
United Nations Committee on Economic, Social and Cultural Rights

Review of Australia Fifth Periodic Report under the International Covenant on Economic, Social and Cultural Rights

National Association of Community Legal Centres and Kingsford Legal Centre Preliminary Submission to Inform Adoption of List of Issues

August 2016

This submission has been prepared by the **National Association of Community Legal Centres** and Kingsford Legal Centre, with contributions from a number of NGOs across Australia and is endorsed, in whole or in part, by 14 peak and civil society organisations.

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Introduction

This submission by the National Association of Community Legal Centres (NACLC) and Kingsford Legal Centre is endorsed by 13 peak and civil society organisations from across Australia.¹

NACLC is the peak national body for around 200 community legal centres across Australia. Community legal centres are independently operating community-based organisations that provide free and accessible legal and related services to vulnerable and disadvantaged members of the community. NACLC has NGO consultative status with the United Nations Economic and Social Council.

The Kingsford Legal Centre is a community legal centre in Sydney that provides free advice and ongoing assistance to members of the community in relation to a number of areas of law, including discrimination law. Kingsford Legal Centre also undertakes law reform and community education work.

This submission draws heavily on the Joint Submission prepared by NACLC, Kingsford and the Human Rights Law Centre as part of Australia's 2015 Universal Periodic Review.² It outlines a number of issues which NACLC and Kingsford suggest that the Committee on Economic, Social and Cultural Rights (the Committee) should consider in its development of a List of Issues Prior to Reporting (List of Issues) in respect of Australia's compliance with the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Important note: This it is not however an exhaustive submission and focuses primarily in areas in which NACLC and Kingsford have knowledge, expertise or interest. As a result, NACLC and Kingsford together with a coalition of NGOs intend to provide a further and more detailed submission prior to the Committee's consideration of Australia's Report in May 2017.

This submission is structured as follows:

- general comments on Australia's 5th report
- an overview of UN reviews of Australia since the Committee's last review
- follow-up and information based on the Committee's previous concluding observations
- issues relating to the general provisions of the ICESCR, and
- issues relating to the specific provisions of the ICESCR.

¹ These organisations include: Community Legal Centres Queensland; Disabled People's Organisations Australia (DPO Australia); Equality Rights Alliance; Federation of Ethnic Communities' Councils of Australia; National Aboriginal and Torres Strait Islander Legal Services; National Mental Health Consumer and Carer Forum; People with Disability Australia; SCALES Community Legal Centre; Victorian Gay and Lesbian Rights Lobby; Welfare Rights Legal Centre; Women's Legal Services Australia; Women's Legal Service NSW; Women with Disabilities Australia; and CAAFLU Aboriginal Corporation* (violence against women section)

² Australia's 2nd Universal Periodic Review, Joint NGO Submission on behalf of Australian NGO Coalition, March 2015, available here: http://www.naclc.org.au/cb_pages/files/Submissions/Final-UPR-Submission-for-website.pdf

General Comments on State Party Report

Australia's fifth periodic report covers the period from 1 July 2009 to 30 June 2014. NACLC and Kingsford note with concern that Australia's fifth periodic report was due on 30 June 2014, but was not provided to the Committee until February 2016.

NACLC and Kingsford are also concerned about the approach taken by Australia to preparing its Report. The Committee noted in its Concluding Observations with respect to Australia's last Report, that 'it regrets that the format chosen in preparing the fourth periodic report of Australia did not provide the Committee with a substantive report on the measures adopted by the State party to give effect to the Covenant rights and on the progress made in achieving the observance of those rights'.³ NACLC and Kingsford consider that the format of the most recent Report, in particular its structure according to Concluding Observations, appears focused on responding to Concluding Observations rather than engaging constructively or providing a substantive report on measures and progress by Australia to give effect to Covenant rights.

In addition, despite specific requests by the Committee in its Concluding Observations and recommendations for additional data on a range of indicators, there is a lack of data in many areas of the Report.

The Report states that it supplements Australia's 2007 Common Core Document and should be read in conjunction with that document. However, the Common Core Document is now out of date in addition to being deficient in a number of key respects. NGOs in Australia continue to consider that it fails to include a number of significant human rights issues or adequately engage with Australia's domestic implementation of ICESCR and progress towards the realisation of economic, social and cultural rights. At the time it was developed NGOs expressed concern about a lack of transparency around its development or consultation with civil society.

Finally, despite the Committee's encouragement and paragraph 14 of Australia's Report which refers to engagement with Australian NGOs, NACLC and Kingsford note with concern the very limited opportunity for NGO engagement or consultation with the Australian Government in relation to its Report or more broadly in relation to domestic implementation of ICESCR.

³ The committee issued its concluding observations on Australia's fourth report on 12 June 2009: Committee on Economic Social and Cultural Rights, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant*, 42nd sess, UN Doc E/C.12/AUS/CO/4 (22 May 2009).

Australia: United Nations Reviews and Engagement

Since its last periodic review by the Committee in May 2009, Australia has been reviewed by a number of other United Nations human rights mechanisms, many of which are directly relevant to the Committee's review of Australia's obligations under the ICESCR. These include:

- Human Rights Council, Australia's 2nd Universal Periodic Review, 2015⁴
- Committee against Torture, 2014⁵
- Committee on the Rights of Persons with Disabilities, 2013⁶
- Committee on the Rights of the Child, 2012⁷
- Human Rights Council, Australia's 1st Universal Periodic Review, 2011⁸
- Committee on the Elimination of Racial Discrimination, 2010⁹
- Committee on the Elimination of Discrimination against Women, 2010¹⁰

Australia has also been subject to country visits by a number of Special Procedures of the UN Human Rights Council, including:

- UN Special Rapporteur on Violence against Women, Its Causes and Consequences, April 2012¹¹
- UN Special Rapporteur on Trafficking in Persons, especially women and children, November 2011¹²
- UN Independent Expert on the Effects of Foreign Debt and other Related International Financial Obligations on Human Rights, February 2011¹³
- UN Special Rapporteur on the Right to Health, November/December 2009¹⁴
- UN Special Rapporteur on Indigenous Peoples, August 2009¹⁵

⁴ Materials are available here: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/AUSession23.aspx>

⁵ Committee against Torture, *Concluding Observations on the initial report of Australia, adopted by the Committee at its tenth session, 2-13 September 2013*, 10th sess, UN Doc CRPD/C/AUS/CO/1 (24 October 2013).

⁶ Committee on the Rights of Persons with Disabilities, *Concluding Observations on the combined fourth and fifth periodic reports of Australia, adopted by the Committee at its 1284th and 1285th meetings, 26 November 2014*, 53rd sess, UN Doc CAT/CO/AUS/4-5 (22 December 2014).

⁷ Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention*, 60th sess, UN Doc CRC/C/AUS/CO/4 (28 August 2012).

⁸ Material is available here: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/AUSession10.aspx>

⁹ Committee on the Elimination of Racial Discrimination, *Consideration of reports submitted by States parties under article 9 of the convention*, 77th sess, UN Doc CERD/C/AUS/CO/15-17 (13 September 2010).

