



**AUSTRALIA'S  
NATIONAL FRAMEWORK  
FOR  
HUMAN RIGHTS  
  
NATIONAL ACTION PLAN**

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# FOREWORD

Australia believes that the protection and promotion of human rights is every nation's responsibility and that the function of government is to safeguard the dignity and rights of individuals, whose lives should be free of violence, discrimination, vilification, and hatred.

Australia has a proud human rights record. We enjoy a strong democratic tradition, a transparent and independent judicial system and a free press. Our society is characterised by a sense of egalitarianism.

But no nation is without its human rights challenges and we do not rest on our laurels. We continue to strive to protect and promote human rights and to address disadvantage. The Government's reform agenda is actively ensuring that each member of the Australian community has the opportunity to participate in the life of our community and to experience the benefits and accept the responsibilities that flow from such participation. The National Action Plan on Human Rights provides a framework within which the Government can ensure that future challenges are met positively and productively.

In 1994, Australia was the first State to put forward a National Action Plan on Human Rights. The Plan demonstrated Australia's longstanding commitment to the universal enjoyment of human rights, and Australia's ongoing efforts in promoting human rights domestically and internationally.

Ten years later, the Government reaffirms Australia's commitment to the protection and promotion of human rights, through the development of this revised National Action Plan. The Plan sets out the priority areas in which the Government aims to enhance the enjoyment of human rights in Australia over the coming decade, and also describes the comprehensive human rights protections already in place in Australia.

This revised National Action Plan moves beyond the United Nations treaty-based structure of the previous Plan. It adopts a far broader approach, encompassing such elements as protection of the family and the rights of the disabled, in addition to the human rights priority areas included under the treaty system. The Plan sets out a strategic vision for Australia's human rights priorities, and provides a structure to ensure these human rights priorities are implemented.

In 2004 Australia has also served as Chair of the United Nations Commission on Human Rights, further emphasising this nation's prominent and effective position as a leader in the field of human rights.

I trust that this document, Australia's revised National Action Plan on Human Rights, will raise international awareness of programs in Australia that practically and successfully promote and protect human rights. Importantly, it will also provide Australians with a comprehensive guide to the Government's human rights legislation, structures, programs and future initiatives.

**John Howard**  
**Prime Minister**  
**December 2004**

## **PART I - OVERVIEW**

Australia's approach to human rights is a reflection of our liberal democratic ideals and our belief that justice and human dignity are the self-evident rights of all people. We therefore embrace the obligations arising from our participation in the United Nations human rights system and from our ratification of international human rights instruments. Australia has played a lead role in the development of international human rights standards, and is party to the human rights treaties listed in Annexure B. Australia has also made a significant contribution to supporting the efforts of peoples in developing countries to achieve higher standards of human rights, particularly through the promotion of democratic institutions.

### **Australia's robust system of human rights protections**

Australia's leading role in developing the international human rights system, and its commitment to the principle of fair treatment for all, is enforced by our nation's robust domestic system of human rights protection. Australia takes the view that universal observance of human rights, both at home and abroad, helps to achieve a more stable and just international order, which benefits the security and prosperity of all nations and individuals.

Human rights policy in Australia is based on the principle that human rights are inherent, inalienable, indivisible and universal. They are the birthright of all human beings, cannot be lost or taken away, are all of equal importance and apply to all persons irrespective of race, sex, disability, language, religion, political or other opinion, national or social origin, age, property or other status.

Australia's existing system for protecting human rights is comprehensive, with requirements essential to such protections established and supported by successive governments. The Australian Government recognises that, at a fundamental level, the promotion and protection of human rights is best achieved through strong and robust democratic institutions such as an independent judiciary, responsible and accountable government, the rule of law, well-resourced and respected opposition parties, and a free media.

The central features of our constitutional system are the doctrines of "responsible government", under which the Executive is accountable to the Parliament and the Parliament to the people; and the "separation of powers", which separates the judicial system from the other branches of Government to ensure it remains an independent arbiter of governmental action. Responsibility ensures governments must take into account the will of the people in making decisions, while separation forces dispersion of powers and responsibilities to avoid the concentration of power in any one section of government.

The transparent legislative process means that laws developed by the Executive must be approved by both houses of Parliament. Regulations must be authorised by laws and are subject to disallowance by the Parliament. Once a law is passed, the separation doctrine ensures that the Parliament is bound to accept the decision of the courts about what a particular law means and how it is to be applied.

In Australia, all people and bodies, including the Government, can have the lawfulness of their actions scrutinised in a court of law and can be held accountable for any activity determined to be inconsistent with the law. Government policies are implemented by a professional and apolitical public service. Citizens have the right to be given reasons for administrative decisions made about them by Government officials, and to have those decisions independently reviewed through the administrative tribunal system and/or the courts. There is also a range of ombudsmen and commissions that can inquire into government decisions and allegations of misconduct. In addition, a network of parliamentary committees exists, with specific responsibilities to review various spheres of government activity and legislation.

As the highest law in Australia, the Constitution specifically protects certain rights and freedoms, including trial by jury, freedom of religious association, and just terms for acquisition of property, as well as an implied right to political communication. The Constitution also gives jurisdiction to the High Court for any person to challenge the lawfulness of government decisions.

The Constitution of Australia also prohibits the Commonwealth Parliament from making any law for establishing any religion, imposing any religious observance, or prohibiting the free exercise of any religion. From the earliest days of European settlement religious diversity has been a fact and religious freedom has been a part of Australian life. While Australia is predominantly a Christian country, there are large communities that practice Islam, Buddhism, Judaism, and Hinduism. Australia also has a rich history of Indigenous traditions and beliefs, as well as a diversity of other faiths. It is widely considered that there is a high level of embracement in the community concerning this diversity and that Australia operates a best-practice model of inter-faith dialogue. The Australian Government recognises, however, that constant vigilance, through the rigorous investigation of complaints by statutory bodies, is necessary to ensure the human right to free religious expression is protected for all community members.

The Australian criminal justice system supports the primacy of the rule of law by ensuring those accused of crimes are subject to a fair, transparent investigation and trial process. A person can only be detained by police for a limited period, before being taken before an independent judicial officer who decides whether the person may be detained in custody pending trial. A person subject to trial is presumed to be innocent, and the trial must take place before a judicial officer (judge or magistrate) who is independent of the executive government and legislature. Generally, a person who is placed on trial for a serious offence that is punishable by a significant term of imprisonment has the right to be tried before a jury drawn from the community.

These strong democratic institutions — responsible government, the separation of powers, the observance of constitutional safeguards, and a transparent criminal justice system — are complemented by a number of specific legal protections for human rights. Arguably the most important of these is Australia's independent national human rights institution, the Human Rights and Equal Opportunity Commission (HREOC), which plays a central role in administering a statutory system for dealing with discrimination and human rights complaints from individuals. The structure and functions of HREOC conform to the United Nations principles for the operation of national human rights institutions (the Paris Principles). These require a State to ensure that its national human rights institution has:

- its independence guaranteed by statute
- autonomy from government
- pluralism, including in membership
- a broad mandate based on universal human rights standards
- adequate powers of investigation, and
- sufficient resources to carry out its functions.

As an independent statutory body established by an Act of Federal Parliament, HREOC controls the expenditure of its own budget, and can and does criticise the Government if it concludes that there has been a breach of domestic human rights legislation for which it has responsibility or where it considers there has been a breach of certain international human rights treaties to which Australia is a party.

Complaints of unlawful discrimination under the *Racial Discrimination Act 1975*, *Sex Discrimination Act 1984*, *Disability Discrimination Act 1992* and *Age Discrimination Act 2004* can be made to HREOC. HREOC can investigate and attempt to conciliate the complaints. Where a complaint is unable to be conciliated, it can be terminated by HREOC and proceedings alleging unlawful discrimination can be instituted in the Federal Court of Australia or the Federal Magistrates Court.

HREOC is also responsible for inquiring into acts and practices by Commonwealth authorities that are alleged to infringe human rights as set out in specified international instruments to which Australia is a party. Matters which cannot be resolved by conciliation can be the subject of a report by the Commission to the Australian Attorney-General, who in turn must table the report in Parliament.

Human Rights education is one of the core responsibilities of the Commission. The Commission conducts public awareness and educational programs aimed at the community, government and business sectors. In addition, the Commission can conduct national inquiries into issues of major importance, which can also be a powerful educational tool.

In addition to HREOC, there are many non-government organisations (NGOs) that also have an important role to play in the promotion and protection of human rights standards in public life. Some organisations focus exclusively on specific human rights issues, whereas others have broader interests which inevitably encompass human rights. Other NGOs focus on discrete areas such as the rights of women, children or Indigenous peoples.

There are many NGOs in Australia that work cooperatively with the Government in enhancing human rights by providing a range of support services, such as: food and shelter for the homeless; support for people with disability; refuges for women who are victims of domestic violence; AIDS support services; community legal centres; and community health care.

Other private bodies assume an advocacy role in the protection and promotion of human rights, seeking to affect change through lobbying Governments on human rights issues. As their names imply, NGOs are independent of governments and therefore do not always share the same views as national governments or international bodies such as the UN. While the views and methodologies of NGOs do not always coincide with those of Government, the input which NGOs bring to the domestic and international human rights debate is both legitimate and an important source of positive dialogue.

The Australian Government seeks to maintain a positive and constructive relationship with NGOs in the human rights field and consults with them on a regular basis. For example, the Minister for Foreign Affairs has instituted formal consultative meetings with NGOs twice a year. The Attorney-General also consults with NGOs involved in the domestic enhancement of human rights at an annual roundtable forum.

To build upon these current strong human rights protections in place in Australia, the Government believes that its human rights initiatives — as well as vigilant monitoring to ensure current standards are maintained — are essential to advance human rights protections in this nation and the region in the 21st century.

The Government's current and future initiatives to further strengthen Australia's human rights record include partnerships between governments, the business sector and the wider Australian community. This demonstrates the Government's commitment to the effective and equitable protection of the human rights of all people. The areas the Government has identified as most greatly assisting the encouragement and enforcement of universal human rights in the future are: promoting a strong, free democracy; human rights education and awareness; addressing disadvantage and assisting independence; supporting the family; and promoting human rights internationally.

These priority areas are built upon the fundamental human rights protections already in place in Australia, as set out in Annexure A.

## **Promoting a strong free democracy**

Australia has one of the most effective representative democracies in the world. The Government considers that Australia's federal structure, independent judiciary and robust representative parliamentary institutions play an integral role in protecting human rights and provide a bulwark against abuses of power and denials of fundamental freedoms.

The Government aims to encourage a greater understanding and participation in Australia's democratic institutions and enhancing the effectiveness of and accessibility to the judicial system. This will be achieved through financial and policy commitment to supporting civics and citizenship education, programs to enhance the effectiveness and elemental fairness of the judicial system, and ensuring access for all people to the legal system.

## **Human rights education**

The Government believes that education and raising public awareness are the most lasting and effective ways to minimise discrimination and promote tolerance of all members of the community, irrespective of gender, differing racial, religious or cultural backgrounds, age or physical or mental disability.

Australia's national human rights institution, HREOC, has an important statutory function of promoting an awareness of, and respect for, human rights in the community. The Government strongly supports HREOC's educative role through respect for the Commission's independence and consideration of its recommendations, proposals, and education initiatives. Financial support is provided under statute by the Commonwealth Parliament. This continuing support by Parliament and Government has assisted HREOC to develop a number of innovative and effective human rights education programs, which target schools, businesses, government agencies, community groups and the general public. Almost all areas of HREOC's work have an educational or public awareness component.

An important educative function is also played by NGOs. NGOs play a double role in human rights education. They provide vital information to Government about human rights issues which affect people at the grassroots level. At the same time, they serve to educate the people they represent about the human rights programs and protections which are available to them.

The National Committee on Human Rights Education, established by the Australian Government in 1998, also has an educative role in the community. The Committee's work complements that of HREOC by providing a forum for representatives from non-government organisations, government agencies, community bodies, businesses and the media to discuss and implement initiatives dealing with human rights education.

Human rights legislation is also an important tool in human rights education. Australia currently has in place federal legislation to protect against discrimination on the basis of race, sex, disability and age. Such legislation, which outlaws discrimination and harassment in a number of areas is an important element of human rights education. Such legislation serves to educate the public as to what is acceptable behaviour, while judgments concerning unlawful discrimination under the legislation reinforce the principles that such discrimination is unacceptable.

The Government is also fully committed to multicultural Australia, which recognises and celebrates cultural and linguistic diversity and the benefits this has to offer. The appointment of a Minister for Citizenship and Multicultural Affairs demonstrates the significance of multiculturalism in Government decision-making. The Government considers that human rights education is an important element in multicultural Australia, and has implemented a number of educational programs aimed at promoting respect for racial and cultural diversity.

## **Addressing disadvantage and assisting independence**

Australia has a wide range of programs, services and support mechanisms designed to assist every Australian to reach their full potential. The Government is committed to ensuring that such programs and services target those most in need, such as Indigenous Australians, people with disability, and women, while encouraging all Australians to contribute to the Australian community to the extent that they are able.

The Government is dedicated to reducing the disadvantage experienced by Indigenous Australians and to increasing their opportunities to achieve self-reliance and economic independence. To assist Indigenous people to secure an equitable position in Australian society, the Government places high priority on initiatives in the areas of health, housing, education and employment.

The Government supports those outcomes of the Programme of Action from the World Conference against Racism that urge States to stimulate the access of Indigenous people to economic activities, increase levels of employment, promote Indigenous enterprise and provide access to training and services that benefit community development.

The Government funds and supports structural change that will produce better outcomes for Indigenous people. The Government seeks to improve outcomes for Indigenous people by building partnerships of shared responsibility with them and their organisations, and by co-operation and co-ordination between all levels of government in the delivery of services to Indigenous people as part of this partnership.

The Australian Government also wants to ensure that, to the greatest extent possible, people with disability are able to have the same opportunities as every other person and lead an independent life. The *Disability Discrimination Act 1992* (Cth) contains general principles designed to ensure that the rights of people with disability are included and upheld to the greatest possible extent in all aspects of broad community life.

To ensure the human rights of people with disability are respected, the Government is also concentrating on improving standards of access to premises and public transport and improving disabled people's educational and employment opportunities. Implementation of the Government's welfare reforms will enhance the participation of people with disability in the workforce and ensure that Government programs and services are accessible to people with disability.

The Government is also strongly resolved to eliminating discrimination and violence against women and girls. In addition to legislation prohibiting discrimination on the basis of sex, a range of initiatives have been introduced to improve opportunities and choices for women, particularly in the areas of health, education, training and employment. The Government is also funding major programs to increase women's participation in leadership and decision-making. It considers that educative measures and practical assistance to increase opportunities for women to participate in positions of leadership and decision-making are an essential element in achieving women's equality.

The Government also recognises that younger and older Australians make important contributions to the welfare of this nation, and should therefore be allowed to participate fully in its economic, cultural and social spheres, free from discrimination. To this end, the federal Parliament has enacted legislation that makes unfair discrimination on the basis of age unlawful.

The Government recognises that poverty also acts to reduce participation in all facets of life necessary to fully enjoy individual human rights. A comprehensive system of social security payments, targeted at those in need, provides a safety net to assist those who are unable to fully support themselves, whether because of age, illness or disability, caring responsibilities or unemployment. In addition a comprehensive system of financial and support-network assistance is maintained and expanded by government: to support families; assist with the cost of children and at the birth of a child; help low to middle-income families afford essential services; and provide income support for young people seeking work or undertaking education or training.

## **Supporting the family**

The family is the building block of any society and is central to enabling every Australian to reach their full potential and contribute to community life. To this end, the Government aims to ensure that families and children receive the support that they require, particularly in times of need, to create a productive and cohesive society.

The Government has constructed a wide range of policies, focusing on every aspect of strengthening and encouraging the family unit. Early childhood programs, policies to protect children and young Australians, strengthening the family law system, and the encouragement of marriage and a lifetime commitment from adults to their children, are all designed to result in strong families that will foster elemental human rights.

The Australian Government Response to the 1998 Joint Standing Committee on Treaties report on the Inquiry into the Convention on the Rights of the Child reflects Australia's strong commitment to the needs of children. This commitment is evident through a wide range of initiatives and programs within the Australian Government's areas of responsibility: the development of integrated policy and programs to strengthen families and prevent child abuse and neglect; income support and policy for those whose primary role is caring for children; and a national child care policy.

