Opportunity Commission, *Summary of Observations following the Inspection of Mainland Immigration Detention Facilities 2007* (2007), 9, available at http://www.humanrights.gov.au/human_rights/immigration/idc2007.html.

²³ Australian Human Rights Commission, *2008 Immigration Detention Report: Summary of Observations following Visits to Australia's Immigration Detention Facilities* (2008), available at http://www.hreoc.gov.au/human_rights/immigration/idc2008.html.

Lack of Assistance upon Release from Detention

- 7.7 Asylum seekers who are released from detention face into the Australian community continue to face severe hardship. Depending on the visa they are granted, many asylum seekers are not entitled to work and are not entitled to access Australia's public health system (Medicare). This results in poverty and has been described as, 'detention without the razor wire.'²⁴

8. Racial and Religious Discrimination

Australian Muslim and Arab Communities

- 8.1 Following the events of 11 September 2001, Australia's Muslim and Arab populations have reported increased anti-Muslim and anti-Arab prejudice. Many aspects of Australia's counter-terrorism measures impact disproportionately and detrimentally on Australia's Muslim and Arab population, and these communities have reported 'a substantial increase in fear and an increasing distrust of authority'.²⁵
- 8.2 The operation of many of Australia's counter terrorism laws also have other consequences, including:
- (a) police 'stop and search' powers are overly broad and inadequately regulated, resulting in alleged victimisation of groups such as Aboriginal Australians, Muslims and African migrants; and
 - (b) the overly broad definitions of 'terrorist acts' and 'terrorist organisations' have had particular impacts on Australia's Arab and Muslim populations. For example, to date, 19 organisations have been listed as 'terrorist organisations', with all but one of those organisations being self-identified Islamic organisations.
- 8.3 Australian state and federal legislation fails to adequately protect against such prejudice and unfair targeting. Discrimination on the basis of religion remains lawful in New South Wales and South Australia, which is particularly problematic given that approximately half of Australia's Muslim population lives in New South Wales.²⁶
- 8.4 In 2004, the then Human Rights and Equal Opportunity Commission released a report, entitled *Isma — Listen: National Consultations on Eliminating Prejudice against Arab and Muslim Australians*, which found that the majority of respondents had experienced some form

²⁴ Larry Schwartz, 'A Bridge to Nowhere', *The Age*, 30 October 2005 from <http://www.theage.com.au/news/national/beyond-the-fence/2005/10/30/1130607145501.html?page=1&oneclick=true>.

²⁵ Human Rights and Equal Opportunity Commission, *Isma — Listen: National Consultations on Eliminating Prejudice against Arab and Muslim Australians* (2004), 4.

²⁶ Australian Bureau of Statistics, 'Religious Affiliation by Sex: Australia', *Census Tables* (2006); Australian Bureau of Statistics, 'Religious Affiliation by Sex: NSW', *Census Tables* (2006), available at <http://www.censusdata.abs.gov.au/>.

of harassment and prejudice because of their religion.²⁷ In addition, Muslim women experience significantly higher levels of discrimination due to being easily identified as Muslim by their dress.²⁸ Recent reports also indicate that Islamic groups have been discriminated against when they have sought approval to construct Islamic schools.

Violence against Indian Students

- 8.5 Recently there have been a number of racially motivated attacks on international students, specifically Indian students studying in Melbourne. The attacks have sparked protests by Indians, and have fuelled tension in Indian and Australian relations.²⁹
- 8.6 In response to these attacks, the Australian Government has set up a taskforce to coordinate the Government's response. The taskforce will comprise senior officials from various government departments, including the Department of Foreign Affairs and Trade, the Department of Immigration and Citizenship and the Attorney General's Department.³⁰
- 8.7 At the state level, Victoria Police has established a community reference group to facilitate communication on safety issues within the Indian community. The group will provide information and advice to Indian students who are victims of crime.³¹

9. Children's Rights

- 9.1 The Australian Government has, generally speaking, failed to recognise and provide for the specific human rights of children.