¹⁰ Committee on the Elimination of All Forms of Discrimination against Women, *Concluding observations of the Committee on the Elimination of Discrimination against Women*, 46th sess, UN Doc CEDAW/C/AUS/CO/7 (30 July 2010). Note, Australia's 8th Report was due on 1 July 2014, but has not yet been submitted.

¹¹ See, eg, Australian Human Rights Commission, *'Australian Study Tour Report: Visit of the UN Special Rapporteur on Violence against Women'* Report (2012); National Association of Community Legal Centres, *'NACLC Welcomes Comments by UN Special Rapporteur on Violence Against Women'* (Media Release, 11 February 2015).

¹² Human Rights Council, *Report on the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, Addendum: Mission to Australia*, 20th sess, Agenda Item 3, UN Doc A/HRC/20/18/Add.1 (18 May 2012).

¹³ Cephas Lumina, *Report of the Independent Expert on the Effects of Foreign Debt and Other Related International Financial Obligations of States on the Full Enjoyment of All Human Rights, particularly Economic, Social and Cultural Rights : Addendum, Mission to Australia and to Solomon Islands*, A/HRC/17/37/Add.1 (25 May 2011).

¹⁴ Anand Grover, *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, A/HRC/14/20/Add.4 (3 June 2010).

¹⁵ James Anaya, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, UN A/HRC/15/37/Add.4 (1 June 2010).

Special Procedures of the UN Human Rights Council have also made comments in relation to Australia on a number of occasions since the Committee's last review, as has the UN High Commissioner for Human Rights.¹⁶ A number of Special Rapporteurs are also visiting Australia in 2016 and 2017.

Follow-Up to Committee's Previous Observations

Constitutional and Legal Framework (art 2)

Implementation of Covenant into Domestic Law

Previous Concluding Observations 2009, para 11

Bearing in mind the provisions of article 28 of the Covenant, the Committee reiterates that the principal responsibility for its implementation lies with the State party's Federal government and recommends that it: (a) enact comprehensive legislation giving effect to all economic, social and cultural rights uniformly across all jurisdictions in the Federation; (b) consider the introduction of a Federal charter of rights that includes recognition and protection of economic, social and cultural rights, as recommended by the Australian Human Rights Commission; (c) establish an effective mechanism to ensure the compatibility of domestic law with the Covenant and to guarantee effective judicial remedies for the protection of economic, social and cultural rights.

Despite the previous recommendations of the Committee, Australia has still not fully incorporated ICESCR into Australian domestic law, there is no comprehensive legal framework for the protection of human rights (nor any further consideration of a Federal Charter of Rights that may provide such protection) and Covenant rights are not justiciable or enforceable in Australian courts or tribunals.

While Australia's domestic law contains a number of pieces of legislation that protect certain human rights, particularly the right to non-discrimination, they do not cover all rights provided for in ICESCR. In the absence of a federal charter of rights or human rights act, there are very significant gaps in the protection of human rights.

In April 2010, the Australian Government announced a *Human Rights Framework* in response to an independent national consultation on human rights conducted in 2009. The Framework did not include a federal Human Rights Act—the consultation's key recommendation, it did however include a number of positive developments such as the introduction of statements of compatibility to accompany new Bills introduced into Federal Parliament and the establishment

¹⁶ For example, Human Rights Council, *Report on the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez*, 28th sess, Agenda Item 3, UN Doc A/HRC/28/68/Add.1, paras 27-31.

of a Parliamentary Joint Committee on Human Rights (PJCHR) to provide greater scrutiny of legislation for compliance with Australia's international human rights obligations. However, many elements of the Framework have had limited effectiveness. For example, the recommendations and comments of the PJCHR are rarely appropriately responded to or considered.

In addition, a National Human Rights Action Plan (NHRAP) was introduced in 2012. However, the NHRAP appears to have been discontinued and there has been no publicly reporting on its implementation since June 2013.

Proposed Questions for List of Issues:

Please provide information on the status, of Australia's Human Rights Framework and National Human Rights Action Plan.

Please indicate the ways in which the domestic legal system provides an effective remedy to persons whose rights under the Covenant have been violated.

Australian Human Rights Commission

Previous Concluding Observations 2009, para 13

The Committee recommends that the State party strengthen the mandate of the Australian Human Rights Commission in order to cover all the Covenant rights and ensure that adequate human and financial resources are allocated to this institution, in line with the Paris Principles.

NACLC and Kingsford remain concerned about the mandate of and human and financial resources provided to the Australian Human Rights Commission.

Since the Committee's last review there have been some positive developments, including the establishment of a National Children's Commissioner and Age Discrimination Commissioner, as well as the appointment of a full-time Race Discrimination Commissioner and Human Rights Commissioner.

However, the mandate and powers of the Australian Human Rights Commission remain limited. Determinations of the AHRC are unenforceable and there is no requirement for the Australian Government to implement, or even respond to, the Commission's recommendations. The financial resources allocated to the AHRC also remain inadequate and indeed there has been a substantial reduction in funding.¹⁷

In addition, since the last review, there have been a number of other concerning developments, including the appointment of a Commissioner without a transparent process; the reduction of the Disability Discrimination

¹⁷ While formally outside the review period, the funding cuts to the AHRC announced on 15 December 2014 amount to \$5 million over three years, or more than \$1.6 million per year: see Australian Government, *Mid-Year Economic and Fiscal Outlook: Appendix A – Policy Decisions Taken since the 2014-2015 Budget: Expense Measures* (2014).

Commissioner and Age Discrimination Commissioner from full-time to part-time roles (though this has now been addressed); and attacks on the President of the AHRC and attempts to procure her resignation (though there appears to have been some improvement and recommitment to engaging with and supporting the independence of the AHRC in recent months).¹⁸

Proposed Questions for List of Issues:

Please provide information on the Australian Government's commitment to independence and functioning of the Australian Human Rights Commission, including the human and financial resources allocated to the Commission and its mandate.

Anti-Discrimination Legislation

Previous Concluding Observations 2009, para 14

The Committee recommends that the State party enact federal legislation to comprehensively protect the rights to equality and non-discrimination on all the prohibited grounds.

Australia has enacted a number of federal laws to prevent discrimination, including the *Racial Discrimination Act 1975* (Cth), *Sex Discrimination Act 1984* (Cth), *Disability Discrimination Act 1992* (Cth), and the *Age Discrimination Act 2004* (Cth). In addition, since the last review, in 2011 and 2013 Australia enacted welcome amendments to the *Sex Discrimination Act 1984* (Cth), including to introduce protections for the attributes of relationship status, sexual orientation, gender identity and intersex status.

However, federal anti-discrimination laws remain inconsistent, outdated and fails to comprehensively protect the rights to equality and non-discrimination on all prohibited grounds. For example, the laws fail to actively promote equality or address systemic or intersectional discrimination and are subject to a range of exemptions and exceptions.