The Government has identified early childhood as a priority area for action and is developing a National Agenda for Early Childhood in close consultation with all levels of government and the non-government sector. The creation of the Department of Family and Community Services and the recent introduction of the position of Parliamentary Secretary for Children and Youth Affairs have ensured an integrated approach across the spectrum of Australian Government policies and programs for children.

## **Promoting human rights internationally**

The Australian Government views human rights as an inseparable part of Australia's overall foreign policy approach, because the treatment of individuals is of itself a matter of concern to Australians and because promoting and protecting human rights

underpins Australia's broader security and economic interests. Accordingly, the Government will continue to adopt a multi-faceted approach to promoting human rights, through multilateral forums such as the United Nations, bilateral relationships, Australia's international aid programs, Asia-Pacific regional initiatives, and other measures.

Australia's human rights policies are very strongly oriented towards achieving practical outcomes that improve the rights of individuals. The Government considers that constructive engagement, combined with technical assistance, capacity building and development of institutions that protect human rights, is the most effective way of advancing human rights. The Government therefore actively pursues dialogue on human rights with several countries, and undertakes formal talks and site visits to enhance each nation's understanding of human rights successes and ongoing challenges.

Of particular importance to the Australian Government is the continued support of a vibrant, effective and positive program of international aid. The Australian Aid Programme assists developing countries to reduce poverty and achieve sustainable development. It is an integral part of Australia's human rights policies and a practical expression of Australia's commitment to the protection and promotion of fundamental human rights. While the primary responsibility for protecting human rights in developing countries necessarily rests with the governments of those countries, Australia's aid program assists those governments to meet their responsibilities, and will continue to strengthen human rights in the region and throughout the world.

## **PART II – HUMAN RIGHTS IN AUSTRALIA**

### **A. BACKGROUND TO AUSTRALIA’S NATIONAL FRAMEWORK FOR HUMAN RIGHTS – NATIONAL ACTION PLAN**

Australia first proposed the concept of countries developing national action plans on human rights in 1993 at the Vienna World Conference on Human Rights. The proposal was adopted by the Conference and became one of the recommendations in the Vienna Declaration and Programme of Action which states:

The World Conference on Human Rights recommends that each State consider the desirability of drawing up a national action plan identifying steps whereby that State would improve the protection and promotion of human rights.

In 1994, Australia was the first country to complete a national action plan. The Plan drew together all elements of Australian government policy relating to the domestic observance of the full range of civil, political, economic and social rights. The Plan was updated in 1995 and 1996–97.

It was recognised that a country’s national action plan may need to be reviewed in the future to improve the enjoyment of human rights in that country. It was also recognised that each national action plan would reflect the political, cultural, historical and legal circumstances of each country concerned.

The Government recognises that discrimination and human rights abuses can cut across, and be compounded by, factors such as race, gender, disability and age. For example, women from culturally and linguistically diverse backgrounds may suffer heightened discrimination because of both their race and their gender. The revised National Action Plan therefore approaches the promotion and protection of human rights thematically rather than on a United Nations treaty basis to adequately address intersections between such multiple factors.

This Framework for Human Rights - National Action Plan sets out the Australian Government’s approach to improving the awareness and enjoyment of human rights in Australia by outlining:

- the focus for enhancing the enjoyment of human rights in Australia in the future, and
- current measures that Australia has in place for the protection and enjoyment of human rights.

#### **Preparation of the Plan**

A Working Group chaired jointly by the Attorney-General’s Department and the Department of Foreign Affairs and Trade was set up to prepare this Plan. The Group comprised representatives from:

- Department of the Prime Minister and Cabinet
- Department of Communications, Information Technology and the Arts

- Department of Employment and Workplace Relations
- Department of Family and Community Services
- Department of Defence
- Department of Health and Ageing
- Department of Education, Science and Training, and
- Department of Immigration and Multicultural and Indigenous Affairs.

The Human Rights and Equal Opportunity Commission (HREOC) and the Aboriginal and Torres Strait Islander Commission (ATSIC) also participated in the Working Group in the early stages of the development of a draft Plan.

The development of the National Action Plan was based on the following principles:

- the document should be accessible to the general public
- it should provide a broad overview of policies and practices to protect human rights
- it should accord equal priority to all human rights, and
- it should set out strategic priorities for future action.

A draft Plan was developed around these principles, based on the outcomes of the Working Group. The draft Plan was then circulated to HREOC, State and Territory Governments and NGOs for comment. The National Action Plan incorporates many of the suggestions and comments made on the draft through this consultation process.

## **Australia's participation in the international human rights system**

The universal promotion and protection of human rights is a major focus of the United Nations Charter. The United Nations exercises its human rights responsibilities through the United Nations General Assembly, the Security Council, the Economic and Social Council, the Commission on Human Rights, the High Commissioner for Human Rights and the Commission on the Status of Women.

Under Article 62 of the United Nations Charter, the Economic and Social Council (ECOSOC) may make recommendations to promote respect for, and observance of, human rights and fundamental freedoms. It may also draft conventions for submission to the General Assembly and convene international conferences on human rights issues. In accordance with its mandate, ECOSOC established the Commission on Human Rights and the Commission on the Status of Women.

The Commission on Human Rights, established in 1946, is the main UN body dealing with human rights. The role of the Commission on Human Rights has evolved from a body that was focused on standard setting, to one that is primarily concerned with responding to human rights violations and pursuing a range of measures to promote and protect human rights. Australia has a long history of involvement with the Commission, and was again elected as a member of the Commission for the period

January 2003 to January 2006. Australia was Vice-Chair of the Commission in 2003, and was elected Chair of the Commission in 2004.

The Commission has established a range of working groups to assist in specialised areas and to assist in the drafting of international declarations and conventions. It has also developed a number of Special Rapporteur positions to monitor and investigate violations of human rights. Special Rapporteurs are appointed in relation to specific countries where human rights violations are an issue of concern or in relation to thematic issues such as racism and religious intolerance.

The Commission on the Status of Women was established in 1946 and focuses on achieving equality for all women. The Commission adopts its own resolutions and decisions and prepares draft resolutions and decisions for consideration by ECOSOC.

The Office of the United Nations High Commissioner for Human Rights is the primary coordination unit within the United Nations Secretariat for the implementation of the human rights program.

Other major United Nations agencies involved in human rights issues include: the United Nations Educational, Scientific and Cultural Organisation (UNESCO); the United Nations High Commissioner for Refugees (UNHCR); the International Labour Organisation (ILO); the International Law Commission (ILC); the Food and Agriculture Organisation (FAO); and the World Health Organisation (WHO).

Most countries regard the 1948 Universal Declaration on Human Rights as the cornerstone of the international human rights system. The principles contained within it were later incorporated into two covenants, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both of which were adopted by the General Assembly in 1966. Together, these three documents are commonly referred to as the International Bill of Rights, and set out the most basic rights and freedoms to which everyone is entitled.

At the 1993 World Conference on Human Rights, the international community reaffirmed its commitment to the Universal Declaration on Human Rights through the adoption of the Vienna Declaration and Programme of Action. This included the duty of States, regardless of their political, economic or cultural systems, to promote and protect all human rights and fundamental freedoms. Australia was closely involved in these developments.

The United Nations has also adopted a number of conventions which address specific areas of human rights, including:

- Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- Convention on the Rights of the Child (CROC), and

- Convention on the Protection of the Rights of All Migrant Workers and their Families.

Countries that ratify these conventions voluntarily agree to the obligations contained within them. Some conventions (such as the CERD, at Article 14) or optional protocols to conventions or covenants (such as the First Optional Protocol to the ICCPR) enable individuals to make complaints (known as communications) to a treaty monitoring body alleging a violation of their rights under the relevant convention, provided certain procedural matters have been satisfied. For example, under the First Optional Protocol to the ICCPR, individuals can bring a complaint to the Human Rights Committee alleging that their rights under the ICCPR have been violated.

The General Assembly and the ECOSOC have also adopted various resolutions and declarations, which have played an important role in developing international human rights standards and raising awareness of human rights issues.

### **Reporting under international human rights treaties**

The primary function of each treaty body is to monitor the implementation of obligations contained in the human rights instruments for which they are responsible. All countries that are party to these treaties are obliged to submit regular reports on implementation of obligations for consideration by the relevant treaty body. Australia reports periodically to six of the seven United Nations human rights treaty bodies that are currently in force (Australia is not at present a party to the Convention on the Protection of the Rights of all Migrant Workers and Members of their Families).

<b>Committee</b>	<b>Treaty</b>	<b>Reporting period</b>
<b>Human Rights Committee</b>	<b>ICCPR</b>	<b>5 years</b>
<b>Committee on Economic, Social and Cultural Rights</b>	<b>ICESCR</b>	<b>5 years</b>
<b>Committee on the Elimination of Racial Discrimination</b>	<b>CERD</b>	<b>2 years</b>
<b>Committee on the Elimination of Discrimination against Women</b>	<b>CEDAW</b>	<b>4 years</b>
<b>Committee against Torture</b>	<b>CAT</b>	<b>4 years</b>
<b>Committee on the Rights of the Child</b>	<b>CROC</b>	<b>5 years</b>

In addition, Australia is required to report to the ILO on the implementation of particular ILO Conventions to which it is a party in accordance with a reporting schedule issued by the governing body of the ILO. (See Annexure B).

## **Implementing international human rights obligations in Australia**

The provisions of treaties to which Australia has become a party do not become part of Australian domestic law by virtue only of the formal acceptance of the treaty by Australia. The general approach taken in Australia to human rights and other conventions is to ensure, as far as is possible, that domestic legislation, policies and practice comply with the convention prior to ratification.

Although the Australian Government can negotiate and conclude treaties and subsequently legislate with respect to the subject matter of an international treaty, this is not always an efficient means of giving effect to Australia's international human rights obligations. The States and Territories are responsible for key areas of social policy and public infrastructure within Australia. As a result, the Australian Government must often rely on the States and Territories to give domestic effect to international treaties, particularly where the subject matter falls within an area of State and Territory responsibility.

As a result, the Australian, State and Territory governments have adopted a cooperative approach towards the implementation of Australia's international obligations. In accordance with the Principles and Procedures for Commonwealth-State Consultation on Treaties, consultations are held before entry into an international agreement which is of interest to the States and Territories. The aim of this approach is to secure agreement about the manner in which international obligations should be implemented. The States and Territories are also consulted in the preparation of periodic reports to international bodies.

In addition, a Joint Standing Committee on Treaties (JSCOT) has been established to enable the Australian Parliament to assess the implications of a treaty, before its ratification. Under this process, a proposed treaty must be tabled in Parliament with a National Interest Analysis, which sets out the political, economic, social, cultural and environmental costs and benefits of ratification. The treaty is then referred to JSCOT to assess the domestic implications of ratification. Assessment by JSCOT may include holding public hearings.

## **B. THE FOCUS FOR HUMAN RIGHTS IN AUSTRALIA**

The Government's five priorities for human rights in Australia are:

- promoting a strong, free democracy
- human rights education and awareness
- assisting disadvantaged groups to become more independent
- supporting the family, and
- promoting human rights internationally.

### **Promoting a strong free democracy**

#### **Supporting civics and citizenship education**

The Australian Government is committed to encouraging greater understanding and active participation in Australian democracy.

In 1997, the Australian Government launched a national civics and citizenship education program entitled *Discovering Democracy*. The aim of the program was to improve students' knowledge, skills and attitudes about Australia's democratic institutions and civic life, with particular emphasis on the history of Australian democracy. It also helped students acquire an understanding of human rights in Australia and internationally. Social justice is an important theme within these activities, including values such as the concern for the rights and dignity of all people, fairness, and commitment to redressing disadvantage and discriminatory and violent practices. These values contribute to students' understanding of what is involved in achieving a fair and democratic society. Program activities and curriculum materials support basic democratic values such as tolerance, acceptance of cultural diversity, respect for others and freedom of speech, religion and association.

*Discovering Democracy* also provided learning experiences to enable students, by the end of the compulsory years of schooling, to identify how the rights and obligations of Australian citizens relate to local, national and global contexts. Students are able to investigate the role of Australian and international legal institutions in protecting human rights, how rights can be lost and how they can be protected. The *Discovering Democracy* programme ended in June 2004, but the Australian Government continues to provide support for civics and citizenship education (including human rights), particularly for a national civics and citizenship education website.

The Australian Government is also promoting understanding of human rights through its support for values education. *The Values Education Study* report released in November 2003 includes the results of case studies in 69 schools, research findings from Australia and overseas and a Draft National Framework for Values Education in Australian Schools. The Australian Government has consulted with school communities and is seeking State and Territory support for a national framework on values education. It is also funding values education forums in every school, clusters of champion schools showcasing best practice approaches, curriculum resources for

all schools and national cooperation with parents, principals, teachers and teacher educators.

## **Enhancing the effectiveness of the justice system**

The Rule of Law, based on the principles of transparency and accountability, underpins Australia's legal system. In Australia, all people and bodies, including governments, can have the lawfulness of their actions scrutinised in a court of law, and can be held accountable for any activity deemed to be inconsistent with the law. The Rule of Law is upheld by a strong and professional judiciary whose independence is constitutionally protected and staunchly defended.

The Government recognises the importance of equitable access to the courts and tribunals, the need to encourage alternative methods for resolving disputes, and the importance of on-going professional development of judicial officers.

On 9 March 2004 the Attorney-General released the Federal Civil Justice System Strategy Paper for public comment. The Strategy Paper, which was prepared by the Department, focuses on ways to improve the management of federal civil disputes, how litigants interact with the system, and the role of courts and lawyers in the system. It proposes that the objective of the federal civil justice system should be to provide a just and accessible means of resolving disputes in an efficient and effective manner. The Strategy Paper recommends a number of short term improvements to the federal civil justice system as well as identifying key goals for the system to aid strategic planning. Submissions on the Paper were received from a broad range of stakeholders, including the federal courts, the legal profession, legal service providers and public interest groups. These, together with the Paper, will be taken into account in the further development of the civil justice system.

### ***Federal Magistrates Court***

The creation of the Federal Magistrates Court (FMC) has provided the Australian community with an accessible forum for the resolution of less complex family law and general federal law disputes. The FMC strongly encourages people in appropriate cases to resolve their disputes through counselling, mediation or other alternative dispute resolution methods.

The Government will continue to consider additional areas of suitable jurisdiction for the FMC.

### ***Enhancing the administrative review system***

The Government is committed to improving the system for merits review of administrative decisions, and ensuring access to merits review that is fair, just, economical, informal and quick.

In February 2003, the Government announced that it would undertake reform of the Administrative Appeals Tribunal, which is the largest body at the national level providing review of government decisions. The reform is aimed at enabling the Tribunal to flexibly manage its workload and to ensure that reviews are conducted as efficiently as possible.

The Government supports the work of the Administrative Review Council (ARC), which is an independent advisory body established under the *Administrative Appeals Tribunal Act 1975*. Consistent with its statutory mandate, the ARC monitors the administrative law system, provides independent advice to Government on matters of administrative law and undertakes work on a range of projects, for example:

- analysis of policy and legal factors relevant to the scope of judicial review
- issues relating to the use of automated assistance (ie expert systems) in administrative decision making, and
- identification for training purposes of core competencies for administrative decision makers.

### ***Ensuring access to the legal system***

#### *Pro-bono legal work*

The Australian Government encourages pro bono legal work in the private and public sector. The Government has supported the outcomes arising from the work of the National Pro Bono Taskforce, including the establishment of a National Pro Bono Resource Centre. The objectives of the Centre are to facilitate the provision of pro bono services by the private legal profession as well as to consider opportunities to enhance the ability of public sector lawyers to provide pro bono services.

#### *Legal Aid*

The Australian Government will continue to fund legal assistance for people in need with matters that arise under Commonwealth law. State and Territory governments fund assistance for matters which arise under respective State and Territory laws. Legal aid services are delivered primarily through State and Territory legal aid commissions. Eligibility for legal aid is subject to means and merits tests and relevant priorities and guidelines.

The Australian Government also provides significant funding for legal aid services for Indigenous Australians. In March 2004, the Government announced that it plans to put its Indigenous legal aid program to tender, to ensure that the legal needs of Indigenous Australians are met as fully as possible.