Juvenile Justice System

- 9.2 There are significant gaps in the legal rights and protection of children and young people in the legal system. For example, mandatory sentencing laws operating in the Northern Territory and Western Australia, which have a particular impact on young people and disproportionately affect young Aboriginal Australians,³² are not based on the principle that young offenders can and should be rehabilitated. Other areas of the juvenile criminal justice

²⁷ Human Rights and Equal Opportunity Commission, *Isma — Listen: National Consultations on Eliminating Prejudice against Arab and Muslim Australians* (2004) 3.

²⁸ *Isma — Listen* consultation participants reported numerous incidents of women in hijabs being spat at, of objects being thrown at them from passing cars and of their hijabs being forcibly removed.

²⁹ 'Thousands protest against Indian student attacks', *ABC News*, <http://www.abc.net.au/news/stories/2009/05/31/2585657.htm>.

³⁰ Commonwealth, *Parliamentary Debates*, House of Representatives, 2 June 2009, 55 (Mr Stephen Smith, Minister for Foreign Affairs)

³¹ *Ibid*, 55.

³² The UN Committee on the Rights of the Child expressed its concern about the over-representation of Indigenous children in the juvenile justice system: see UN Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Australia*, [73]-[74], UN Doc CRC/C/15/Add.268 (2005).

system that do not adequately protect the rights of children include the availability and conditions of bail, the detention of juveniles in adult facilities, the identification of children in criminal proceedings and the use of curfews and 'move on' laws.

Education

- 9.3 Education in Australia is reaching crisis point at all levels — from early childhood education through to tertiary education. Australia's childcare system has been rated as the third worst in the developed world,³³ with Australian Government spending on early childhood education being the worst in the developed world.³⁴
- 9.4 While a high percentage of Australian children attend pre-school education, there is no guaranteed access to pre-school education.³⁵ In 2005, secondary school completion rates were 67 per cent, a figure which had not improved in the previous decade.³⁶
- 9.5 A range of groups confront significant barriers to education and do not have equal access to educational opportunities, including children with disability, Aboriginal children, children from low income families, and children from rural and remote areas.

Care and Protection

- 9.6 Recent amendments to the *Family Law Act 1975* (Cth) concerning the care of children following family separation prioritise parents' claims to equal custody at the expense of the principle that the best interests of the child are paramount in deciding where a child will live and with whom the child will spend time.
- 9.7 The number of children in out-of-home care in Australia has risen by almost 115 per cent over the last decade. Some steps have already been taken to improve the protection of children. These include increased information sharing between various governments to help identify families where child abuse is suspected and the introduction in selected Western Australian communities of an income management trial giving state protection authorities the power to recommend the quarantining of income support and family payments to Centrelink.

Aboriginal Children

- 9.8 Aboriginal children and young people experience significant disadvantage in the substantive protection and realisation of their rights, including with respect to health, the criminal justice system and education.

³³ See 'Australia Third Bottom in UNICEF Childcare Table' ABC News Online, 12 December 2008, available at <http://www.abc.net.au/news/stories/2008/12/12/2444436.htm>.

³⁴ Organisation for Economic Co-operation and Development (OECD), *Starting Strong II: Early Childhood Education and Care* (2006), available at http://www.oecd.org/document/63/0,3343,en_2649_39263231_37416703_1_1_1_1,00.html.

³⁵ Australian Council of Social Service, *Fair Start: 10 Point Plan for Early Childhood Education and Care* (2006) 8.

³⁶ Australian Bureau of Statistics, *Australian Social Trends* (2006), available at <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/9FA90AEC587590EDCA2571B00014B9B3?opendocument>.

- 9.9 Aboriginal children confront significant barriers to education and do not have equal access to educational opportunities. The education system's ability to attract and retain Aboriginal students is seriously affected by a lack of culturally-appropriate education, Aboriginal language schools and human rights education.³⁷

³⁷ Michaela Kronemann, *Education is the Key: An Education Future for Indigenous Communities in the Northern Territory* (2007) 33.