Since the last review, concerns have also been expressed in relation to Australia's anti-discrimination legislation in the course of a number of UN reviews, including for example:

- in 2013, the Committee on the Rights of Persons with Disabilities recommended Australia strengthen anti-discrimination laws to address

¹⁸ See, eg, Commonwealth, *Senate Estimates – Legal and Constitutional Affairs Legislation Committee*, Senate, 24 February 2015, 31 (Chris Moraitis); International Service for Human Rights, 'Australia: UN should act to end reprisals against Australian Human Rights Commission' (Media Release, 16 February 2015) <<http://www.ishr.ch/news/australia-un-should-act-end-reprisals-against-australian-human-rights-commission>>.

intersectional discrimination and guarantee protection from discrimination on the grounds of disability.¹⁹

- in 2011, the United Nations High Commissioner for Human Rights expressed concern about discrimination and racism in the community, particularly associated with Islamophobia,²⁰ and
- in 2011, the CRC expressed concern about racism in Australia.²¹

Despite initial moves to review and consolidate federal anti-discrimination law in 2010 and 2011 as one of the initiatives under the Human Rights Framework, this reform was deferred indefinitely in May 2013.

Proposed Questions for List of Issues:

Please provide information on the deferral of the consolidation of Federal anti-discrimination legislation and what consideration has been given to further reviews of anti-discrimination legislation to comprehensively protect the rights to equality and non-discrimination on all prohibited grounds.

Violence against Women

Previous Concluding Observations 2009, para 22

The Committee recommends that the State party take appropriate measures, including specific legislative measures criminalizing acts of domestic violence. In particular, the State party should consider adopting the Australian Human Rights Commission's proposals related to the development of the new Plan of Action to Reduce Violence against Women and their Children, ensuring that it reflects human rights principles; and increase shelters and support services for the victims. The Committee further recommends that the State party increase its efforts to prosecute acts of domestic violence. The Committee request the State party to include in its next periodic report available information on the number and nature of reported cases of domestic violence, on the conviction, and the sanctions imposed on perpetrators, as well as any assistance and rehabilitation measures provided to victims of domestic violence.

As noted in Australia's Report, there have been a range of positive developments designed to address and respond to violence against women since the last review, including the development of a National Plan to Reduce Violence Against Women and Their Children and two three-year action plans under the Plan;²² a

¹⁹ Committee on the Rights of People with Disabilities, *Concluding observations on the initial report of Australia, adopted by the Committee at its tenth session (2-13 September 2013)*, UN Doc CRPD/C/AUS/CO/1 (21 October 2013), para 15.

²⁰ United Nations High Commissioner for Human Rights Navi Pillay, 'Press Conference: Opening Remarks' (Speech delivered in Canberra, 25 May 2011).

²¹ Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention*, 60th sess, UN Doc CRC/C/AUS/CO/4 (28 August 2012), paras 29-30.

²² In 2011, the Australian Government released the National Plan to Reduce Violence against Women and Children 2010 - 2022. The First Action Plan covered the period from 2010 - 2013. The Second Action Plan under the National Plan runs from 2013-2016. The Australian Government is currently developing a Third Action Plan.

commitment to a national domestic violence order scheme; and funding for national organisations such as ANROWS and OurWatch.

However, violence against women in Australia, particularly Aboriginal and Torres Strait Islander women, continues to be a significant issue, with one in three women in Australia experiencing physical violence) and almost one in five women experience sexual violence. Such violence disproportionately impacts a number of groups of women, including Aboriginal and Torres Strait Islander women (who are 35 times more likely to be admitted to hospital for family violence-related injuries); women with disability, women in rural or remote areas, and women in culturally and linguistically diverse communities.²³

In addition to the Committee's recommendations in 2009, this issue was also a major concern of the Committee on the Elimination of Discrimination against Women in 2012.²⁴

The key concerns in relation to violence against women include the lack of an independent mechanism to evaluate implementation of the National Plan, including with NGO input; and its limited focus. Specifically, it fails to adequately consider the experiences of a number of diverse groups of women, including women with disability, Aboriginal and Torres Strait Islander women, women in remote, rural and regional areas, older women, women from culturally and linguistically diverse communities, women in prison, young women and girls and people who are lesbian, gay, bisexual, trans or intersex.

In addition funding for domestic and family violence services and sexual assault services, including specialist women's services and Aboriginal and Torres Strait Islander community controlled organisations, as well as specialist crisis and longer-term responses to violence against women is inadequate. Other issues include the lack of nationally consistent data, the need for family law to prioritise the safety of victims of family violence, and the need for laws to address technology-facilitated stalking and abuse.

Proposed Questions for List of Issues:

Please provide information on monitoring and reporting mechanisms in place with respect to the implementation of the National Plan to Reduce Violence Against Women and Children.

Why has Australia reduced funding to services that assist women and children experiencing family violence, including family violence and sexual assault

²³ See, eg, Australian Bureau of Statistics, *Gender Indicators, Australia*, Feb 2014, Cat No 4125.0. *Australian Institute of Health and Welfare, Family Violence among Aboriginal and Torres Strait Islander Peoples 2006*; Women with Disabilities Australia, *Stop the violence : addressing violence against women and girls with disabilities in Australia : background paper* (2013); Women's Services Network, *Domestic violence in rural Australia: a literature review*, Department of Transport and Regional Services (2000); and Australian Institute of Criminology, 'Emerging Issues in domestic/family violence research', *Research in Practice Report*, No10, (April 2010).

²⁴ Committee on the Elimination of Discrimination Against Women, *Concluding Observations of the Committee on the Elimination of Discrimination against Women*, 46th sess, UN Doc CEDAW/C/AUS/CO/7 (30 July 2012).

services, legal assistance services and other women-specific and Aboriginal and Torres Strait Islander community controlled services?

Ratification of Treaties and Withdrawal of Reservations

Previous Concluding Observations 2009, paras 35 and 36

The Committee recommends that the State party consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

The Committee encourages the State party to give positive consideration to signing and ratifying the Optional Protocol to the Covenant.

Since the last review Australia has ratified the Optional Protocol to the Convention on the Rights of Persons with Disabilities and it entered into force for Australia on 19 September 2009.

In response to recommendations received during Australia's 2011 Universal Periodic Review, Australia also said it would formally consider becoming a party to ILO Convention No. 169, work towards ratification of a number of other instruments and systematically review its reservations to human rights treaties.

However, Australia has not yet ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), ILO Convention No. 169 or the Optional Protocol to ICESCR. Indeed, as part of Australia's 2015 UPR despite recommendations about ratification of both OP-ICESCR and ICRMW the Australian Government noted the recommendations and indicated that ratification would not be considered further at this time.

Australian NGOs and the Australian Human Rights Commission have made repeated recommendations to the Australian Government in relation to these instruments, including that the Parliamentary Joint Standing Committee on Treaties conduct a National Interest Analysis on ratification of these instruments.²⁵

Proposed Questions for List of Issues:

Please explain Australia's current position in relation to signing and ratifying the Optional Protocol to ICESCR and how this position is compatible with the principle that victims should be entitled to an 'effective remedy' for human rights violations.