#### *Community Legal Centres*

The Australian Government also provides funding to more than 120 community legal centres throughout Australia, and will continue to provide funding and assistance to such centres to ensure Australians' legal needs are met. Funding is provided for the delivery of a broad range of legal services, including the child support scheme, the *Disability Discrimination Act 1992*, the environmental defender's office, welfare rights, women's legal services, youth legal services, civil litigation, clinical legal education, and Indigenous and rural women's issues.

### ***Promoting alternative dispute resolution***

The Australian Government recognises the importance of alternative dispute resolution (ADR). It funds early intervention, advice and primary dispute resolution services in the family law system and encourages the use of ADR by Australian

courts, tribunals and commissions. It has assisted the development of ADR within industry self-regulatory schemes.

The Government supports the ongoing work of the National Alternative Dispute Resolution Advisory Council, which plays a central advisory role on ADR in Australia. The Council has a number of projects including a review of statutory provisions relating to alternative dispute resolution, judicial education, government use of ADR, Indigenous dispute resolution, mediator accreditation and ADR research.

### ***National Judicial College***

The National Judicial College of Australia was established in May 2002. The College is an independent entity located at the Australian National University in Canberra. It is funded by the Australian and participating State and Territory governments and provides professional development for Commonwealth, State and Territory judicial officers.

The Australian Government will continue to support the National Judicial College and will continue to seek support from every State and Territory government for the College.

The College aims to enhance the professional development of Australian judges and judicial officers, and to help the judiciary perform at the highest standards, through the delivery of judicial education programs dealing with areas such as development of practical skills, and education in legal and social issues. The College began delivering courses in 2003.

### ***National regulation of the legal profession***

The Australian Government will keep working with State and Territory governments pursuant to a Memorandum of Understanding signed by all governments to ensure the adoption of consistent laws for the regulation of the legal profession in Australia.

## **Enhancing the effectiveness of national security**

Efforts to achieve national security must not jeopardise basic human rights. Actions taken to upgrade security would be counter-productive if they deprive us of the very rights that we are seeking to protect in the first place. However, national security and human rights are not mutually exclusive. Article 3 of the Universal Declaration of Human Rights provides that 'Everyone has the right to life, liberty and security of person'. National security measures promote civil liberties by preserving a society in which fundamental rights and freedoms can be exercised.

Following the terrorist attacks of September 11 2001, the Australian Government introduced comprehensive counter-terrorism legislation to increase Australia's protection against terrorism. This legislation has both enhanced our national security and protected our civil liberties. The laws put in place sufficient measures and safeguards to protect our fundamental rights and freedoms from both the threat of terrorism and excessively intrusive laws. They enable us to take action to prevent acts of terrorism before they are carried out and bring to justice those who cause enormous loss of life and devastation to communities through acts of terrorism.

In doing so, our laws seek to strike a balance between strengthening our national security and protecting individual liberties. The Australian Government is committed to dealing with the terrorist threat through constitutional means. Australia's democratic traditions and processes are its greatest ally and greatest strength in the war on terror. These traditions and processes are the tools that will help combat terrorism and protect and preserve our human rights. The Government is constantly reviewing and improving our legislation to ensure it meets the complementary objectives of preserving civil liberties and freedom while countering the actions of terrorists who threaten to undermine them.

In addition to improvements in Australia's security legislation, a public information campaign has been launched, including television, national press and Non-English-Speaking Background press to ensure that the message reaches everyone in the country.

National security embraces measures to protect the Australian community, government and institutions from harm. The following website provides a single access point for national security information from the Australian Government:  
<<http://www.nationalsecurity.gov.au/>>

The National Security Hotline has been established to further strengthen Australia's national security arrangements. It complements the activities being undertaken as part of the Australian Government's national security public information campaign. The Hotline is set up to receive information from members of community who wish to report any activity which they feel may be relevant to national security and warrant further investigation. It also provides information on a wide range of national security matters. By establishing a single point of contact for national security information, the National Security Hotline enhances the ability of the community and government to work together to safeguard Australia's national security.

The Australian Government's White Paper on Terrorism, *Transnational Terrorism: The Threat to Australia*, was publicly launched by the Minister for Foreign Affairs on 15 July 2004. The White Paper is based on expert advice from a range of sources. The White Paper's main purpose is to present to the Australian public an authoritative view of the international dimensions of the contemporary terrorist threat to Australia and Australian interests. This reflects the high priority the Government places on dealing with this difficult security issue. It also reflects the Government's commitment to keeping the Australian public fully informed of significant changes to Australia's security environment and the measures being taken by the Government to protect Australia's interests. The White Paper will help inform public debate and understanding of the context in which the Government is developing Australia's approach to fighting terrorism. The White Paper is available online at  
<<http://www.dfat.gov.au/publications/terrorism/index.html>>

## **Human rights education**

### **Human Rights and Equal Opportunity Commission**

The Australian Government holds the view that the most lasting and meaningful way to reduce discrimination and abuses of human rights is to change community attitudes

through practical educative initiatives to encourage tolerance and fairness. The Government therefore continues to support the important role of the Human Rights and Equal Opportunity Commission (HREOC) in promoting awareness and respect for human rights in the community.

HREOC consults with peak bodies, conducts public inquiries, undertakes research and publicises the results on-line, through the media and in printed reports. Commissioners regularly give speeches and contribute to public debate via media interviews, distributing information on human rights issues and by writing opinion pieces for the press.

HREOC's website ([www.humanrights.gov.au](http://www.humanrights.gov.au)) is a key educational tool that provides an up-to-date human rights education resource for students, teachers, employers, the legal profession and government and non-government agencies. It also provides a method of promoting human rights to the community generally and is an important source of information for thousands of Australians.

HREOC develops educational programs to provide information and improve the enjoyment of human rights in Australia. The resources are developed in consultation with experienced curriculum experts and the focus is on literacy skills including critical literacy and comprehension skills.

For example, HREOC's human rights education program for teachers of upper primary and secondary students comprises a series of modules, the first of which, *Youth Challenge Online – Teaching Human Rights and Responsibilities*, was launched in late 2001. *Youth Challenge* is a web-based resource to assist school teachers to educate students about human rights and responsibilities by way of role-plays, guided activities, surveys, personal stories and discussion. During 2003–04 a Youth Challenge series, based on sexual harassment in schools, was also delivered to schools throughout Australia.

Following the success of *Youth Challenge*, HREOC launched Information for Teachers ([www.humanrights.gov.au/info\\_for\\_teachers/index.html](http://www.humanrights.gov.au/info_for_teachers/index.html)), an on-line human rights portal for teachers wanting to teach human rights. It is linked to the curricula of each State and Territory education system, thus providing teachers with a range of human rights education materials they can teach across a variety of key learning areas.

HREOC's other human rights education programs include:

- a publication, *Face the Facts*, which provides questions and answers relating to migrants, asylum seekers, refugees and Indigenous Australians
- *Bringing Them Home*, which is based on the stories, findings and recommendations of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families, and
- *Woman of the world: Know your international human rights and how to use them*, which provides information to school students about women's international human rights from an Australian perspective.

HREOC also has an extensive list of publications such as: guides to Commonwealth human rights legislation (eg *Your Guide to the Sex Discrimination Act*); facts sheets

(eg *Discrimination in Employment & Occupation*); and brochures (eg *Know Your Rights Under the Disability Discrimination Act*).

HREOC also undertakes initiatives to assist and educate employers and employees. For example, the Race for Business information and training package assists employers eliminate racism in the workplace and reduce the likelihood of complaints under the *Racial Discrimination Act 1975* (Cth). *Race for Business* contains a video, a training manual and detailed guidelines for employers on the Racial Discrimination Act. *Sexual Harassment in the Workplace: A Code of Practice for Employers* sets out guidelines for employers on how to meet their obligations to prevent and eliminate sexual harassment in the workplace under the *Sex Discrimination Act 1984* (Cth).

Similarly, the National Indigenous Legal Advocacy Courses are aimed at Indigenous people working in justice related areas, such as Aboriginal Liaison Officers. The program equips participants with the competency to work in legal environments to assist Indigenous peoples in the interaction with the legal processes, such as courts, police and community justice processing. Similarly, the training program *Tracking Your Rights* assists Indigenous people to better understand their rights and to utilise effective problem solving mechanisms to resolve conflict such as using anti-discrimination legislation and community action.

During 2003 and 2004 HREOC undertook the project *Isma' - Listen: National consultations on eliminating prejudice against Arab and Muslim Australians*, with the aim of restoring and maintaining harmony in the Australian community. The summary report was released on 16 June 2004 in Sydney. The project's aims were to listen to Arab and Muslim Australians' experiences of discrimination and vilification, investigate what strategies were being used to counter anti-Arab and anti-Muslim prejudice in communities across Australia, and identify further strategies that could be put in place. HREOC consulted widely, including with Australian, State and Territory government agencies and Arab and Muslim communities across Australia. The report and accompanying CD will be distributed widely to schools and community groups as an educational resource.

National inquiries also play an important educational role in promoting a greater understanding and acceptance of human rights in Australia, by providing an opportunity for research and analysis of policy issues and laws related to human rights. The inquiry process enables interested parties to make submissions and to give evidence at public hearings.

The statutory power of HREOC to intervene in ongoing court cases involving human rights issues also has an educative component, particularly for the legal profession. Other community education activities directed at the legal profession include the regular publication of the *Legal Bulletin*, and a book, *Federal Discrimination Law 2004*.

## **National Committee on Human Rights Education**

The National Committee on Human Rights Education was established by the Government in 1998 as the focal point for Australia's contribution to the United Nations Decade on Human Rights Education (1995–2004). The Committee was

established as a cooperative venture between relevant government and non-government agencies, business and the community.

The Committee seeks to involve a wide cross-section of society in its work and to draw on the support and participation of Australians noted for their contribution to the life of the community. The Committee's objectives and activities reflect the Government's belief that, while governments play an important role, promoting human rights is the responsibility of everyone and requires active community participation. One of the goals of the Committee is that all Australians have an opportunity to learn about the human rights values of mutual respect, individual dignity and equal opportunity.

The Australian Government supports the initiatives of the Committee and encourages the States and Territories to continue to do likewise through their respective State committees. The activities of the Committee complement the comprehensive human rights education work of the Human Rights and Equal Opportunity Commission.

## **Addressing disadvantage and assisting independence**

### **Addressing racial and cultural discrimination**

The Australian Government condemns racial discrimination. Australia has comprehensively implemented its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination in Australian law in the form of the *Racial Discrimination Act 1975*. This Act prohibits racial discrimination and vilification and ensures equal opportunity for Australians of all racial backgrounds. The Act prohibits discrimination on the basis of race, colour, descent, or national or ethnic origin and covers discrimination in public life, including in areas such as employment, renting or buying property, the provision of goods and services, accessing public places and in advertising. The Act includes an exemption for 'special measures', that is, benefits for persons of a certain race in order that they may enjoy and exercise human rights and fundamental freedoms equally with persons of other races. The Government is committed to ensuring that its laws and programs are consistent with the Act and undertakes a range of initiatives and programs that constitute special measures under the Act.

The Australian Government is fully committed to the educational measures contained in the Programme of Action from the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. In particular, the Government supports the development of educational and cultural programs promoting tolerance and non-discrimination and promoting human rights, including programs for inclusion in school curricula.

The Australian Government reaffirms its commitment to multiculturalism in the policy statement *Multicultural Australia: United in Diversity Strategic Directions for 2003–2006*. This statement builds on the 1999 policy document *A New Agenda for Multicultural Australia*. Australia's multicultural policy provides a framework for maximising the social, cultural and economic benefits that cultural diversity brings to all Australians. It actively promotes good community relations and social harmony throughout the country. The Government believes firmly that Australian multicultural

policy provides a framework of national unity and a coherent ethos for a diverse and vibrant Australia, while also further developing respect for the basic civic structures and principles which underwrite our democratic society.

The strategic directions of the multicultural policy focus on community harmony; access and equity; and productive diversity. They are designed to raise awareness and understanding of the benefits of Australia's cultural diversity, counter myths and misunderstandings and promote behaviour patterns and attitudes that foster inclusiveness and respect for difference.

A central feature of Australia's multicultural policy is the principle of social equity whereby all Australians are entitled to equality of treatment and opportunity. Its aim is to enable every Australian to contribute to the social, political and economic life of Australia, free from discrimination on the grounds of race, culture, religion, language, location, gender or place of birth. Subject to the law, all Australians have the right to express their own culture and beliefs and, in turn, are obliged to accept the rights of others to do the same. The Council for Multicultural Australia assists the Government to promote multiculturalism. It acts as an external expert group on multicultural policy and facilitates strategic working relationships between government, business leaders and the private sector, and the wider community.

The *Living in Harmony* initiative is primarily a community-based educational program aimed at encouraging harmonious relationships between people or organisations of different cultural backgrounds. It provides a balanced approach of assisting communities to develop local solutions to local issues of racism and intolerance, while also developing projects with strategic, national importance.

The *Living in Harmony* initiative has three components. First, the community grants program offers funding to a wide range of organisations to raise awareness of the benefits of community harmony and address issues of racism in their communities (including Indigenous, ethnic, religious, sporting, educational and mainstream community organisations). Projects use many formats including youth theatre and forums, arts based projects, radio shows and community forums, sports policy and mentors, and work with schools and councils to strengthen positive attitudes.

Second, a partnerships program has been established with a range of organisations, including major companies and State and Territory governments, to develop projects with a national focus aimed at improving social cohesion, tackling racism or generating better understanding, respect and cooperation among people from different cultural backgrounds, including Indigenous Australians. These partnerships complement the 'local solutions to local issues' approach of the grants element of the initiative.

The third component of the *Living in Harmony* initiative is a public information strategy that includes the annual celebration of Harmony Day on 21 March, which coincides with the UN International Day for the Elimination of Racial Discrimination. Harmony Day is now Australia's biggest national multicultural event.

The Australian Government also funds a range of settlement services that target newly arrived migrants and humanitarian entrants. These services recognise that the migration process can result in specific, on-arrival needs and that some new arrivals

can experience difficulties gaining access to mainstream Australian services. The settlement services target group comprises permanent residents who have arrived in the last five years as humanitarian entrants or as family stream migrants with low levels of English proficiency. Within this group, priority is given to providing assistance to migrants and humanitarian entrants from small and emerging communities and to those in rural areas. Funding for community capacity building may extend beyond this five-year period in instances where a community still requires considerable assistance to plan, organise and advocate for services to meet its needs, and where it is receiving significant numbers of new arrivals who are in the settlement services target group.

The Government also recognises that learning English is one of the most important steps that non-English speaking people can take towards full participation in Australian society. The acquisition of English language skills is increasingly important for employment prospects as well as being necessary to avoid the social isolation that can arise from the migration experience. The Adult Migrant English Program (AMEP) provides basic English language tuition to newly arrived migrants and humanitarian entrants. It also has an important orientation function, providing clients with practical information about life in Australia. The AMEP is available free of charge to most eligible migrants and humanitarian entrants and there is no time limit to access tuition. It also offers a course in Australian citizenship which is designed to help migrants learn more about Australia's society and institutions and to help them understand about Australian citizenship and how to become a citizen. Clients enrolled in AMEP have the opportunity to undertake this course as part of their learning program. For non-AMEP clients, the course materials can be obtained through other programs.

Migrant Resource Centres, Migrant Service Agencies and organisations funded under the Community Settlement Services Scheme assist migrants and humanitarian entrants to settle by providing various services. They provide settlement services to individuals and communities which: deliver settlement information and referral services; build capacity by helping communities to be self-reliant; and promote awareness of client needs to service providers and build relationships with settlement and mainstream agencies.

To assist in the maintenance of the cultures, belief systems and languages of Australia's diverse communities, the Australian Government encourages the formation of community based organisations. These organisations not only support communities in all of these areas but also advocate their concerns to Australian governments. In addition, the Australian Government assists by funding a national advocacy body, the Federation of Ethnic Communities' Councils of Australia (FECCA). FECCA especially gives a voice to those communities that are not yet adequately equipped to argue on their own behalf.

### **Addressing Indigenous disadvantage**

The Australian Government acknowledges the social and economic difficulties and discrimination faced by many Indigenous people, and is strongly committed to overcoming disadvantage experienced by Indigenous Australians. The Government seeks to improve outcomes through partnerships of shared responsibility with Indigenous Australians and organisations and co-operation between all levels of

government. The Government's major focus is on key areas of socio-economic disadvantage (including health, housing, education and employment) that need to be addressed in order to raise Indigenous Australians to a position of equality in Australian society.