²⁵ See, eg, Australia's 2nd Universal Periodic Review, Joint NGO Submission on behalf of Australian NGO Coalition, March 2015, available here: http://www.nacli.org.au/cb_pages/files/Submissions/Final-UPR-Submission-for-website.pdf ; Australian Human Rights Commission, Australia's Second Universal Periodic Review, April 2015, available here: <https://www.humanrights.gov.au/submissions/australia-s-second-universal-periodic-review>

Please provide information on Australia's consideration of ratification of other treaties relevant to Covenant rights, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and ILO Convention No. 169.

Other Key Areas

The Committee made a number of concluding observations and recommendations in relation to a number of issues not considered in detail in this submission. These include for example, the following key areas:

Aboriginal and Torres Strait Islander Peoples

The Committee made a number of concluding observations and recommendations in relation to the rights of Aboriginal and Torres Strait Islander peoples.

This submission addresses some of these issues, for example in relation to self-determination, but does not seek to address this issue in detail. NACLC and Kingsford will work with the NGO Coalition and in particular Aboriginal and Torres Strait Islander organisations, to provide further information on these issues in the Joint NGO submission to be provided prior to Australia's review in May 2017. In the interim, the Committee is directed to the wealth of material available highlighting significant concerns about the disadvantage and discrimination faced by Aboriginal and Torres Strait Islander peoples in Australia.²⁶

Briefly however, a significant gap exists between Aboriginal and Torres Strait Islander people and non- Aboriginal and Torres Strait Islander people with respect to many of the rights contained in the ICESCR.

Aboriginal and Torres Strait Islander peoples remain among the most disadvantaged people in Australia across all social indicators. NACLC and Kingsford share serious concerns about legislative, funding²⁷ and policy approaches relating to Aboriginal and Torres Strait Islander peoples and Australia's failure to adequately address these issues, or engage in constructive and meaningful dialogue with Aboriginal and Torres Strait Islander peoples and communities. As expressed by Aboriginal and Torres Strait Islander peak representative organisations in June 2016:

²⁶ See, eg, The Redfern Statement, Statement by Aboriginal and Torres Strait Islander Organisations, June 2016, available here: <http://nationalcongress.com.au/wp-content/uploads/2016/06/The-Redfern-Statement-9-June-2016-FINAL-002.pdf>; Intervention by National Congress of Australia's First Peoples at 15th UN Permanent Forum on Indigenous Issues 2016, available here: http://nationalcongress.com.au/wp-content/uploads/2013/05/160509_UNPFII15_Congress_Item-4_Intervention.pdf ; National Congress of Australia's First Peoples, Shadow Report as part of Australia's 2015 Universal Periodic Review, available here: <http://nationalcongress.com.au/wp-content/uploads/2015/09/UPR-Australia-Congress-Shadow-Report-and-Factsheets-Final.pdf> ; Australia's 2nd Universal Periodic Review, Joint NGO Submission on behalf of Australian NGO Coalition, March 2015, available here: http://www.naclc.org.au/cb_pages/files/Submissions/Final-UPR-Submission-for-website.pdf.

²⁷ For example, in the 2014 Federal Budget there was a cut of over \$534 million over the forward estimates from the Indigenous Affairs portfolio.

'We stand here as Aboriginal and Torres Strait Islander peak representative organisations with a deep concern: that in 2016 First Peoples continue to experience unacceptable disadvantage; that the challenges confronting Aboriginal and Torres Strait Islander people continue to be isolated to the margins of the national debate; that Federal Government policies continue to be made for and to, rather than with, Aboriginal and Torres Strait Islander people; and that the transformative opportunities for Government action are yet to be grasped'.²⁸

Refugees and Asylum Seekers

The Committee made a number of concluding observations and recommendations in relation to refugees and asylum seekers and Australia's immigration policies and practices.

This submission does not seek to address this issue in detail, but information on these policies and practices will be included in the Joint NGO submission to be provided prior to Australia's review in May 2017.

In the interim, the Committee is directed to submissions made by Australian NGOs and the Australian Human Rights Commission to inquiries, other treaty body reviews and Australia's UPR which raise significant concerns in this area, including in relation to mandatory and indefinite detention and conditions in detention.²⁹

People with Disability

The Committee made a number of concluding observations and recommendations in relation to people with disability.

This submission does not seek to address all the issues for people with disability in detail, but information on these policies and practices will be included in the Joint NGO submission to be provided prior to Australia's review in May 2017. In the interim, the Committee is directed to submissions made by Australian NGOs and the Australian Human Rights Commission to other treaty body reviews and Australia's UPR which raise significant concerns in a number of areas.³⁰

²⁸ The Redfern Statement, Statement by Aboriginal and Torres Strait Islander Organisations, June 2016, available here: http://nationalcongress.com.au/wp-content/uploads/2016/06/The-Redfern-Statement-9-June-2016_FINAL-002.pdf

²⁹ See, eg, Australia's 2nd Universal Periodic Review, Joint NGO Submission on behalf of Australian NGO Coalition, March 2015, available here: http://www.naalc.org.au/cb_pages/files/Submissions/Final-UPR-Submission-for-website.pdf and associated Fact Sheet available here: http://www.naalc.org.au/cb_pages/files/UPR/11%2BFinal%2Brefugees%2Band%2BAsylum%2Bseekers%2Bfact%2BSheet-1.pdf; Australian Human Rights Commission, Australia's Second Universal Periodic Review, April 2015, available here: <https://www.humanrights.gov.au/submissions/australia-s-second-universal-periodic-review>.

³⁰ See, eg, Australia's 2nd Universal Periodic Review, Joint NGO Submission on behalf of Australian NGO Coalition, March 2015, available here: http://www.naalc.org.au/cb_pages/files/Submissions/Final-UPR-Submission-for-website.pdf; Committee on the Rights of Persons with Disabilities, 10th sess, UN Doc CRPD/C/AUS/CO/1 (2-13 September 2013) and Australian Civil Society Report to the UN CRPD (August 2012), available here: <http://www.pwd.org.au/issues/crpd-civil-society-shadow-report-group.html>; and

Briefly however, some of the key concerns with respect to people with disability in Australia include:

- the lack of measures to address the negative immigration decisions that disproportionately affect people with disability who cannot easily satisfy the strict health requirement. Numerous individuals with disability and families who have members with disability are denied visas, including people and families who have lived in Australia for many years.
- the significantly high levels of violence and abuse experienced by children and adults with disability particularly in institutional and residential settings, including disability accommodation, mental health facilities, schools, juvenile justice and adult prisons. The Australian Government has still not responded to the November 2015 report from the Senate Inquiry into this matter which included a key recommendation for the establishment of a Royal Commission into this issue.³¹
- Sexual and reproductive rights violations, including forced sterilisation are still evident in Australia. Numerous UN concluding observations have recommended prohibition of forced sterilisation as a matter of urgency.

Culturally and Linguistically Diverse Communities

The Committee made a number of concluding observations and recommendations in relation to migrants and newly arrived immigrants.

This submission does not seek to address all the issues for migrants, newly arrived immigrants and people from culturally and linguistically diverse communities in detail, but information on these issues will be included in the Joint NGO submission to be provided prior to Australia's review in May 2017. In the interim, the Committee is directed to a number of other materials, including submissions made by Australian NGOs to Australia's UPR which raise significant concerns in a number of areas.³²

Australian Human Rights Commission, Australia's Second Universal Periodic Review, April 2015, available here: <https://www.humanrights.gov.au/submissions/australia-s-second-universal-periodic-review>.