From 1 July 2004, changes to the management of Indigenous affairs saw a shift of program responsibilities to mainstream agencies. This reflects the Government's renewed commitment to improving outcomes and opportunities for Indigenous people. The reallocation of major employment and economic development programs to the Department of Employment and Workplace Relations was designed to bring about better employment opportunities and give Indigenous people a greater opportunity to share in the wealth and success of this country. Major areas of focus will be improved coordination between portfolios, stronger focus on economic development and a shift from welfare to participation.

The Australian Government recognises that effective targeting of programs and services to assist Indigenous Australians is dependent on the availability of accurate data. It is therefore committed to improving the quality of data collection about Indigenous Australians at national, State and Territory levels, particularly in the areas of health, community and infrastructure needs. This commitment reflects the Programme of Action from the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance which urges states to collect, compile and analyse reliable statistical data with a view to monitoring the situation of marginalised groups and the development of appropriate measures to support them.

The Council of Australian Governments (COAG) has agreed on a reporting framework focusing on key indicators for overcoming Indigenous disadvantage. The priority outcomes for the reporting framework are safe, healthy and supportive family environments with strong communities and cultural identity; positive child development and prevention of violence, crime and self harm; and improved wealth creation and economic sustainability for individuals, families and communities.

The Aboriginal and Torres Strait Islander Social Justice Commissioner is required by statute to submit to the Attorney-General an annual report regarding the enjoyment and exercise of human rights by Indigenous Australians. This report includes recommendations as to action that should be taken to ensure the enjoyment of human rights by Indigenous Australians.

### ***Indigenous Support***

While Indigenous Australians are able to access mainstream services, there are also a wide-ranging number of services which are specifically targeted to Indigenous Australians. Over the last few years, governments in Australia have been changing their approach to providing additional support to Indigenous Australians.

### ***New Directions in Indigenous Affairs***

The Australian Government implemented key advances in the administration of Aboriginal and Torres Strait Islander affairs on 1 July 2004. At their heart is a whole-of-government approach based on building partnerships with Indigenous Australians at the local and regional level that customise and shape the delivery of government

services. There is a strong emphasis on welfare reform, improved service delivery and better outcomes.

More than \$1 billion of programs managed by the Aboriginal and Torres Strait Islander Commission (ATSIC) and Aboriginal and Torres Strait Islander Services (ATSIS) were transferred to mainstream Australian Government agencies with the aim of achieving better value for money for Indigenous Australians.

The new approach is based on accepting responsibility – by governments, as well as Indigenous communities themselves. Mainstream departments will work in a coordinated way and are accountable for outcomes. To provide strategic direction and monitor outcomes, a Ministerial Taskforce on Indigenous Affairs was established in May 2004, chaired by the Minister for Immigration, and Multicultural and Indigenous Affairs.

The Taskforce plays a critical role in the successful implementation of the reforms to Indigenous affairs. It coordinates the Government's Indigenous policies and report to Government on directions and priorities in Indigenous policy and expenditure. The Taskforce's Charter has identified three key priorities to be addressed: early childhood intervention, safer communities and addressing passive welfare and promoting employment and economic development.

A group of departmental Secretaries is supporting the Ministerial Taskforce. It will also report annually on the outcomes of Indigenous-specific services. The Ministerial Taskforce is advised by the National Indigenous Council, which consists of appointed Indigenous experts. The Taskforce will meet directly with the Council at least twice a year.

Indigenous Coordination Centres (ICCs) have been established in rural and remote areas as well as urban centres. The Centres offer a whole-of-government response to issues identified by Indigenous communities including making the mainstream work better for Indigenous people. There is a much stronger focus on working constructively with State and Territory Government agencies and with local government.

To guide whole-of-government service delivery with Indigenous representatives, partnership agreements are being developed at the regional level, and shared responsibility agreements at the local and community level. The new approach requires communities to offer commitments such as improving school attendance in return for Government funding initiatives.

ATSIC's 35 Regional Councils will continue as sources of community advice until 30 June 2005 when the Australian Government, in consultation with State and Territory Governments and Regional Councils, plans to introduce more effective representative arrangements at the regional level.

### ***Capacity building and practical reconciliation***

All Australian governments will continue to pursue the framework to advance reconciliation.

The framework adopts an approach for governments based on partnerships and shared responsibilities with Indigenous communities and program flexibility and coordination between government agencies, with a focus on local communities and outcomes.

The approach consists of two basic principles:

- responsibility for the condition and wellbeing of Indigenous communities is shared by the community, its families and individuals with government “Shared Responsibility”, and
- consistent with Shared Responsibility, communities and governments changing their current approaches by building their capacity to achieve better outcomes and build a shared future.

The Australian Government recognises that the improvement of Indigenous governance is essential for Indigenous communities to reach their goals and build the capacity of people in communities to manage their own affairs. Measures to enhance Indigenous governance have commenced with training aimed at helping Indigenous corporations better manage their affairs and operate in accordance with legislation and organisational rules. Additional approaches will be adopted in the future, including community awareness and education.

### ***Improving the long-term health outcomes for Indigenous Australians***

In accordance with the Programme of Action from the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, the Government is strongly committed to eliminating disparities in health status between Indigenous and non-Indigenous Australians. Aboriginal and Torres Strait Islander people continue to experience the poorest health of any group in Australia, particularly in remote regions. The Australian Government is committed to improving the health of Indigenous people.

Addressing the social and economic causes of poor health, including environmental factors such as housing and related infrastructure, substance use, increasing access to culturally appropriate primary health care, including specialist services in rural and remote Australia, and improving the linkages between different parts of the health system are essential to improving Indigenous health outcomes.

The Australian Government recognises that a long-term partnership is required with Indigenous people to achieve sustainable gains in health standards. The Government is committed to improving the accessibility and responsiveness of general health programs to better meet the needs of Indigenous people. It also funds Indigenous-specific programs which provide health related services in areas of greatest need, particularly in remote locations, in order to improve access to essential services.

The Australian Government, and the State and Territory governments, have been working closely with Indigenous communities and health professionals to develop the *National Strategic Framework for Aboriginal and Torres Strait Islander Health*. Building on the 1989 *National Aboriginal Health Strategy*, the Framework sets out the agreed national objectives, priorities and action areas implemented at the jurisdictional level within existing policy, planning and reporting structures and frameworks.

The Framework, which was signed by all Health Ministers in July 2003, aims to guide all levels of government in a coordinated, collaborative and multi-sectoral approach to improving Indigenous health over the next ten years.

There have been some improvements in the health of Indigenous Australians. For example, in 1992-94 the death rate of Indigenous Australians from respiratory illness was seven to eight times the national average and the death rate from infectious and parasitic diseases was 15 to 18 times the national average. By 1999-01 these rates had fallen to four and five times the national average respectively. Even so, there is a clear need for ongoing concentrated efforts.

The Indigenous infant mortality rate decreased from 18.8 per 1 000 live births in 1993-95 to 14.2 per 1 000 live births in 1999-01. By comparison, the non-Indigenous rate has remained relatively stable.

### ***Improving access to appropriate housing***

The Australian Government, and the State and Territory governments, are working together to improve access by Indigenous Australians to mainstream housing options in urban and regional areas. The Government also intends to free up resources for Indigenous housing in rural and remote communities where there is high need and where mainstream public and private housing is generally unavailable.

The main forms of housing assistance that Indigenous Australians can access are Indigenous-specific rental housing, public rental housing, community housing, home purchase assistance, and private rental assistance.

The Australian Government, and the State and Territory governments, have endorsed a statement of new directions, *Building a Better Future: Indigenous Housing to 2010*. The vision for these new directions is for better housing for Indigenous Australians so that:

- Indigenous people throughout Australia will have access to affordable and appropriate housing, which contributes to their health and well-being and which is safe, well designed and appropriately maintained
- there will be a vigorous and sustainable Indigenous community housing sector, operating in partnership with the Australian Government, and State, Territory and local governments, and
- Indigenous housing policies and programs will be developed and administered in consultation and cooperation with Indigenous communities and with respect for Aboriginal and Torres Strait Islander cultures.

The new directions for Indigenous housing aim to achieve the following outcomes:

- better housing: housing that meets agreed standards, is appropriate to the needs of Indigenous people, and contributes to their health and well being
- better housing services: services that are well managed and sustainable
- more housing: growth in the number of houses to address both the backlog of Indigenous housing needs and emerging needs of a growing Indigenous population
- improved partnerships: ensuring that Indigenous people are fully involved in the planning, decision making and delivery of services by governments
- greater effectiveness and efficiency: ensuring that assistance is properly directed to meeting objectives, and that resources are being used to best advantage
- improved performance linked to accountability: program performance reporting based on national data collection systems and good information management, and
- coordination of services: a 'whole of government' approach that ensures greater coordination of housing and housing-related services linked to improved health and well-being outcomes.

By providing well-designed, constructed and regularly maintained housing, the Government aims to improve the health and well being of Indigenous Australians. There have been a number of demonstrated improvements in the housing situation of Indigenous Australians, including increases in the proportion of Indigenous families owning or purchasing their own home and decreases in the level of overcrowding in Indigenous households. Home ownership by Indigenous Australians increased from 27.9% to 32.2% between 1991 and 2001. Between 1986 and 2001, the average number of people per Indigenous household, as a measure of overcrowding, decreased from 4.4 to 3.6.

### ***Improving the educational outcomes of Indigenous Australians***

The Australian Government is committed to improved educational outcomes for Indigenous Australians. The Government believes that this is essential to addressing Indigenous disadvantage and to enabling Indigenous people to become better able to take advantage of opportunities available to all Australians.

Significant progress has been made in improving the educational outcomes of Indigenous students. Year 12 retention rates for Indigenous students have risen to record levels in recent years, while national literacy and numeracy benchmark results are the best to date. Indigenous enrolments in vocational education and training have increased significantly, as has the number of Indigenous students undertaking a Bachelor or higher degree. There have been demonstrated improvements in employment outcomes for Indigenous graduates as a result. For example:

- The proportion of Indigenous children who stay on at school through to Year 12 increased from 29% in 1996 to 39% in 2003.

- The 2001 results were the best to date for Indigenous students on five out of six national benchmarks for reading, writing and numeracy for Years 3 and 5. For example, in 1999, 75% of Indigenous Year 5 students achieved the Year 5 writing benchmark. By 2001, that figure had risen to 80%.
- The number of Indigenous people undertaking post-secondary vocational education and training has more than doubled from 22 887 in 1994 to 58 087 in 2003.
- Employment rates following training for Indigenous graduates have improved from 61% in 1999 to 78% in 2003, making the employment rate after training for Indigenous graduates comparable to the rate for total VET students.
- The number of Indigenous students doing Bachelor or higher level degrees increased by 36% between 1996 and 2003 from 4210 to 5706.
- The take up rate of Indigenous university graduates into full time employment in 2002 (84%) was higher than the non-Indigenous rate (81%). This compares to a rate of 83% for Indigenous graduates and 82% for non-Indigenous graduates in 1998.

While statistical indicators show significant improvement in the levels of educational achievements by Indigenous Australians over the past 30 years, the continued gap between Indigenous outcomes and the national average highlights the need for ongoing concentrated efforts. Indigenous Australians are much less likely to complete high school or pursue post-school qualifications than other Australians. Important contributing factors include poor attendance, and low levels of literacy and numeracy attainment in the early years of schooling.

The Government supports those outcomes of the Programme of Action from the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance that urge States to stimulate the access of Indigenous people to quality education and lifelong learning without discrimination.

The Australian Government and State and Territory governments have agreed on a National Aboriginal and Torres Strait Islander Education Policy (AEP) setting goals and priorities for all levels of education. The AEP seeks to improve Indigenous peoples' access to and participation in education as a way of producing educational achievements at a level equivalent to that of the broader community.

The AEP also highlights the need to involve Indigenous Australians in educational decision-making, and ensuring that Indigenous Australians have equal access and participation in educational services and equitable and appropriate outcomes. The AEP has 21 goals, which focus on measurably raising the educational outcomes achieved by Indigenous students. These measures are particularly focused on the key areas of:

- improving literacy
- improving numeracy
- improving educational outcomes for Indigenous students
- increasing Indigenous enrolments

- increasing Indigenous employment in education and training
- increasing professional development of staff involved in Indigenous education
- increasing involvement of Indigenous parents/community members in education decision making, and
- expanding culturally inclusive curricula.

The Australian Government and the State and Territory governments provide funding for a broad range of programs to improve educational outcomes for Indigenous students. The emphasis of these programs is on improving literacy and numeracy and school attendance in the early childhood years and primary school; increasing the retention rate of students to year 12 or its vocational equivalent; and increasing the numbers of students going on to further education or training and employment. These initiatives are making a difference: enrolment and attendance rates across all sectors continue to improve; a greater proportion of Indigenous Vocational Education and Training (VET) program students is completing an Australian Qualifications Framework Certificate III, which is more likely to lead to employment than lower level VET qualifications; and Indigenous students are encouraged to gain qualifications at the Bachelor and higher degree levels.

Improving outcomes for Indigenous people in VET is a key objective of the National VET Strategy for 2004 to 2010, agreed by the Australian and State and Territory Ministers for training. The Strategy states that Indigenous Australians will have skills for viable jobs and their learning culture will be shared.

The Australian Government has implemented a range of programs designed to accelerate the closure of the gap between Indigenous and non-Indigenous educational outcomes.

Two key programs are the Indigenous Education Strategic Initiatives Programme (IESIP) and the Indigenous Education Direct Assistance (IEDA) Programme. The IESIP provides per capita funding to educational institutions to ensure that they are resourced to support AEP goals. The current objective of the IESIP is to significantly close the gap between outcomes of Indigenous and non-Indigenous Australians across the preschool, schooling and vocational education and training sectors. Under the IESIP, each provider enters into an Indigenous Education Agreement with the Australian Government that stipulates agreed targets against performance indicators. Each agreement is monitored through biannual progress reports, meetings, and annual performance reporting. The IESIP also funds projects to achieve particular outcomes and improve schooling infrastructure, and supports 'mixed-mode' course delivery which is particularly appropriate for many tertiary Indigenous students.

IEDA programs fund school-based parent committees to assist Indigenous students; provide tutorial support for Indigenous students in the school, vocational education and training and higher education sectors that require additional assistance; and allow special projects which inform and assist Indigenous students and their parents about options for further education and employment.

The Australian Government delivers a range of other programs designed to support the priorities of the AEP. ABSTUDY provides student income support for

Indigenous students in the secondary, vocational education and training, and higher education sectors, including elements which address specific areas of Indigenous disadvantage, to assist Indigenous students to continue in education. The Australian Government's National Indigenous English, Literacy and Numeracy Strategy is an important program that aims to lift attendance rates, address health problems that undermine learning and use the most effective teaching methods to obtain better results for Indigenous students.

The Australian Government also conducts a range of ancillary programs that seek to identify educational practices that are particularly effective for Indigenous students, such as the use of Indigenous role models to address school students.

### ***Enhancing the economic independence of Indigenous Australians***

The Government considers that creating employment and business opportunities within Indigenous communities is essential to facilitating economic independence for Indigenous Australians and reducing welfare dependency. Indigenous people have significantly lower levels of employment than other Australians. They are also significantly under-represented in terms of business ownership. This is due to a range of factors, including socio-economic disadvantage, lack of educational and vocational qualifications, low asset holdings, and the fact that a significant proportion of Indigenous Australians live in rural and remote areas with few job opportunities.

The Enhanced Job Network provides Indigenous job seekers with additional training funds as well as early individually tailored assistance to address their needs. The Australian Government's Indigenous Employment Policy (IEP) also aims to increase employment opportunities for Indigenous Australians, with a particular focus on the private sector. The IEP provides flexible financial support for employers and Indigenous job seekers through:

- Wage Assistance – assists employers with a financial incentive to employ Indigenous job seekers.
- Structured Training and Employment Projects – offers assistance for projects that provide training leading to lasting employment opportunities for Indigenous people.
- National Indigenous Cadetship Program – assists Indigenous Australians to gain professional qualifications by matching full-time undergraduate students with employers who can give them professional employment experience while studying.
- Indigenous Community Volunteers (formerly the Voluntary Service to Indigenous Community Foundation) – established to offer support to Indigenous communities to pursue their community development goals in their own way by providing volunteers who can transfer their skills to people in Aboriginal and Torres Strait Islander communities and organisations.
- Community Development Employment Projects (CDEP) Placement incentive – finds work for unemployed Aboriginal and Torres Strait Islander persons in community managed activities. The aim is to assist individuals to acquire skills which benefit the community, develop business enterprises and/or lead to ongoing unsubsidised employment in the mainstream labour force. CDEP

organisations receive a placement incentive when a participant leaves the CDEP and moves into ongoing employment for at least 15 hours per week.

- The Business Development Program – assists the establishment of Indigenous businesses through the provision of grants, loans and other business support services.
- The Indigenous Small Business Fund (ISBF) - complements the Business Development Program by funding the development and expansion of Indigenous small businesses and enterprises.
- Indigenous Business Australia – promotes joint ventures involving Indigenous communities and industry partners, with investment throughout Australia in sectors such as mining and tourism.
- Indigenous Tourism Business Ready Program - assists individuals or businesses to increase their potential for commercialising Indigenous tourism products or services.
- Indigenous Employment Centres – through which CDEP organisations in areas with job opportunities are contracted to provide services to their CDEP participants to help them gain the skills and experience to find sustainable jobs outside of CDEP.
- Indigenous Self Employment Programme (ISEP) – a pilot program to assist individual Indigenous Australians establish their own small business. This program funds a repayable grant, financial literacy training, business advice and support. The IESP is initially operating in three geographic regions: Murdi Paaki in New South Wales, Cape York in Queensland and Shepparton in Victoria. Further expansion of the program is subject to a formal evaluation.
- Indigenous Capital Assistance Scheme (ICAS) – currently being developed to help reduce welfare dependency and increase economic sustainability for Indigenous individuals, families and communities, especially in those regional and remote areas where there are poor labour markets. ICAS is a partnership scheme with the private financial sector. Its aim is to support Indigenous business development. Indigenous enterprises seeking finance will be supported by business and financial advice prior to and during the business start-up phase. The provision of interest and fee subsidies will also be available to ease debt servicing requirements during the early period of a loan. ICAS acts as a mechanism to develop essential financial skills and stimulate economic development in partnership with mainstream financial institutions, and contributes to a relationship between Indigenous businesses and government which is based on commercial principles.

The Government recognises the need for individual assistance to overcome the often substantial barriers to employment that confront many Indigenous Australians, and to achieve the best use of an individual's skills and abilities. There is a wide range of programs designed to improve the employment and economic opportunities of Indigenous Australians. These programs provide job opportunities, support and training to improve employment outcomes and assistance with business development and self-employment. Between the 1996 and 2001 censuses, the unemployment rate for Indigenous Australians fell from 22.7% to 20.0%. The number of Indigenous

people in private sector employment rose from 43 590 to 55 410, an increase of 27% over the same period.

Achieving a higher representation of Indigenous Australians within the Australian Public Service (APS) is a strategic priority for the APS Commission.

The Commission will continue to develop strategies to improve recruitment of Indigenous Australians, and to develop and retain Indigenous APS employees. Key aspects will be to identify best practice in relation to Indigenous APS employment and to encourage Australian Government agencies to adopt practices that are appropriate to their circumstances and employment needs.

### ***Access to telecommunications for Indigenous Australians***

The Telecommunications Action Plan for Remote Indigenous Communities (TAPRIC) has four key service objectives. These are:

- improved and sustained take-up and use of telephone services
- improved take-up and effective use of Internet services
- improved provision and viability of broadband services for community service delivery and community development, and
- increased awareness of telecommunications opportunities and rights.

### ***Achieving Indigenous equality***

Improving justice outcomes for Indigenous Australians is an important issue for all Australian governments, for Indigenous peoples, and for the Australian community as a whole. While the State and Territory governments have primary responsibility for the criminal justice systems, the Australian Government is committed to working with them, and with Indigenous Australians, to address the over-representation of Indigenous people in the criminal justice system.

Contributing factors are complex and varied. However, a number of reports have confirmed the conclusions of the Royal Commission into Aboriginal Deaths in Custody (1991), that the underlying cause of the over-representation of Indigenous Australians in the criminal justice system is their socially and economically disadvantaged situation.

The Government's priority is to address this underlying disadvantage to enable Indigenous people to participate fully in Australian economic and social life, and address their over-representation in the justice system. Government spending on Indigenous specific programs is now the highest on record (\$2.9 billion in 2004-05) and focuses on improving key services, such as housing, health, education and employment opportunities.

The Australian Government is leading the implementation of the COAG reconciliation framework which is focused on improving the social and economic well-being of Indigenous people and communities, including measures for tackling violence, drug and alcohol dependency and other symptoms of community dysfunction.

Australian governments have implemented a range of measures in the areas of community capacity-building and crime prevention, which are aimed at addressing the disproportionate rate at which Indigenous Australians come into contact with the justice system as both victims and perpetrators of crime. Programs prioritise youth, family violence and substance abuse issues. Indigenous communities and community-controlled organisations play an important role in developing, implementing and evaluating measures to improve justice outcomes for Indigenous peoples. Many communities are also implementing local crime prevention initiatives with a high degree of success.

At a national level, priority areas under the Australian Government's National Crime Prevention program included Indigenous and family violence, and Indigenous mentoring and diversion programs. The new National Community Crime Prevention Program announced in the 2004-05 Budget includes a specific grants stream to support Indigenous community based projects. In addition, the Stronger Families and Communities Strategy takes an early intervention and capacity building approach to help families and communities address their local issues.

The Australian Government has undertaken significant research and program development under Partnerships Against Domestic Violence, with a strong focus on Indigenous programs. It has also led the development of a National Drug Strategy Action Plan for Aboriginal and Torres Strait Islander peoples.

The Australian Government has also established the Legal and Preventative Services program which provides access to legal representation and advice and related services to Aboriginal and Torres Strait Islander people. Aboriginal and Torres Strait Islander Legal Services make up the largest part of the program. Services have received funding under the program to ensure that Indigenous Australians are aware of their rights and responsibilities under the law and have access to appropriate representation; and to reduce the rate of Indigenous Australians' adverse contact with the criminal justice system.

The Australian Government also provides funding to Family Violence Prevention Legal Services (FVPLS). These services are located primarily in rural and remote Australia and provide legal assistance, court support, counselling and advocacy services for victims of family violence and sexual assault or people at immediate risk of family violence and sexual assault in Indigenous communities. As part of the 2004-2005 Budget, the FVPLS program will be expanded to double the number of services from the current 13 to 26 services across the country.

In addition to these initiatives, the Australian Government also provides funding for a juvenile pre-court diversion scheme and jointly funds an Aboriginal Interpreter Service in the Northern Territory.

In November 2003, the Australian and New Zealand Crime Prevention Ministerial Forum endorsed a new *Strategic Framework for Crime Prevention and Community Safety 2003-06*. Among the six key priorities are *Indigenous Justice and Crime Prevention* and *Alcohol, Drugs and other Substances and Crime Prevention*. Crime Prevention officials from the Australian Government and from the States and Territories are now developing action plans under the six priorities for the Forum's endorsement.

The Royal Commission into Aboriginal Deaths in Custody made a number of recommendations directed at criminal justice reform, which is primarily the responsibility of State and Territory governments. Nationally, the Australian Institute of Criminology continues to monitor and report on deaths in custody, as recommended by the Commission.

In 1997 the Australian Government convened a Ministerial Summit into Indigenous Deaths in Custody. An important and new outcome from the Summit was that States and Territories agreed to develop strategic plans for the coordination, funding and delivery of programs and services. This outcome reflects the primary responsibility of States and Territories for criminal justice matters and for providing community, education and health services. Three states have launched such plans and others are well underway.

These strategies build upon the extensive criminal justice initiatives implemented since the 1991 Royal Commission, such as greater cooperation and liaison between police and Aboriginal people, improved custodial safety and more culturally aware practices by police and courts. The importance of traditional Indigenous authority in responding to crime is increasingly being recognised, for example, through special courts involving elders and community leaders in sentencing. Initiatives include: Indigenous Community Policing programs (Night Patrols, Aboriginal Community Police Officers and wardens); Sentencing Courts ('Koori' and 'Nunga' courts, Circle Sentencing, Indigenous Justices of the Peace, Sentencing Advice, drug/alcohol courts); anti-violence and family support programs; drug and alcohol services, sobering up shelters; mediation programs; community support programs, including counselling and mentoring; pre-release and post-release support programs (prison-to-work transition programs); residential centres, bail accommodation centres; community supervision programs; and diversion and restorative justice schemes (eg conferencing).

Other important initiatives include the establishment of advisory groups at most regional and/or State and Territory levels to enable Indigenous people to have input into the development and implementation of legislation, policy and services. Progress on the development and implementation of justice plans in all jurisdictions is monitored at the national level by the National Aboriginal Justice Advisory Committee, an independent Indigenous advisory committee.

There is evidence that the concerted efforts of governments are beginning to have a positive effect. This is particularly evident when comparing data in the 1990s (since the Royal Commission into Aboriginal Deaths in Custody) with data from the 1980s. Such comparisons indicate:

- a decrease in the per capita rate of deaths in custody for Indigenous Australians in the 1990s as compared to the 1980s
- a significant decrease (by more than 50%) in the yearly average number of deaths of Indigenous people in police custody over the past decade, as compared with the 1980s, and
- a decline in detention rates for Indigenous juveniles since 1997 (based on rates at June 30 each year).

### *Land rights*

Successive Australian governments have implemented a range of initiatives in support or recognition of Aboriginal and Torres Strait Islander land rights. Consequently, well over 16% of the Australian continent is now owned or controlled by Aboriginal and Torres Strait Islander people. The various measures implemented include land rights legislation, legislation to recognise and protect native title, and purchases of land on behalf of Indigenous Australians.

The Aboriginal and Torres Strait Islander Land Fund (Indigenous Land Fund) was created in 1995 to purchase land for Indigenous Australians, particularly those unable to benefit from recognition of native title. The Indigenous Land Fund has a \$1.4 billion capital base providing a revenue stream to enable land purchases for the benefit of Indigenous people indefinitely. The Indigenous Land Corporation (ILC) receives an annual allocation of over \$50 million from the Indigenous Land Fund to acquire and manage land on behalf of Indigenous Australians.

All Australian States and Territories (except Western Australia, which has a land reserve scheme) have implemented land rights legislation that generally grants inalienable title to land to Indigenous people. For example, since the commencement of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth), almost half of the Northern Territory has been granted to Aboriginal traditional owners in the form of inalienable freehold title. Development of these lands, including for mineral exploration, requires consent from the traditional owners.

### *Native title*

The 3 June 1992 decision by the High Court of Australia in the case of *Mabo v Queensland (No 2)* was a watershed in Australian law. In this case, concerning the legal rights of the Meriam people to the lands of the Murray Islands in the Torres Strait, the High Court held that the common law of Australia recognises a form of native title to be determined in accordance with Indigenous traditional law and custom. In doing so, the Court rejected the notion that Australia was *terra nullius*, that is, land belonging to no one, at the time of British settlement. The Court stated that it could not perpetuate a view of the common law that was unjust, out of step with international human rights, did not respect all Australians as equal before the law, and did not reflect historical reality.

In *Mabo* and a number of more recent decisions, the High Court has characterised native title as being able to be possessed by a community or individual depending on the content of the traditional laws and customs; inalienable other than by surrender to the Crown; and ranging from access and usage style rights to rights of exclusive possession. Native title rights and interests are based on laws and customs that pre-exist the British acquisition of sovereignty. That is, native title rights and interests are not rights that are granted by government, such as statutory land rights of the kind found in the *Aboriginal Land Rights (Northern Territory) Act 1976*. Native title rights and interests may exist over land and waters to the extent that they are consistent with other rights established over the land by law or executive action.

The Commonwealth *Native Title Act 1993* establishes a framework for the protection and recognition of native title. The Australian legal system now recognises native title where:

- the rights and interests are possessed under traditional laws and customs that continue to be acknowledged and observed by the relevant Aboriginal or Torres Strait Islanders
- by virtue of those laws and customs, the Aboriginal or Torres Strait Islanders have a connection with the land or waters, and
- the native title rights and interests are recognised by the common law of Australia.

The Native Title Act sets up processes for determining where native title exists, how future activity impacting upon native title may be undertaken, and providing compensation where native title is impaired or extinguished. The Act gives Indigenous Australians who hold native title rights and interests, or who have made a native title claim, the right to be consulted about, and in some cases to participate in, decisions about activities proposed to be undertaken on the land. Indigenous Australians have been able to negotiate benefits for their communities, including in relation to employment opportunities and heritage protection.

One method of negotiating benefits for indigenous communities is through Indigenous Land Use Agreements (ILUAs). The Native Title Act establishes a framework for ILUAs which are voluntary (but binding) agreements about the use and management of land, made between a native title group and other people. ILUAs can be tailored to meet the needs of particular Indigenous communities with regard to outcomes (examples of which include employment opportunities and community facilities). ILUAs have proved a popular option since their introduction in 1998, with over 100 ILUAs having been registered between 1998 and 2004.

The Native Title Act also establishes a framework for the recognition and operation of representative bodies that will provide services to native title claimants and native title holders.

### ***Assisting Indigenous women and countering Indigenous family violence***

The Australian Government will continue to address the particular needs of Indigenous women and to assist local Indigenous communities to act to reduce family violence. The Programme of Action arising from the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance requested states to adopt policies to promote the civil, political, economic, social and cultural rights of Indigenous women. In particular, the Programme asked States to deal with urgent issues such as violence against Indigenous women, including domestic violence.

At the 2001 Ministerial Conference on the Status of Women (MINCO), women's Ministers from Australia and New Zealand agreed to work with Indigenous women to develop an action plan that reflects Indigenous women's priorities. The Conference identified women and leadership, women and safety, and women and economic status as the three priority areas. The Ministerial Conference supported annual national gatherings of Indigenous women as a method of reporting against the action plan.

The Government has agreed to spend \$16.5 million over four years on the Indigenous Women's Development Programme (IWDP). The IWDP will involve three broad programs of activity:

- Networking Indigenous Women – will promote a network of mutual support, fostering links among women at the local level;
- Indigenous Women's Leadership Programme – will target women already making a contribution in their own communities; and
- Men and Family Relationships – will target Indigenous men in remote communities. A range of mechanisms for reconnecting men with family responsibilities will be developed.

The initiative commenced in July 2004 and will target the development of the leadership capacity of Indigenous women, and will identify, develop and support Indigenous women to take leadership positions in greater numbers. It aims to bring about a progressive increase in the number of Indigenous women leaders, enhance women's status and heighten awareness of important community issues that are currently the domain of women, as well as encourage men to shoulder greater responsibility for their families. There has been a strong response to initial advertisements for the Leadership Programme.

The Australian Government also supports a range of programs designed to address domestic and family violence in Indigenous communities.

The national Partnerships Against Domestic Violence initiative includes a major element to address domestic and family violence in Indigenous communities. The Australian Government funds a wide range of community based initiatives such as night patrols and safe houses, as well as the Family Violence Legal Prevention Programme which provides specific legal assistance and counselling in relation to Indigenous family violence. A broad range of other programs exist to help Indigenous communities tackle family violence, drug and alcohol dependency and other symptoms of social dysfunction.

In August 2003, coinciding with a meeting of MINCO, the second National Indigenous Women's Gathering took place. This was attended by some 50 Indigenous women representing the Australian Government and all States and Territories and resulted in the presentation to (and subsequent endorsement by) MINCO of the Indigenous Women's National Action Plan. The Plan documents the responsibilities for the Australian Government and States/Territories in the three agreed key priority areas (above) under the Council of Australian Governments (COAG) reconciliation process. In August 2004, the third National Indigenous Women's Gathering took place. The gathering focused on the key priority areas under the Indigenous Women's Action Plan as well as Foetal Alcohol Syndrome and its devastating impact on indigenous communities. Ministers announced that another gathering would be held when Women Ministers next meet in 2005.

The Australian Government is leading work with State and Territory governments, through COAG and the Ministerial Council on Aboriginal and Torres Strait Islander Affairs (MCATSIA), to address Indigenous family violence. MCATSIA has endorsed terms of reference for a major national audit, to be funded by the

Government, which will identify gaps in family violence and related services available to Indigenous people, and identify best practice. This will allow Indigenous communities and governments to know which approaches to reduce the incidence of Indigenous family violence are working successfully and how these might be implemented in other communities.