³¹ Community Affairs References Committee, Parliament of Australia, *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability* (2015) <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect>

³² See, eg, Australia's 2nd Universal Periodic Review, Joint NGO Submission on behalf of Australian NGO Coalition, March 2015, available here: http://www.naclc.org.au/cb_pages/files/Submissions/Final-UPR-Submission-for-website.pdf; Committee on the Elimination of Racial Discrimination, *Consideration of reports submitted by States parties under article 9 of the convention, 77th sess*, UN Doc CERD/C/AUS/CO/15-17 (13 September 2010); Australian Human Rights Commission, *Freedom from Discrimination, Report on the 40th Anniversary of the Racial Discrimination Act*, National Consultation Report (2015); Prof A Markus, *Australians Today*, the Australia@2015 Scanlon Foundation Survey, (2015), 3 available here: <http://scanlonfoundation.org.au/wp-content/uploads/2016/08/Australians-Today.pdf>.

Housing and Homelessness

The Committee made a number of concluding observations and recommendations in relation to housing and homelessness.

This submission does not seek to address this issue in detail, but information on these policies and practices will be included in the Joint NGO submission to be provided prior to Australia's review in May 2017. In the interim, the Committee is directed to submissions made by Australian NGOs to inquiries, other treaty body reviews and Australia's UPR which raise significant concerns in this area.³³

Briefly, since the last review, homelessness has increased,³⁴ housing affordability has worsened, and there continues to be a social housing shortage and policies. Family violence is now the most common cause of homelessness in Australia. Australian NGOs have recommended that Australia:

- maintain its commitment to halve homelessness by 2020 and develop a comprehensive and coordinated national housing strategy.
- ensure the availability of social and affordable housing suitable for people with diverse housing needs through increased investment in affordable housing programs, specialist homelessness and tenant advisory services
- conduct an audit of laws and policies that impact disproportionately or discriminatorily on people experiencing homelessness and encourage amendment of those laws and policies at state and local levels.³⁵

Mental Health

The Committee made a number of concluding observations and recommendations in relation to mental health and access to mental health services.

This submission does not seek to address this issue in detail, but information on these policies and practices will be included in the Joint NGO submission to be provided prior to Australia's review in May 2017. In the interim, the Committee is directed to submissions made by Australian NGOs and the Australian Human Rights Commission to inquiries, other treaty body reviews and Australia's UPR which raise significant concerns in this area.³⁶

³³ See, eg, Australia's 2nd Universal Periodic Review, Joint NGO Submission on behalf of Australian NGO Coalition, March 2015, available here: http://www.nacli.org.au/cb_pages/files/Submissions/Final-UPR-Submission-for-website.pdf

³⁴ Australian Bureau of Statistics, *Census of Population and Housing: Estimating homelessness*, (12 November 2012) 5.

³⁵ See, eg, Australia's 2nd Universal Periodic Review, Joint NGO Submission on behalf of Australian NGO Coalition, March 2015, available here: http://www.nacli.org.au/cb_pages/files/Submissions/Final-UPR-Submission-for-website.pdf;

³⁶ See, eg, Australia's 2nd Universal Periodic Review, Joint NGO Submission on behalf of Australian NGO Coalition, March 2015, available here: http://www.nacli.org.au/cb_pages/files/Submissions/Final-UPR-Submission-for-website.pdf; Australian Human Rights Commission, Australia's Second Universal Periodic Review, April 2015, available here: <https://www.humanrights.gov.au/submissions/australia-s-second-universal-periodic-review>.

Issues Relating to the General Provisions of the Covenant (arts 1-5)

This section deals with issues relating to the general provisions of the Covenant where they have not already been dealt with above in relation to the Committee's previous observations.

Article 1 — Right of Self-Determination

Aboriginal and Torres Strait Islander peoples remain among the most disadvantaged people in Australia across all social indicators, including engagement with the justice system, health, education, housing and employment. This disadvantage is compounded by a lack of recognition of and respect for the right of self-determination and for Aboriginal and Torres Strait Islander peoples nationally and locally to participate in decisions which affect their communities.

In particular, there are significant concerns about the failure to engage with or fund the peak national representative body for Aboriginal and Torres Strait Islander people, the National Congress of Australia's First Peoples. In addition, other concerns with respect to self-determination in Australia include the need for a comprehensive national reparation system for the Stolen Generations; the ongoing operation of discriminatory laws; and the need for Constitutional recognition of Aboriginal and Torres Strait Islander people.

National representative body

Previous Concluding Observations 2009, para 15

The Committee recommends that the State party...establish a national indigenous representative body with adequate resources.

The establishment of a representative and effective national Aboriginal and Torres Strait Islander body is essential for the realisation of Article 1 of ICESR for Aboriginal and Torres Strait Islander people.

In 2010, following an extensive consultation process, the National Congress of Australia's First People (Congress) was established. However, there are serious concerns with respect to engagement with and support for Congress. For example, in 2015 Congress stated that the Australian Government 'now refuses to formally acknowledge the role and representative status of the National Congress of Australia's First Peoples' and that 'Congress rejects absolutely the proposition by the Australian Government that it has engaged with Congress, amongst others, when designing policies, programmes and implementing services that affect Aboriginal and Torres Strait Islander Peoples'.³⁷

³⁷ National Congress of Australia's First Peoples, *Australia's Second Universal Periodic Review*, Submission, 2015, <http://nationalcongress.com.au/wp-content/uploads/2015/09/UPR-Australia-Congress-Shadow-Report-and-Factsheets-Final.pdf>

In addition, the Australian Government has significantly reduced funding to Congress, including in 2014 a cut of \$15 million³⁸ and now effectively defunded Congress with funding ceasing in mid-2017.

Aboriginal and Torres Strait Islander organisations, other NGOs (including NACLIC and Kingsford Legal Centre) and the Australian Human Rights Commission have consistently called for greater engagement, respect and funding for Congress.³⁹ In addition, Aboriginal and Torres Strait Islander organisations have also called for the establishment of a national body in a number of key Covenant areas including education, employment and housing.⁴⁰

Constitutional recognition

While some steps have been taken towards recognition of Aboriginal and Torres Strait Islander peoples in the Constitution,⁴¹ no model for constitutional change has been finalised nor the timeframe for a referendum announced.

Proposed Questions for List of Issues:

Please provide information on the steps that the Australian Government is taking to promote the right of Aboriginal and Torres Strait Islander peoples of self-determination, including:

- information on funding and support for the National Congress of Australia's First Peoples in a way that acknowledges and respects decision-making by Aboriginal and Torres Strait Islander Peoples, consistent with the Declaration on the Rights of Indigenous Peoples
- steps to ensure that Aboriginal and Torres Strait Islander communities can fully participate in the national conversation about recognition in the Australian Constitution, and
- information on the proposed timeline for a referendum and the proposed model for Constitutional recognition.

³⁸ National Congress of Australia's First Peoples, *Congress 2014 Budget Response* (15 May 2014) <http://nationalcongress.com.au/congress-2014-budget-response>.