The Government recognises that in Indigenous communities, “family” encompasses a combination of relationships. The Indigenous Parenting and Family Wellbeing initiative is aimed at improving parenting skills and family wellbeing and building stronger Aboriginal and Torres Strait Islander communities for the future. The Reconnect program assists young people to find alternative accommodation where their home situation is not safe, eg in situations of family violence. The Youth Activities Services program promotes community leadership, to help Indigenous communities tackle family violence, drug and alcohol dependency and other symptoms of social dysfunction.

The Australian Government, and the State and Territory governments support the National Strategy on Indigenous Family Violence. Recognising the complex nature of family and community violence in Indigenous communities, including the importance of involving and targeting women, children and men in developing long-term, sustainable solutions, the Strategy focuses on better targeting of existing resources to support community driven initiatives. Jurisdictions will focus on seven key areas: child safety and well being; reducing alcohol and substance abuse; improving the justice system; creating safe places; improving relationships and well being; promoting shared leadership; and building community capacity. Within the context of the National Strategy, the Australian Government has established a Family Violence Partnership Programme which seeks to support a range of joint projects in partnership with each jurisdiction, with a particular focus on remote areas.

### ***Continuing support for international efforts to promote Indigenous rights***

Australia has supported the International Decade of the World’s Indigenous People as a means for advancing the rights and opportunities of Indigenous peoples. A focus of the Decade has been the work of the United Nations Inter-governmental Working Group on the Draft Declaration on the Rights of Indigenous Peoples. Consideration of the Draft Declaration has been a protracted process because many countries, including Australia, have concerns about the text as drafted by the Working Group on Indigenous Populations, while Indigenous peoples have argued for adoption of that text without change. Australia recognises the importance accorded by many of the world’s Indigenous peoples to an instrument articulating their human rights and is an active participant in the Working Group on the Draft Declaration.

Australia is an active participant in the UN Permanent Forum on Indigenous Issues. The Government believes that a single, appropriately representative and accountable body which can coordinate UN activity on Indigenous issues is important for addressing Indigenous-specific issues and recognition of Indigenous peoples’ perspectives.

The Government also supports efforts to recognise Indigenous peoples’ perspectives in relevant international forums and to facilitate their participation in the UN system.

The Australian Government is committed to the return of Indigenous remains being held in public institutions around the world.

In September 2004, the Australian Government funded the Museum of Ethnography in Stockholm, Sweden to repatriate ancestral remains to Indigenous people of the Kimberley in Western Australia; Urandangie in Queensland; Bermagui in New South Wales; and Camperdown in Victoria.

Prime Ministers John Howard and Tony Blair signed the *Prime Ministerial Joint Statement on Aboriginal Remains* in July 2000 to help speed the process of repatriation from the United Kingdom.

Since 1996, over 580 sets and 10 parts of ancestral remains have been repatriated to Australia. This includes the return of approximately 300 ancestral remains from the University of Edinburgh in Scotland to the Ngarrindjerri people of South Australia. The Royal College of Surgeons in London also returned remains to traditional owners in Tasmania in 2002 and 2003. The University of Michigan recently returned ancestral remains to the Yorta Yorta peoples of the upper Murray River region.

The Australian Government is currently developing a whole-of-government policy to facilitate the further repatriation of Indigenous ancestral remains from overseas institutions.

## **Addressing the human rights of people with disability**

### ***Commonwealth Disability Strategy***

The revised Commonwealth Disability Strategy is a planning framework to assist Australian Government agencies to meet their obligations under the *Disability Discrimination Act 1992* by ensuring their policies, programs and services are accessible for people with disability.

The Strategy asks Government organisations to incorporate the needs of people with disability in the early planning stages of their policy and service delivery processes. It is designed to encourage agencies to consider disability issues in their everyday work and to take into account the diverse needs of all members of the Australian community.

The Strategy sets out performance indicators and measures against the five core business roles of agencies: policy adviser, regulator, purchaser, provider and employer. Taken together, the indicators establish a performance-reporting framework. All Australian Government agencies are required to assess their performance and report against the reporting framework in their annual reports.

### ***Development of Disability Standards***

The Disability Discrimination Act contains provision for the Attorney-General to formulate disability standards. Disability standards are designed to spell out, in greater detail, rights and obligations under the Act. The Australian Government is working closely with the States and Territories and other stakeholders to develop disability standards for access to premises and for education to complement the existing Disability Standards for Accessible Public Transport.

### *Disability Standard for Access to Premises*

Work on a draft disability standard for access to premises under the Disability Discrimination Act is in progress. The Government has asked the Australian Building Codes Board (ABCD) to develop proposals to amend the Building Code of Australia to better align it with the requirements of the Disability Discrimination Act, allowing it to form the basis of this standard. The purpose of the access to premises standard is to help industry, regulators and service providers achieve equitable, cost effective access to buildings for people with disability.

A draft Standard was released for public comment in January 2004. Public consultation sessions (including public forums in all capital cities) were held in February 2004. The public consultation period ended on 30 April 2004. ABCD, through its Building Access Policy Committee, will review the comments and revise the draft documents before making recommendations to Government.

### *Disability Standards for Education*

The Government will continue to work with stakeholders to increase the level of participation in education and training by people with disability. The draft Disability Standards for Education have been developed under the auspices of the Ministerial Council on Education, Employment, Training and Youth Affairs.

The purpose of the Standards is to eliminate disability discrimination in education as far as possible, and to assist education providers to understand their obligations under the Disability Discrimination Act, by clarifying the legal obligations of education and training providers, assisting them to understand their obligations under the Disability Discrimination Act. Extensive consultations have been conducted in developing the draft Standards and accompanying Guidance Notes. Implementation of the Standards will yield improved education and training outcomes for students with disabilities.

### *Disability Standards for Accessible Public Transport*

The Disability Standards for Accessible Public Transport and accompanying Guidelines commenced on 23 October 2002. The Standards establish minimum accessibility requirements to be met by providers and operators of public transport conveyances, infrastructure and premises. All new items have to comply with the Standards. A compliance timetable provides for increasing accessibility requirements over time, as non-conforming items are gradually retired or upgraded.

### ***Productivity Commission Review of Disability Discrimination Act***

The Productivity Commission review of the *Disability Discrimination Act 1992* (DDA) was announced on 5 February 2003. Public hearings occurred in late May, June and July 2003, and in early 2004. A final report was delivered to Government on 5 May 2004. The report was tabled in Parliament on 14 July 2004.

The final Report is positive, and concludes that the DDA has been reasonably effective in addressing disability discrimination. The Productivity Commission is satisfied that the DDA has met the Competition Principles Agreement tests to date and, with appropriate amendments, will provide net benefits into the future. The Commission found no alternative approach that would better achieve the objectives of

the DDA, in particular eliminating (as far as possible) discrimination on the ground of disability.

The Commission found that having a DDA is consistent with Australia's international obligations, but has made some recommendations to improve the DDA's operation. The final report is available from <[www.pc.gov.au](http://www.pc.gov.au)>.

### ***Encouraging greater participation in the workforce by people with disability***

Through the current welfare reform process, the Australian Government is working to ensure that people with disability are able to fulfill their aspirations and potential for work. The Government has proposed changes to income support arrangements in an effort to focus more on individuals' abilities and to recognise their capacity to become more involved in the workforce or community life.

### ***Education of students with disability***

The Regional Disability Liaison Officer (RDLO) initiative, funded through the Higher Education Equity Programme, and the Disability Coordination Officer (DCO) Programme, funded by the Vocational Education and Training (VET) area, provide a network of 31 officers based in universities, TAFEs and private training providers. The role of the RDLOs/DCOs is to facilitate the transition of students with a disability from school to TAFE or university and from study to work.

Higher education institutions can also apply for funding under the Additional Support for Students with Disabilities Programme, which helps universities support students with disabilities who have high cost support needs, by reimbursing some of the costs of educational support and equipment purchase/hire.

The Australian Government provides funds to State and Territory training authorities to provide additional training places, and associated learning supports, for people with a disability. It also funds the VET Priority Places Programme, which assists people with a disability to obtain a nationally recognised qualification so that they can participate more effectively in the labour market. The Australian Government also funds assistance for New Apprentices with a disability. Participation by people with a disability in VET has increased from 43 311 in 1996 to 91 400 in 2003, a 93% increase.

Notably, the new schools funding in the 2005-08 quadrennium includes \$2billion in funding for children with special needs. The Literacy, Numeracy and Special Learning Needs Programme will assist schools to help students with additional needs, assist centres that provide support to children with disabilities and support national initiatives and research to improve learning outcomes for educationally disadvantaged students.

### ***Access to telecommunications for people with disability***

Under the Universal Service Obligation, people with disability are guaranteed access to the standard telephone service on terms and conditions comparable to those available to other Australians. This includes access to specialised equipment at the same price as a standard telephone handset. People who are deaf, or who have a

hearing or speech impairment, can obtain teletypewriters or textphones, and can also use the National Relay Service at no extra charge to communicate with people who use ordinary voice telephones.

## **Addressing gender inequality**

The Australian Government is strongly committed to ensuring both males and females receive full access to educational and employment opportunities as well as eliminating discrimination and violence against women and girls. In addition to legislation prohibiting discrimination on the basis of sex, a range of programs and services have been introduced to improve choices for women, particularly in the areas of health, education, training, employment, and eliminating sexual and family violence.

The Government is funding major programs to increase women's participation in leadership and decision-making. The Government considers that educative measures and practical assistance to increase opportunities for women to reach positions of leadership and decision-making are essential elements in achieving women's equality.

Recent initiatives also aim to improve the educational prospects of boys, who have fallen significantly behind girls' educational outcomes over the past 20 years.

### ***Eliminating discrimination and violence against women***

The Government has established a number of initiatives aimed at eliminating discrimination and violence against women. The principal mechanisms that enshrine anti-discrimination measures are the *Sex Discrimination Act 1984* and the Human Rights and Equal Opportunity Commission (HREOC).

Australia was an active participant in the special session of the United Nations General Assembly on 'Women 2000: Gender Equality, Development and Peace for the Twenty-First Century', held in New York from 5–9 June 2000 (known as "Beijing Plus Five", sponsored by the UN Commission on the Status of Women to identify and address the needs of women around the world). To support the outcomes of Beijing Plus Five, the Australian Government developed the Beijing Plus Five Action Plan 2001-2005 in consultation with key stakeholders. The Action Plan identifies key areas of collaborative work across government agencies, businesses and the community. For example, a Beijing Plus Five Action Plan Kit and 'gender mainstreaming' guides have been produced to assist government agencies to use the Action Plan and incorporate gender into their work. These are available at [www.osw.dpmc.gov.au/index.html](http://www.osw.dpmc.gov.au/index.html).

A key aspect of the Action Plan is to eliminate stereotypical attitudes and behaviours and to encourage men and boys to take greater responsibility for changing harmful attitudes and behaviours towards women and girls, and actively advance gender equality.

The Partnerships Against Domestic Violence Initiative is a collaborative approach between Australian, State and Territory governments, and the community, domestic violence service sector, criminal justice sector, and business. The aim of the initiative is to acquire knowledge and trial new ways of preventing and responding to domestic violence. Activities include:

- working with children to reduce the effects of witnessing domestic violence
- encouraging perpetrators to accept responsibility for violence
- national community awareness initiatives
- Indigenous community capacity building to develop and implement their own solutions to deal with domestic violence, and
- support for ongoing research through funding for the Australian Domestic and Family Violence Clearinghouse.

The Australian Government continues to support other initiatives to raise community awareness about and eliminate violence against women and girls, such as the White Ribbon Campaign, which commemorates the annual International Day for the Elimination of Violence Against Women.

The National Initiative to Combat Sexual Assault was established by the Australian Government to reduce the incidence of sexual assault in the community. The aim is to generate partnerships to develop, test and implement a range of strategies and initiatives, such as community education and awareness campaigns; enhanced data collection; improved knowledge sharing on approaches to combat sexual assault and promote best practice; and funding projects to address sexual assault.

The Ministerial Council on the Status of Women has established the National Women's Safety Taskforce to address the key issues of women's safety: sexual assault, domestic violence and Indigenous family violence. The Taskforce will be based on the current collaborative model used in the Partnerships Against Domestic Violence Taskforce.

### ***Encouraging participation in leadership roles***

The Australian Government's Women's National Leadership Initiative aims to increase women's participation in leadership positions. Key strategies include:

- measures to assist government with the appointment of highly skilled women to Australian Government boards and decision-making bodies;
- the Honouring Women initiative which provides:
- strategies to encourage the community to nominate more women for awards and honours,
- plans to enhance the skills of Indigenous women through sponsorship of leadership training; and
- assistance to women in rural and remote areas through the Sports grants program.

The Australian Government funds a number of initiatives to assist women to participate in the development of national policies and programs. Key strategies include:

- the Women's Development Programme which funds activities by national non-government women's groups to strengthen their contribution to public policy

- funding four Women's National Secretariats to work collaboratively to represent the diverse views of women by consulting the women's sector and other stakeholders
- the Regional Women's Advisory Council which ensures that the Government is aware of the views, aspirations and needs of regional and rural women, and

### ***Health***

The Australian Government is facilitating research and effective partnerships between women's organisations, the Office of the Status of Women, other government departments and research bodies, to ensure that key issues of health and wellbeing are addressed.

The Australian Government funds the Australian Longitudinal Study of Women's Health which is a twenty-year study following the health and wellbeing of 40,000 women across three age cohorts exploring issues including physical and emotional health, use of health services, health behaviours and risk factors, time use, socio-demographic factors and life stages and key events such as childbirth, divorce, and widowhood. The Office of the Status of Women has commissioned two research projects from the study, one examining the physical, social and economic health and wellbeing of women with dependent children following relationship breakdown, and the other exploring the impact of violence against young women and its impact on their reproductive health.

A range of health and wellbeing issues have been explored in the *Focus on Women* series of papers. Two research papers were published examining the profile of women in prisons and the issues impacting on their health and wellbeing. Other papers include: *Looking Risky: Body image and risk taking behaviours* and *Women as Health Consumers: the breast cancer experience*.

The Government is investing in prevention and management of breast cancer, cervical cancer and ovarian cancer. The National Breast Cancer Centre fosters an evidence-based approach to the diagnosis, treatment and support of women with breast cancer. In 2001, the Government asked the National Breast Cancer Centre to pilot the Ovarian Cancer Program. BreastScreen Australia is an Australian Government-funded breast screening program aimed at achieving significant reductions in mortality and morbidity from breast cancer through early detection. The National Cervical Screening Program seeks to reduce morbidity and mortality from cervical cancer. In 2001-02 the Government commenced a Bowel Cancer Screening Pilot, directed to both women and men, aimed at assessing the acceptability, feasibility and cost-effectiveness of a national bowel cancer screening program in Australia.

The *Rural Women's GP Service*, announced in the 1999-2000 Budget, aims to improve access to primary and secondary healthcare for women in rural Australia who currently have little or no access to a female general practitioner.

### ***Education outcomes***

More young women are in education and training than ever before, which is reflected in the key areas of education and training:

- More girls than boys complete school to Year 12 level – 80.7% retention rate from year 7/8 to year 12 for girls in 2003 compared with 70.3% for boys.
- In 2003 women made up 58% of domestic students undertaking an undergraduate award course at a university. The pattern of women's participation in higher education has changed to such an extent that their representation remains low only in Engineering and Information Technology fields.
- At December 2003, there were 151 100 female apprentices and trainees in training. Proportionately, the number of female apprentices and trainees in-training increased from 20.4% at 31 December 1996 to 37.1% at 31 December 2003.

In early 2004, Australian, State and Territory Ministers for vocational education and training (VET) endorsed *Women: shaping our future*, a new national policy paper for women in VET. The paper provides a flexible framework for agencies to identify strategies for women, at the local level, to improve their outcomes in VET.

The Informed Choices for Australian Women initiative will develop a women's information strategy including: a women's data warehouse; a women's Internet portal; a research and policy publication series to disseminate information about women's circumstances and needs; and a biennial national women's conference. The women's data warehouse, Window on Women, will provide a single source of data for and about women across a variety of issues of importance to women. The data warehouse will give government departments, NGOs, students and the community easy access to information about women. It will also play an important role in policy development, implementation and evaluation.