³⁹ See, eg, The Redfern Statement, Statement by Aboriginal and Torres Strait Islander Organisations, June 2016, available here: <http://nationalcongress.com.au/wp-content/uploads/2016/06/The-Redfern-Statement-9-June-2016-FINAL-002.pdf>; Australia's 2nd Universal Periodic Review, Joint NGO Submission on behalf of Australian NGO Coalition, March 2015, available here: http://www.nacli.org.au/cb_pages/files/Submissions/Final-UPR-Submission-for-website.pdf; Australian Human Rights Commission, Australia's Second Universal Periodic Review, April 2015, available here: <https://www.humanrights.gov.au/submissions/australia-s-second-universal-periodic-review>.

⁴⁰ See, eg, The Redfern Statement, Statement by Aboriginal and Torres Strait Islander Organisations, June 2016, available here: <http://nationalcongress.com.au/wp-content/uploads/2016/06/The-Redfern-Statement-9-June-2016-FINAL-002.pdf>.

⁴¹ For example, a Referendum Council has been appointed; recommendations have been made by an independent Expert Panel and the Joint Select Committee on Constitutional Recognition; the *Aboriginal and Torres Strait Islander Peoples Recognition Act 2013* (Cth) was passed; and funding has been provided to Reconciliation Australia for the *Recognise* campaign to build community support.

Article 2 — Treaty Entrenchment and Non-Discrimination

See above in relation to the failure to incorporate ICESCR fully into Australian domestic law and the situation in relation to anti-discrimination law.

With respect to foreign aid, the Australian Government abolished AusAID (the Australian Agency for International Development) as an independent agency. Aid is now delivered through the Department of Foreign Affairs and Trade, with a significantly reduced budget. Australia's foreign aid contribution has decreased and remains significantly short of the 0.7 per cent required by the Millennium Development Goals.⁴²

Proposed Questions for List of Issues:

What timeline does Australia propose in order to meet the internationally agreed target of contributing 0.7% of Gross National Income to overseas development assistance?

Article 3 — Equal Rights of Men and Women

Despite Australia's efforts, women continue to experience disadvantage across key indicators including income, access to health, education, housing and political representation. This is particularly so for Aboriginal and Torres Strait Islander women, women from culturally and linguistically diverse and non-English speaking backgrounds and women with disability.

A number of the issues relevant to this article are discussed above with respect to the Committee's previous concluding observations, including for example in relation to violence against women. In addition to the issues discussed below, further work also needs to be done to remove barriers to workforce participation; address the unequal distribution of unpaid caring work; provide affordable and accessible childcare; and ensure women are able to maintain or obtain financial independence through work.

Economic Equality

Previous Concluding Observations 2009, para 17

The Committee recommends that the State party continue strengthening its effort to enhance equality between men and women in the work place, in particular those initiatives aimed at implementing the principle of equal pay for work of equal value. The State party should consider implementing the recommendation of the Senate Legal and Constitutional Affairs Committee in relation to amending the Sex Discrimination Act 1984.

⁴² For example, Australia's aid-to-GNI ratio for 2016-2017 is 0.22%. See, eg, Department of Foreign Affairs and Trade, *2016-2017 Australian Aid Budget Summary* (3 May 2016) <<http://dfat.gov.au/news/news/Pages/2016-17-australian-aid-budget-summary.aspx>>; Department of Foreign Affairs and Trade, *2015-2016 Development Assistance Budget Summary* (February 2016) <<http://dfat.gov.au/about-us/corporate/portfolio-budget-statements/Documents/2015-16-development-assistance-budget-summary-feb16.pdf>>

Australia has significant gendered gaps in wages (24.7% based on full-time total remuneration)⁴³ and retirement savings (women retire with 45.7% less superannuation)⁴⁴. The gender pay gap in the public sector is 12%.⁴⁵

Women also continue to represent a low percentage of high-ranking positions in political and public life. For example, in 2014, only 18.2% of board members of Australia's top 200 companies were female, and 41 boards in the top 200 companies did not have any female members.⁴⁶ Politically, only 38.2% of the last Senate was female and only 26.7% of the House of Representatives.⁴⁷

In a welcome development, in 2012 the Workplace Gender Equality Agency (WGEA) was established, however Australian NGOs have recommended that Australia should address the gendered wage gap, including collecting a range of gender disaggregated data about the needs of diverse groups of women and preventing any reduction in workplace gender equality reporting.

Paid Maternity Leave

Pleasingly and in line with the Committees' recommendation during the last review,⁴⁸ in 2011 Australia introduced a compulsory paid maternity and paternity leave scheme. Specifically, it introduced an 18 week Paid Parental Leave scheme on 1 January 2011, and introduced provision for 12 months unpaid parental leave under the *Fair Work Act 2009* (Cth).

However, the scheme is fixed at the national minimum wage, something the Committee on the Rights of the Child noted with concern in 2012. Further, the Federal Government has not yet ratified the Maternity Protection Convention (No. 183) (which superseded Convention 103) or implemented the recommendations of the Senate to improve the Paid Parental Leave Scheme over time to allow for 26 weeks paid parental leave through the combination of government and employer funding.⁴⁹

⁴³ Workplace Gender Equality Agency, *Gender Pay Gap Biggest In Manager Ranks* (Media Release, 17 February 2015) <https://www.wgea.gov.au/media-releases/gender-pay-gap-biggest-manager-ranks>.

⁴⁴ Ross Clare, *An update on the level and distribution of retirement savings*, Association of Superannuation Funds of Australia Research and Resources Centre, (March 2014).

⁴⁵ Workplace Gender Equality Agency, *Gender Pay Gap Statistics Facts Sheet*, March 2016, available here: https://www.wgea.gov.au/sites/default/files/Gender_Pay_Gap_Factsheet.pdf

⁴⁶ Australian Human Rights Commission, *Supporting Working Parents: Pregnancy and Return to Work National Review*, Final Report (2014) 16.

⁴⁷ Dr Joy McCann and Janet Wilson, *Representation of Women in Australian Parliaments 2014* (9 July 2014) Parliament of Australia.

⁴⁸ Committee on Economic, Social and Cultural Rights, *Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant: concluding observations of the Committee on Economic, Social and Cultural Rights: Australia*, 42nd sess, UN Doc E/C.12/AUS/CO/4 (12 June 2009) para 21.

⁴⁹ Senate Economics References Committee, Parliament of Australia, *A husband is not a retirement plan – Achieving economic security for women in retirement* (2016) 7.

Pregnancy and Return to Work Discrimination

Despite the current legal prohibitions against discrimination under federal anti-discrimination legislation, pregnancy and return to work discrimination is still pervasive in the Australian community.