The Australian Government has developed a website for women, which provides a single point of access to on-line government information, research, services and resources that are targeted at women or of specific relevance to women. The website is available at: <http://www.women.gov.au/>

The Australian Government accepts that recent evidence shows boys are currently not performing as well as girls on a range of education achievement measures and broader social indicators. A recent parliamentary inquiry into the education of boys found that while many schools and teachers are achieving excellent outcomes for both boys and girls, there is justification for many of the concerns about boys' education.

The Government shares these concerns and recognises that issues surrounding boys' education are complex. Accordingly, it has implemented a suite of initiatives to support teachers and schools in their efforts to improve outcomes for boys, without negatively impacting on girls' academic opportunities and achievements. These initiatives respond to the report of the House of Representatives Inquiry into the education of boys, *Boys: getting it right*, released in October 2002 which found that there is justification for many of the concerns expressed about boys' education.

The Australian Government has allocated \$27 million over six years for boys' education. This includes \$19.4 million for the Success for Boys initiative over 2004-05 to 2007-08 to develop professional learning materials and provide grants to government and non-government schools to implement proven approaches to improve

the education of boys, and approximately \$8 million for Stages One and Two of the Boys' Education Lighthouse Schools (BELS) initiative to identify and showcase successful practices in the education of boys.

The Boys' Education Lighthouse Schools Programme (BELSP) aims to identify and showcase successful practices in the education of boys and research into significant areas of education relevant to boys' education. Stage One of BELSP, involving the identification of best practice in boys' education, has just been completed. Stage Two, involves the identification and funding of at least 30 Boys' Education Lighthouse School clusters around Australia to disseminate and share best practice. The Australian Government has also instigated a review of the current gender equity policy framework so that it reflects the current issues relating to the impact of gender on learning of all Australian students.

Policy action on boys' education continues to ensure there is no diminution of the many important advances that have been made over the past few decades in education participation and achievement of girls, and that girls' educational experiences and outcomes continue to receive necessary and appropriate attention and support.

### ***Female training and employment***

Socio-economic indicators show that more women than ever before are participating in the paid workforce. For example, in December 2003, the labour force participation rate of all women (15 years and over) was 55.8%. In 2001, 33% of Australia's small business operators were women. Nonetheless, women remain concentrated in lower skilled categories of employment. Women also continue to strive for pay equity between different industries, and to balance career and caring responsibilities.

The Australian Government's Transition to Work initiative is geared towards identifying and overcoming specific barriers to employment for parents, carers and mature age people who are starting work for the first time or are returning to work after an absence of two years or more. It provides access to a range of activities such as TAFE courses, help with job applications, computer training, personal development activities such as study skills and assistance with presentation skills.

The *Sex Discrimination Act 1984* and the *Equal Opportunity for Women in the Workplace Act 1999* (Cth) also protect and promote women's entry and participation in all levels of the workplace. The latter Act emphasises the need for organisations to be flexible and innovative in the way they achieve equal employment opportunity for women. The Equal Opportunity for Women in the Workplace Agency works with employers to assist them to achieve equal opportunity for women employees.

### ***Women and the Law***

The Australian Government funds 11 specialist women's legal services in all States and Territories through its Community Legal Services funding program. In addition, the Government funds Aboriginal and Torres Strait Islander Women's Projects under the Community Legal Services funding program, as well as community legal services around Australia to provide legal services to women in rural and remote areas and to those that are isolated due to factors such as disability, age or domestic violence. These specialist legal services most often deal with issues of domestic violence and

family law; child support; child abuse; discrimination and harassment; financial matters; housing and tenancy; property; consumer credit; and relationships.

The Government is committed to ensuring that all members of the Australian judiciary can access education programs that increase their awareness of community attitudes and of the impact of their decisions on women. Judicial education programs are being funded by the Government through the Australian Institute of Judicial Administration (AIJA). The first gender awareness conference developed by the AIJA was held in October 1995. Since then the Government has funded several educational programs to identify and address gender bias in the legal system.

The Federal Magistrates Court is providing a quicker and cheaper forum for many Commonwealth matters, including family law disputes and enforcement of women's rights under anti discrimination law.

### ***Assisting migrant and refugee women***

Since 1991, there has been special recognition in Australia's migration laws of the need for victims of domestic violence to still be eligible for permanent residence without being forced to remain in abusive relationships. The domestic violence provision (DVP) allows applicants for Partner visas (and certain other business or skilled visas) to continue with their applications for permanent residence if their relationship with their partner breaks down and they (or their dependants) have suffered domestic violence inflicted by their partner. The provision is available to both male and female applicants. An applicant can be considered under the DVP if the relationship was genuine and continuing until it ceased and the applicant presents acceptable evidence prescribed by the Migration Regulations that their sponsor has inflicted domestic violence.

Within the Migration (Humanitarian) Programme there is also a specific program aimed at refugee women and their dependents who are in danger of victimisation, harassment or serious abuse and do not have the protection of a male relative.

The Women at Risk (WaR) Programme provides resettlement in Australia and resettlement assistance on arrival. WaR entrants are given access to torture and trauma counselling services.

The Immigration Portal (<http://www.immigrationportal.gov.au/>) provides online access to comprehensive information on newly arrived migrants and on settlement policies and programs.

### **Addressing age discrimination**

The Government is committed to ensuring that Australians of all ages can participate effectively in society regardless of their age. To this end, Parliament has enacted the *Age Discrimination Act 2004* which came into effect on 23 June 2004. This fulfils the Australian Government's 2001 election commitment to develop national age discrimination legislation.

The Act prohibits age discrimination in a number of areas of public life including employment, education, accommodation and access to goods, services and facilities.

It strikes a careful balance between the need to eliminate unfair discrimination on the basis of age and the need to ensure sufficient flexibility to allow for legitimate age distinctions.

A key objective of the legislation is to promote attitudinal change across the community so that people, particularly younger and older Australians, are judged on their actual capacity and are not unfairly excluded from access to a range of social goods and activities. As with all other Australian Government anti-discrimination legislation, the Human Rights and Equal Opportunity Commission will have a role in relation to public awareness and education, inquiring into possible human rights infringements, and policy and legislative development.

## **Supporting the family**

### **Building stronger families and communities**

The Australian Government is working to build stronger families and communities through programs that use prevention and early intervention to strengthen family capabilities, relationships and family life, and to build community capacity. The Government also promotes family-friendly work practices that include access to affordable and appropriate childcare. The Child Care Benefit subsidises the cost of childcare for families according to their income and provides parents with increased choice following the birth of a child. Family Tax Benefit payments provide financial support to low and middle-income families to help with the cost of raising children. Family Tax Benefit payments are also available to single income families in recognition of the additional financial burden faced by many of these families. Maternity Payment provides additional financial assistance to families around the time of the birth of a baby.

The Australia Government has established a Families Internet portal to provide information on government services and useful information for families on relationships, financial planning etc. The website is available at: <http://www.families.gov.au/>. A comparable website has also been created to provide one-stop information on community issues, services and events (<http://www.community.gov.au/>).

### ***National Agenda for Early Childhood***

The Government has identified supporting early childhood as one of its key priorities. The Government recognises that the early years profoundly influence the development of children and their likelihood of progressing into happy, healthy, socially adept, productive adults.

Responsibility for early years investment is shared between the Australian Government, State and Territory governments and local governments. Consequently the Australian Government is leading the development of a National Agenda for Early Childhood, to help bring early childhood services and policy into a common framework. The Agenda will focus on children aged 0–5 years.

The Agenda will give directions for a whole of government approach for future investment in early childhood, providing a way of sharing a common understanding about aims, goals, principles and outcomes.

The Agenda will build on substantial activity in the early childhood area being undertaken by all levels of government, non-government organisations, professionals, business, volunteers and families.

Four broad action areas are proposed for national attention as part of the Agenda:

- healthy young families
- early learning and care
- supporting families and parenting, and
- child-friendly communities.

### ***Supporting young Australians***

The Australian Government supports a wide range of successful services and programs encouraging increased social and economic participation and supporting young people in their transition to independence. The Government's existing youth policies and programs form a solid foundation from which to advance the wellbeing of young Australians.

The Government's aim is to ensure where possible that future strategies directed at young people, including Indigenous young people, go hand in hand with strategies aimed at strengthening the family and community capacities to support young Australians. Efforts are also being directed to support greater cooperation and collaboration on national approaches between all levels of government, non-government organisations, industry and business, community and family.

As part of these efforts, the Government is implementing Simple Service Solutions, which is an approach to delivering programs for young people, emphasising improved government and non-government interagency collaboration to provide better outcomes. The Simple Service Solutions approach aims to assist young people to access the information, advice and support they need in a timely and coordinated way. Simple Service Solutions also aims to reduce the administrative burden for community organisations funded to deliver youth services, who will have more opportunity to focus on their main goal of supporting young people to move towards independence.

The Government has developed a range of programs aimed at assisting young Australians:

- Youth Allowance is an integrated income support payment for young people who meet certain criteria, to assist them through the multiple transitions they make through education, training, unemployment or illness.
- The Job Placement, Employment and Training program assists homeless young people aged 15–21, with multiple barriers to participation in education, vocational training and employment through practical help to overcome these barriers, stabilise their situation and secure sustainable futures. The Reconnect

program helps homeless young people aged 12–18 to stay connected with their family, employment, education, training and the community through counselling, mediation, and practical help to the whole family.

- Youth Activities Services and Family Liaison Workers provide after-school activities for young people aged 11–16 at risk of being disconnected from their families, schools and communities, and help them deal with family conflict or other issues affecting their well-being and their family relationships.
- The Transition to Independent Living Allowance helps young people between 15–25 making the transition from state-supported care arrangements to independent living, with one-off assistance for goods and services each individual may need.
- Mentor Marketplace encourages mentoring to get better outcomes for young people aged 12–25, particularly those at risk of disconnection from family, community, education and work. It develops a mentoring culture in business, schools and communities to engage the business and community sectors in sustainable mentoring activities.

The Australian Government has established a dedicated website for young people providing information and advice on youth services, lifestyle, learning, and careers called *the source* (<http://www.thesource.gov.au>).

### ***Protection of children***

Child protection is a core responsibility of State and Territory governments. The Australian Government further addresses child abuse and protection issues through prevention and early intervention strategies. These include:

- parenting and family payments
- child care assistance
- funding the Australian Council for Children and Parenting, National Child Protection Clearinghouse, Child Protection Week and biennial National Child Protection Awards
- funding various initiatives within the Stronger Families and Communities Strategy (SFCS), including the Stronger Families Fund and the Early Intervention Parenting and Family Relationship Support initiative, and
- additional funding specifically for early childhood intervention and prevention including healthy young families, early learning and care, supporting parents and families, and supporting child friendly communities.

Young people at risk are supported through a range of services aimed at strengthening connections with family, education, training, work and the community including Youth Activity Services, Family Liaison Workers, Reconnect, and the Job Placement, Employment and Training Program.

The Australian Government works with State and Territory governments to develop and implement national plans around child protection and early intervention strategies.

National action plans include:

- The National Plan of Action Against Commercial Sexual Exploitation of Children. The Plan focuses on eliminating the factors that contribute to the commercial sexual exploitation of children and young people, by identifying the roles and responsibilities of the Australian Government, and State and Territory governments, in supporting Australian families and addressing future directions.
- The Australasian Police Ministers Council (APMC) National Child Sex Offender Register. The register is used to track the movements of convicted child sex offenders around the country. Only those with criminal convictions will be included on the register and the information will only be available to police for operational purposes.
- The National Action Plan for Foster Children, Young People and their Carers. The National Plan aims to achieve high quality outcomes for children and young people in foster care. It focuses on areas where jurisdictions can work together to establish national standards, share information on best practice and improve national consistencies and cross-jurisdictional collaboration.

The Magellan project is a Family Court initiative, involving intensive case management by Australian Government and State/Territory agencies, of family law proceedings relating to children that involve allegations of serious physical and/or sexual abuse. The project has the potential to improve coordination between Australian Government and State/Territory agencies in family law cases by improved case management. The Australian Government supports the national rollout of the Magellan project, and is contributing to funding the overall evaluation of the rollout.

Indigenous children are over-represented in cases of child protection agency involvement. The reasons for this are complex. They include: poverty, family separation in the past, alcohol and substance use, incarceration and cultural differences in child rearing.

The Aboriginal Child Placement Principle, adopted by all jurisdictions, outlines a preference for the placement of Indigenous children with other Indigenous people when they are placed outside their family. The Principle has the following order of preference for the placement of Indigenous children:

- with the child's extended family
- within the child's Indigenous community
- with other Indigenous people.

COAG participants noted their shared responsibility for Indigenous issues and agreed to an increased national focus on Indigenous child protection issues, to complement the COAG reconciliation framework. In order to address what many have called a crisis of Indigenous child abuse, the Australian Government, States and Territories have agreed to consider ways to enhance their responsiveness to Indigenous families at risk and in crisis, improve safety and well-being outcomes for Indigenous children, and address contributing factors behind abuse.

At an international level Australia has signed the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Australia was an active participant in the development and negotiation of the text of the Optional Protocol and intends to pursue ratification as a priority.

The Australian Government's policy on ratifying international instruments is that ratification should not occur until compliance with a treaty is ensured. Many of the obligations under the Optional Protocol are matters for State and Territory Governments, and the Optional Protocol was discussed at the Standing Committee of Attorneys-General in March 2004. It was agreed that the necessary legislative amendments would be made in all jurisdictions to ensure compliance with the Protocol and facilitate ratification.

### *Addressing youth suicide*

Although rates have declined in recent years, youth suicide remains a public health issue in Australia. The suicide rate for males aged between 15 and 24 years is of concern, particularly among Indigenous Australians. There is a range of programs and publications aimed at promoting the mental health of children, young people and their families funded under the National Mental Health Strategy and the National Suicide Prevention Strategy.

The Australian Government will continue to collaborate with State and Territory governments to foster suicide prevention programs. Under the National Suicide Prevention Strategy funding is allocated for initiatives and projects at the national level, and to support local community, Indigenous and rural activities.

Initiatives such as Mind Matters – A Mental Health Promotion Programme for Secondary Schools, and Children of Parents with a Mental Illness, focus on individuals and groups in the community with particular mental health needs. The Child and Adolescent Mental Health Survey, a component of the National Survey of Mental Health and Wellbeing, identifies the prevalence of mental health problems for this age group within the Australian population. The Social and Emotional Well Being Framework, a National Strategic Framework for Aboriginal and Torres Strait Islander Mental Health and Social and Emotional Well Being (2004 – 2009) recommends actions to address Aboriginal and Torres Strait Islander suicide issues.

A number of information resources aimed at the general community have been produced to address the high level of misunderstanding about mental health problems and reduce the stigma surrounding mental illness. Telephone help lines and web based information services have also been developed to provide easily accessible and after hours services for all people with a mental illness and those at risk of suicide and their families, carers and friends.

Some leading examples of online information and counselling services are: Beyond Blue (<http://www.beyondblue.org.au/site>); DepressionNet (<http://www.depressionnet.com.au>); and Kids Help Line (<http://www.kidshelp.com.au/>).

## **Assisting separated families**

The Australian Government supports many initiatives to assist families going through the trauma of separation. The Government funds services for separating families under the Family Relationship Services Program. These services include counselling and mediation and other primary dispute resolution processes provided by community organisations. The Government supports children's contact services. This service centre provides safe, neutral environments for children to establish or maintain contact with their non-resident parent. It aims to facilitate positive contact and, where appropriate, support families in achieving independent management of contact visits.

The Reconnect program helps homeless and as a rule young people aged 12-18 to stay connected with their family, employment, education, training and the community through counselling, mediation and practical help to the whole family.

The Government also funds services under the Contact Orders Program which works with parents in conflict over residence and contact arrangements. Each service provides specialised therapeutic and educative interventions tailored to meet the needs of these parents and their children.

### ***Enhancing the family law system***

#### *Implementation of the Family Law Pathways Report*

The Australian Government is dedicated to building an integrated family law system that is flexible and builds individual and community capacity to achieve the best possible outcomes for separating families. The Government recognises that despite the large number of high quality services that are available to separating families, there is a need to develop a more co-ordinated approach to helping families in distress. The Government established the Family Law Pathways Advisory Group to provide advice in that context.