For example, the *Supporting Working Parents Report* released by the Australian Human Rights Commission in 2014 indicated that one in two (49%) of mothers reported experiencing discrimination in the workplace at some point, and 32% of mothers discriminated against went to look for another job or resigned.⁵⁰ Further, 18% of mothers indicated that they were made redundant or that their jobs were restructured, that they were dismissed or that their contract was not renewed during their pregnancy, when they requested or took parental leave, or when they returned to work.⁵¹ The Report noted that it has been estimated that increasing women's workforce participation in Australia by 6% could increase the national GDP by \$25 billion.⁵²

A range of measures are necessary to address this issue, for example including:

- collaborating with peak bodies in business, unions and the community to coordinate the production and dissemination of clear, comprehensive and consistent information about employer obligations, employee rights and leading practices and strategies⁵³
- strengthening of the 'right to request' provisions under s 65 of the *Fair Work Act 2009* (Cth) and clarifying provisions under the National Employment Standards under the *Fair Work Act 2009* (Cth)⁵⁴
- further amending the *Sex Discrimination Act 1984* (Cth) to extend the discrimination ground of family responsibilities under the Act to include indirect discrimination; include a positive duty on employers to reasonably accommodate the needs of workers who are pregnant and/or have family responsibilities; and ensure companies are able to make higher superannuation payments for their female employees when they wish to do so,⁵⁵ and
- improving monitoring and data collection.⁵⁶

⁵⁰ Australian Human Rights Commission, *Supporting Working Parents: Pregnancy and Return to Work National Review*, Final Report (2014) 8.

⁵¹ *Ibid.*

⁵² *Ibid.*, 9

⁵³ *Ibid.*, 12

⁵⁴ *Ibid.*

⁵⁵ Australian Human Rights Commission, *Supporting Working Parents: Pregnancy and Return to Work National Review*, Final Report (2014,) 12; Senate Economics References Committee, Parliament of Australia, *A husband is not a retirement plan – Achieving economic security for women in retirement* (2016) 14.

⁵⁶ Australian Human Rights Commission, *Supporting Working Parents: Pregnancy and Return to Work National Review*, Final Report (2014,) 13.

Proposed Questions for List of Issues:

Please provide information on measures in place or planned to reduce the gender pay gap.

Please provide information on measures in place or planned to improve the situation of women with respect to superannuation.

Please provide information on measures in place or planned to address return to work and pregnancy discrimination experienced by women in Australia.

Issues Relating to Specific Provisions of the Covenant (arts 6-16)

Article 6 — Right to Work

The Committee made a number of concluding observations and recommendations in relation to social security.

This submission does not seek to address social security issues in detail, but information on these policies and practices will be included in the Joint NGO submission to be provided prior to Australia's review in May 2017. In the interim, the Committee is directed to submissions made by Australian NGOs to other inquiries, treaty body reviews and Australia's UPR which raise significant concerns in this area.⁵⁷

Briefly however, it is important to note that barriers to the enjoyment of the right to work are faced by many people in Australia, including in particular Aboriginal and Torres Strait Islander peoples, asylum seekers, migrants, people with disability, young people and older people. For example:

Aboriginal and Torres Strait Islander People

The national unemployment rate for Aboriginal and Torres Strait Islander people aged 15 years and over is 20.6% nationally, and 27.4% in remote areas.⁵⁸ This is almost four times the unemployment rate for all Australians, which was 5.7% in July 2016.⁵⁹

⁵⁷ See, eg, Australia's 2nd Universal Periodic Review, Joint NGO Submission on behalf of Australian NGO Coalition, March 2015, available here: http://www.naclc.org.au/cb_pages/files/Submissions/Final-UPR-Submission-for-website.pdf. The Redfern Statement, Statement by Aboriginal and Torres Strait Islander Organisations, June 2016, available here: http://nationalcongress.com.au/wp-content/uploads/2016/06/The-Redfern-Statement-9-June-2016_FINAL-002.pdf;

⁵⁸ Australian Bureau of Statistics, *National Aboriginal and Torres Strait Islander Social Survey, 2014-15* (28 April 2016) <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/4714.0>>

⁵⁹ Trading Economics, *Australia Unemployment Rate* (2016) <<http://www.tradingeconomics.com/australia/unemployment-rate>>

Asylum Seekers and Refugees

Asylum seekers who arrived in Australia by boat on or after 13 August 2012 and are granted bridging visas are not permitted to work.⁶⁰ This has negative consequences on physical and social wellbeing and encourages isolation, mental health issues and family breakdown.⁶¹

People with Disability

The labour force participation rate for people with disability in Australia is low, at 53.4%, compared with 83.2% for people without a disability.⁶² This figure has changed little over the past twenty years, suggesting that the current strategies in place are not doing enough to secure the right to work for people with a disability.

Older People

Despite a rise in the workforce participation by Australians aged 55-64 (particularly amongst women); Australia has a comparatively low workforce participation rate of older Australians compared with other OECD countries. For example, people aged 55 years and over make up approximately a quarter of the population, but only 16% of the total workforce.⁶³ In November 2015, 73.8% of Australians aged 55–59 years were participating in the labour force, with 56.5% of 60–64 year olds and 12.7% of those aged 65 years and over in the labour force.⁶⁴

Two key inquiries have considered this issue, including a 2013 report from the Australian Law Reform Commission⁶⁵ and a 2016 report from the Australian Human Rights Commission.⁶⁶ Unfortunately however, despite these inquiries, the Australian Government has announced no specific course of action to support mature age employment and comply with Covenant rights.

Proposed Questions for List of Issues:

Please provide information on measures taken or planned to address barriers to employment faced by Aboriginal and Torres Strait Islander peoples, asylum seekers, migrants, people with disability, young people and older people.

⁶⁰ Australian Human Rights Commission, *Tell Me About: Bridging Visas for Asylum Seekers* (April 2013) 2. <https://www.humanrights.gov.au/sites/default/files/document/publication/Fact%20Sheet%20on%20Bridging%20Visas.pdf>

⁶¹ *Ibid*, 3.

⁶² Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with a Disability* (2016) 35.

⁶³ Australian Bureau of Statistics, *Australian Social Trends, Sep 2010, cat 4102.0 — Older People and the Labour Market* (2010).

⁶⁴ Australian Bureau of Statistics, *Labour Force, Detailed — Electronic Delivery, November 2015* (Cat. No. 6291.0.55.001).

⁶⁵ Australian Law Reform Commission, *Access All Ages—Older Workers and Commonwealth Laws*, ALRC Report 120 (2013).

⁶⁶ Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability* (2015).

Article 9 — Right to Social Security

The Committee made a number of concluding observations and recommendations in relation to social security.

This submission does not seek to address social security issues in detail, but information on these policies and practices will be included in the Joint NGO submission to be provided prior to Australia's review in May 2017. In the interim, the Committee is directed to submissions made by Australian NGOs to inquiries, other treaty body reviews and Australia's UPR which raise significant concerns in this area.⁶⁷

Briefly however, there are ongoing concerns about the ability of all people who require social security in Australia to access it, in particular refugees and asylum seekers, newly arrived migrants, people unable to provide adequate proof of identity, and marginalised and disadvantaged people. Other issues include:

- inadequacy of social security payments, including many pegged around or below the poverty line which are insufficient to support a dignified and adequate standard of living
- the conditionality of some social security payments, including compulsory income management schemes and the operation of the Cashless Welfare Card which disproportionately affect some groups and restrict individual decision-making, with little evidence of effectiveness
- the Community Development Program legislation, and
- the impact of the compliance regime, reviews of entitlement and penalties.

Article 10 — Right to Family

This submission does not seek to address social security issues in detail, but information on these policies and practices will be included in the Joint NGO submission to be provided prior to Australia's review in May 2017. In the interim, the Committee is directed to submissions made by Australian NGOs to other treaty body reviews and Australia's UPR which raise significant concerns in this area.⁶⁸

⁶⁷ See, eg, Australia's 2nd Universal Periodic Review, Joint NGO Submission on behalf of Australian NGO Coalition, March 2015, available here: http://www.naclc.org.au/cb_pages/files/Submissions/Final-UPR-Submission-for-website.pdf

⁶⁸ See, eg, Australia's 2nd Universal Periodic Review, Joint NGO Submission on behalf of Australian NGO Coalition, March 2015, available here: http://www.naclc.org.au/cb_pages/files/Submissions/Final-UPR-Submission-for-website.pdf

Briefly however, a number of areas of particular concern include:

- the treatment of children in immigration detention⁶⁹
- the impact of Australia's legislative and policy approaches to refugees and asylum seekers, including for example sponsorship rules and delays in processing applications
- the level of Aboriginal and Torres Strait Islander children in out-of-home care
- the disproportionate removal of children from parents with disability, and
- ongoing discrimination and inequality for members of the lesbian, gay, trans, intersex (LGBTI) community in Australia, with LGBTI couples unable to marry,⁷⁰ overseas marriages not recognised, and some jurisdictions not allowing same-sex couples to legally adopt children, including those already in their care.⁷¹

Article 11 — Right to an Adequate Standard of Living

This submission does not seek to address social security issues in detail, but information on these policies and practices will be included in the Joint NGO submission to be provided prior to Australia's review in May 2017. In the interim, the Committee is directed to submissions made by Australian NGOs to other treaty body reviews and Australia's UPR which raise significant concerns in this area.⁷²

Briefly however, a number of areas of particular concern include:

- despite Australia being a comparatively wealthy country, poverty remains at unacceptable levels. 2.55 million people in Australia (13.9%) are living below the poverty line, after taking account of their housing costs including 603,000 children (17.7% of all children).⁷³ The proportion of people in poverty increased between 2010 and 2012 from 13 to 13.9%.

⁶⁹ See, eg, Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention*, 2014 available here: <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/forgotten-children-national-inquiry-children>

⁷⁰ Mary Anne Neilsen, *Same-sex marriage*. Law and Bills Digest, Commonwealth of Australia <http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook44p/Marriage>.

⁷¹ Queensland, Northern Territory and South Australia do not currently permit same-sex couples to adopt children in their care, however both South Australia and Queensland have flagged proposed amendments.

⁷² See, eg, Australia's 2nd Universal Periodic Review, Joint NGO Submission on behalf of Australian NGO Coalition, March 2015, available here: http://www.naclc.org.au/cb_pages/files/Submissions/Final-UPR-Submission-for-website.pdf.

⁷³ Australian Council of Social Service (ACOSS), *Poverty in Australia 2014*, 2014. This analysis is based on 2012 data using the 50% of median income poverty line, the most austere poverty line widely used in international research. Available at http://acoss.org.au/images/uploads/ACOSS_Poverty_in_Australia_2014.pdf.

- the majority of people living below the poverty line in Australia rely on social security payments as their main source of income (61%) and payments to people who are unemployed and young people fall well below the poverty line and assistance to sole parent families is inadequate to protect children from poverty
- Aboriginal and Torres Strait Islander people, particularly those living in remote communities, suffer from severe disadvantage, including in relation to living standards and experience significant barriers and limited access to services.⁷⁴

Articles 13 & 14 — Right to Education

This submission does not seek to address the right to education in detail, but information on these policies and practices will be included in the Joint NGO submission to be provided prior to Australia's review in May 2017.

Briefly however, there are a range of issues of particular concern with respect to education in Australia, including education funding, early childhood education, human rights education, and education for Aboriginal and Torres Strait Islander peoples.

Since the last review, concerns have been expressed in relation to the right to education in the course of a number of UN reviews, including:

- The Committee on the Rights of the Child expressed ongoing concerns about the barriers to education faced by Aboriginal and Torres Strait Islander children and children living in remote areas. It recommended that Australia further improve the quality and coverage of its early childhood care and education and ensure adequate resources for implementing bilingual models of education.⁷⁵
- The Committee on the Elimination of Discrimination against Women reported that access, support and funding continued to be major obstacles to training and educational opportunities for Aboriginal and Torres Strait Islander women.⁷⁶
- The Committee on the Rights of Persons with Disabilities expressed concern about students with disabilities being placed in special schools, or being confined to special classes and units. It made a number of

⁷⁴ See, for example: Steering Committee for the Review of Government Service Provision, Productivity Commission, *Overcoming Indigenous Disadvantage: Key Indicators 2014* (2014); Committee on the Rights of the Child, *Concluding Observations: Australia*, UN Doc /C/AUS/CO/4 (19 June 2012); Select Committee on Regional and Remote Indigenous Communities, *First Report* (2008); James Anaya, Special Rapporteur, *Report by the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People: Addendum – The Situation of Indigenous Peoples in Australia* (Advanced unedited version), UN Doc A/HRC/15 (4 March 2010).

⁷⁵ Committee on the Rights of the Child, *Concluding Observations: Australia*, 60th sess, UN Doc CRC/C/AUS/CO/4 (28 August 2012) [74]–[77].

⁷⁶ Committee on the Elimination of Discrimination against Women, *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Australia*, 46th sess, UN Doc CEDAW/C/AUL/CO/7 (30 July 2010) [40]–[41].

recommendations, including that Australia increase participation and completion rates by students with disabilities.⁷⁷

Education Funding

In 2010, the former Federal Minister for Education, the Hon Julia Gillard MP, initiated a review of national education funding entitled the Review of Funding for Schooling (also known as the Gonski Review).⁷⁸ The report found that the performance of Australian students has declined at all levels of achievement and that Australia has a significant gap between its highest and lowest performing students.⁷⁹ The report also found that there is a link between low levels of achievement and educational disadvantage, particularly among students from low socioeconomic and Indigenous backgrounds.⁸⁰

The report made 41 recommendations related to the funding of schools across Australia including that significant additional investment is required; that all recurrent funding for schools be based on a new schooling resource standard; and that there is a need for a fairer funding framework, better coordination of school infrastructure funding and works, a national schools resourcing body, and stronger governance and accountability.⁸¹

Proposed Questions for List of Issues:

Please provide information on the status of the implementation of the 41 recommendations contained in the Gonski Review and an assessment of Australia's progress in addressing the issues identified in the Review.

⁷⁷ Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Initial Report of Australia*, 10th sess, UN Doc CRPD/C/AUS/CO/1 (21 October 2013) [45]–[46].

⁷⁸ Australian Government, *Review of Funding for Schooling*, Final Report, December 2011.

⁷⁹ *Ibid*, 22.

⁸⁰ *Ibid*, 111–117.

⁸¹ *Ibid*, xxi–xxviii.