The Pathways Report, *Out of the Maze – Pathways to the Future for Families Experiencing Separation*, was launched in August 2001. It made a number of significant recommendations on how to develop a more co-ordinated family law system, to help families make earlier, more informed decisions and agreements and to increase the focus on the needs of the children involved. The Australian Government Response to the Report, released in May 2003, supported the recommendations and allocated \$27.8 million over four years to enhance services for families around Australia.

A cross-portfolio Taskforce, chaired jointly by the Attorney-General's Department and the Department of Family and Community Services, is responsible for the continuing implementation of Pathways initiatives and, in consultation with key stakeholders, developing a coordinated and consistent policy framework for the future delivery of services for separating families and families in conflict.

In addition to the funds provided by the Australian Government to support services for separating families, Government and non-government service providers have been developing and implementing other initiatives aimed at addressing the recommendations in the Pathways Report.

These include:

- convening a national forum of 120 representatives from the family law system to help build working relationships and reinforce those already established
- collaborative development of information products
- provision of one-off seed funding to support the establishment of local family pathways networks at State and Territory level
- development of a number of methods to better integrate service delivery by community agencies, the Family Court, the Child Support Agency and others
- reference of Pathways recommendations about multi-disciplinary judicial and tertiary education to the National Judicial College and the Council of Australian Law Deans
- consideration of how best to progress the development of a national research agenda in family law and separation issues as recommended by Pathways, including holding a workshop for researchers, service providers and other interested agencies in June 2003, and
- national expansion of the Family Court's Magellan project—the successful case management system aimed at earlier resolution of matters involving child abuse.

#### *Family Law Amendment (Child Protection Convention) Act 2002*

The Government supports the widest possible ratification of the Hague Convention on the Protection of Children 1996 to ensure the enforceability of parental responsibility court orders and cross border cooperation on child protection cases. Australia ratified the 1996 Convention on 29 April 2003 and it entered into force for Australia on 1 August 2003. *The Family Law Amendment (Child Protection Convention) Act 2002* amended the *Family Law Act 1975* to enable Australia to ratify the Convention. Each State and Territory will also implement the Convention through model legislation relating to child protection matters.

#### *Continued support for Family Law Council*

The Australian Government recognises the importance of strengthening the family law system, including the operation of the Family Law Act and related legislation, and ensuring that people have appropriate access to legal aid in relation to family law matters.

The Government will continue to fund the Family Law Council, which is an independent statutory body, to continue its work on a range of projects including issues arising from the Family Law Pathways Advisory Group's report such as:

- how best to recognise Indigenous kinship systems, child rearing practices and the right of Indigenous children to know their culture, religion and language
- the development, in conjunction with family law practitioners, of guidelines for family lawyers, and
- the use of separate children's legal representatives.

## *Child custody*

The Commonwealth Parliament House of Representatives Standing Committee on Family and Community Affairs' Report on its inquiry into child custody arrangements in the event of family separation, *Every Picture Tells a Story*, was released on 29 December 2003. The Report recommended implementing a series of measures to reform child custody arrangements, to minimise the negative impact on children of custody decisions.

On 29 July 2004 the Government released a statement of reforms to the family law system to respond to the Committee's report. The proposed reforms include a network of Family Relationship Centres across the country to help separating families resolve disputes and agree on parenting arrangements without going to court. The proposed reforms demonstrate the Government's commitment to improving outcomes for separating families and ensuring that the focus is on the best interests of the children involved. The Government is consulting the community on the implementation of the reforms.

The Family Court is also currently undertaking a pilot program of 100 cases, which began on 1 March 2004, that gives judges more control of child-related cases and encourages a less adversarial approach to resolving disputes in the Court. To this end, it is necessary for there to be a departure from some traditional features of the adversarial process and various provisions of the *Evidence Act 1995* (Cth) such as the admissibility of hearsay evidence, and for all the parties to the proceedings to provide informed consent to this departure.

The approach is focussed on the best interests of the child and the parties' proposals for the future of the child rather than the past history of the parties' relationships. It is believed that the removal of some technical rules will greatly assist in achieving this focus.

### ***Improving primary dispute resolution practices***

The Australian Government is committed to increasing the quality of Primary Dispute Resolution services in family law matters. The Primary Dispute Resolution provisions of the Family Law Act are being reviewed to ensure consistency in the use of Primary Dispute Resolution terminology and to assess the need for legislative reform.

Specific projects have been funded by the Australian Government to improve Primary Dispute Resolution practices. An approval process for primary dispute resolution practitioners under the Family Law Act is being developed. Professional development programs for mediators and lawyers to encourage child-focused practices have been developed and are available as a resource to the sectors. Research into the outcomes of child-inclusive mediation, to ensure that the voice of the child is heard, has commenced.

### *Addressing the past separation of Indigenous family members*

Addressing the effects of past practices of separating some Indigenous children from their families has been a major focus for the Australian Government, and State and Territory governments.

The Australian Government responded to the central findings of a national inquiry into the separation of Indigenous children from their families by funding a range of initiatives to facilitate family reunions, improve access to records, counselling, oral history recording and culture and language maintenance, and parenting programs. In 1999, the Australian Parliament passed an historic Motion of Regret, expressing its regret for past injustices experienced by Indigenous people. All State and Territory Parliaments have passed similar Motions.

## **Promoting human rights internationally**

### **Multilateral forums**

The Australian Government plays a lead role in promoting continual improvement and efficiency in the human rights treaty body system, to ensure that the work of the committees remains appropriate to their mandate of assisting states parties to meet their obligations, and that they can effectively combat breaches of human rights.

The need for reform is widely recognised, and efforts to improve the operation of the United Nations human rights treaty body system have been under way since 1996. Australia works with a range of countries, including New Zealand, Canada and Norway to bring about reform of the system. Specific areas that have been identified as requiring improvement include:

- the backlog of reports and communications awaiting consideration
- duplication and lack of coordination among the committees, and
- insufficient secretariat support and financial resources.

Following a review of the operation of the treaty body system in August 2000, the Government implemented a high-level diplomatic initiative to improve the functioning of the system. The fundamental objective of the initiative is to improve the operation of the monitoring system—and its credibility—as a contribution to strengthening human rights observance globally. Key elements of the initiative, some of which are ongoing, include: hosting workshops in Geneva to look at practical ways of addressing key issues of concern; election to the Commission on Human Rights (CHR) for the period 2003–2005 and as Chair of the Commission in 2004; working with the Office of the High Commissioner for Human Rights (OHCHR) to secure additional resources; and continuing to encourage countries in our region to become party to the six core human rights treaties to which Australia is a party and provide practical and effective assistance in this process.

There is now a strong commitment at the highest levels of the UN to improve the functioning of the UN human rights treaty body system. This is evident from reports of the UN Secretary-General in 2002 (on the Administration and Management of the Office of the High Commissioner for Human Rights, submitted pursuant to General

Assembly Resolution 57/313) and 2003 (on the Status of implementation of actions described in the report of the Secretary-General entitled “Strengthening of the United Nations: an agenda for further change”), which highlight:

- steps already taken towards human rights treaty body reform
- further measures needed to strengthen the human rights committee process, including recommendations by the OHCHR on streamlining of reports, harmonisation of reporting guidelines and working methods of the various treaty bodies, and
- reforms to special procedures functions.

The Human Rights Committee, Committee on Economic, Social and Cultural Rights, Committee on the Elimination of Discrimination against Women and Committee against Torture have held constructive and open sessions with states on their working methods. The Committee on the Elimination of Discrimination against Women has also introduced a streamlined format for meetings, a page limit on reports, and is encouraging focused and analytical as opposed to descriptive reporting. Inter-Committee meetings have been established and steps taken to improve the operation and effectiveness of the system of special procedures. There is also support for the harmonisation of reporting guidelines across Committees to help state parties streamline their reports.

While the Government is encouraged by the increasing receptiveness of the UN treaty bodies to the concerns of states there is still greater scope for the committees to work more closely together to develop and implement consistent working methods that reflect “best practice”. Progress is being made – for example in the context of reporting to the committees – but concerns remain, particularly with the operation of the complaint mechanisms. The Government will therefore continue to promote practical measures to enhance the effectiveness of the treaty bodies.

The Government will continue to be an active participant in the UN human rights system. The Government will push for additional resources for the OHCHR, and nominate candidates to serve on treaty committees. Some progress is being made. Australia has played a key role in obtaining six new posts for the Office in 2004-05.

The Government will continue its active and engaged participation in multilateral forums such as the Commission on Human Rights and the United Nations General Assembly. At these forums, Australia will continue to sponsor resolutions on the role of good governance in the promotion of human rights, and on national institutions to promote and protect human rights.

### ***Proposed UN Convention on the rights of persons with disabilities***

Australia is actively involved in the work of the United Nations to develop a draft International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities. The Australian Government recognises that people with disability are one of the most disadvantaged groups in the world. It is strongly committed to ensuring that any such convention genuinely advances the circumstances of people with disability not only within Australia but around the world.

The Government considers any new convention should focus on ensuring that people with disability can effectively access and exercise the rights that they have under existing human rights treaties, rather than duplicating existing rights. The Government acknowledges that the elimination of discrimination on the ground of disability requires that the convention ensure that positive steps be taken, where appropriate, to provide equal opportunity to people with disability. The Government believes that providing accessibility and reasonable accommodation are essential to achieving equality for people with disability because they remove barriers and promote full participation and inclusion in society.

The Government has consulted, and will continue to consult, widely during the development of the convention, seeking comments and submissions from government and non-government organisations including States and Territories and people with disability.

### **Strengthening human rights in bilateral relationships**

The Government will continue its efforts to improve the human rights situations in other countries by engaging in bilateral dialogues. Australia's preference is to engage in constructive dialogue and cooperation where possible. The Government believes this approach is most likely to bring tangible long-term improvements, in particular through capacity building and assistance in the development of the institutional structures necessary to ensure observance of internationally accepted human rights standards. This basic approach does not mean that Australia eschews appropriate criticism of the human rights situation in other countries. Our diplomatic missions throughout the world make numerous representations annually on behalf of individuals whose human rights have been violated.

The Government will continue to raise with other governments, on a case-by-case basis, individual cases of concern and thematic concerns, such as the use of the death penalty.

The Government conducts bilateral dialogue on human rights issues with China, Vietnam and Iran. The China dialogue includes formal talks on the human rights situation in the two countries and site visits designed to enhance understanding of practical ways in which each country deals with specific human rights issues. A technical cooperation program has been designed to promote judicial reform and to improve China's capacity to protect the rights of women and children. The dialogues with Vietnam and Iran have been based on the successful model developed with China.

### **Australia's overseas aid program**

The Australian aid program contributes to the advancement of all human rights through its focus on poverty reduction and sustainable development. Consistent with the need for states to take primary responsibility for their development, effective partnerships with developing countries are a central focus of Australia's aid. Country strategies are jointly developed with all major partner countries and form the basis for our assistance. Australia works within partner countries' broad development frameworks, coordinating our aid closely with that of other donors.

### ***Focus on good governance***

In international forums Australia has taken an active role in promoting good governance globally. This is demonstrated by the regular Australian-led resolution before the CHR on the connections between human rights and transparent, accountable and participatory government. At the 60<sup>th</sup> session of CHR in 2004, the resolution received consensus support.

Effective governance, human rights and sustainable development are closely linked. Good governance contributes to the realisation of economic, social and cultural rights by promoting sound economic and financial management and increasing public sector effectiveness. It also creates an environment in which civil and political rights are respected and promoted (eg through open and fair elections and strong legal and judicial systems). The exercise of civil and political rights through participatory processes reinforces sustainable development and good governance because it helps to ensure government accountability and effectiveness.

Corruption—the abuse of power or position for personal gain—is the antithesis of good governance. It can occur in the government, judiciary, among politicians, or in the private sector. Corruption exacerbates poverty, undermines nation building and security and compromises development (eg by reducing government revenues, distorting public sector investments and reducing their effectiveness). Anti-corruption efforts are integral to Australia’s approach to good governance.

### ***Gender and development***

An important aspect of Australia’s focus on poverty reduction and its support for civil society and democratic processes is the mainstreaming of gender and development considerations into all stages of program and project development and implementation. Gender equality is an integral part of universal human rights and is an important development goal in itself. The Government is committed to its gender and development (GAD) policy to strengthen the promotion of equal opportunities for women and men as participants in and beneficiaries of development. Detailed gender and development guidelines assist the incorporation of a gender perspective in all Australia's aid activities.

Since the introduction of the GAD policy, the Australian aid program has made progress ensuring that gender considerations are incorporated in all aspects of the aid program. A review of the implementation of the GAD policy was undertaken in 2001. Following this review, an implementation strategy has been developed to guide the Australian aid program's efforts at ensuring that gender considerations are incorporated in all aspects of the aid program. The strategy aims to facilitate improvements in areas such as: development of gender strategies within poverty analysis; gender and development training for program managers in Australia and overseas; sector-specific gender case studies for all key sectors and stages of activity development; use of locally-based gender expertise; and mechanisms for monitoring and reporting on gender and development.

### ***Human rights framework***

In addition to its specific focus on good governance, the Australian Government seeks to maximise the benefits for human rights of all development cooperation activities. The Australian Government's framework for supporting human rights through the aid program consists of the following six principles:

- Human rights are a high priority for the Australian Government. Civil and political rights are ranked equally with economic, social and cultural rights.
- The Australian aid program will continue to undertake activities that directly address specific economic, social, cultural, civil and political rights. A particular emphasis will be on the creation of durable institutional capacity to promote and protect human rights.
- The emphasis is on the practical and the attainable. The Australian Agency for International Development (AusAID), the Government's aid agency, will pursue practical aid activities in support of human rights. These activities complement and build on high level dialogue on human rights. Dialogue on human rights and representations about individual cases will normally be carried out through diplomatic channels.
- The aid program will develop activities primarily as a result of consultations and cooperation with partner countries on human rights initiatives. Regional and multilateral activities will also be undertaken.
- Considerable care will continue to be applied to the use of aid sanctions associated with human rights concerns. The Government will consider such sanctions on a case-by-case basis. Aid conditionality based on human rights concerns would only be used in extreme circumstances since it can jeopardise the welfare of the poorest and it may be counterproductive.
- AusAID will continue to link closely with other arms of the Australian Government on governance and human rights issues. AusAID will also liaise with NGOs and human rights organisations in Australia.

### ***Human Rights Fund***

Complementing its support for human rights activities through bilateral and regional programs and through core funding to multilateral organisations, the Australian Government provides global funding to support developing country non-government organisations, as well as national and regional human rights institutions, that promote and protect human rights in those countries.

Key elements of the global Human Rights Fund are:

#### ***Office of the UN High Commissioner for Human Rights***

Australia continues to support the OHCHR National Institutions Project to promote the establishment and strengthening of national human rights institutions in Asia and the Pacific. Australia attaches particular importance to the work of the Office in building the capacity of Indigenous institutions to educate communities and ensure respect for human rights at the local level.

In line with Australia's lead on the good governance and human rights resolution at CHR, Australia is also contributing to a joint United Nations Development Programme/OHCHR project to strengthen good governance for national level advancement of human rights. Part of this project included a seminar in Seoul, Republic of Korea, in September 2004, which examined and built upon examples of national good governance practices identified by states, national human rights institutions, relevant bodies of the United Nations, other international bodies and relevant national and international non-government organisations. Australia submitted case studies of best practice for consideration by delegates to the seminar.

#### *Asia Pacific Forum of National Human Rights Institutions*

The Asia Pacific Forum of National Human Rights Institutions (the APF) is an organisation that supports the development of human rights institutions in Asia and the Pacific. It was established in Darwin in 1996 with Australian Government support. Its membership has trebled in seven years from four to twelve National Human Rights Institutions (NHRIs) of Australia, Fiji, India, Indonesia, Malaysia, Mongolia, Nepal, New Zealand, Philippines, Republic of Korea, Sri Lanka and Thailand.

The APF is well established as an independent entity and is performing an important role in encouraging establishment of NHRIs in the region in accordance with international standards enshrined in the Paris Principles (established in 1992 by the UN Commission on Human Rights, concerning the status, powers and functioning of national human rights institutions). Members and stakeholders appreciate its information, training and advisory services that aim to strengthen the capacity of NHRIs in the region. The APF is still in a growth period, with membership expected to increase.

#### *Human Rights Small Grants Scheme*

The Human Rights Small Grants Scheme provides small (up to AU\$70,000) grants to locally based organisations in developing countries for activities that promote and protect human rights in a direct and tangible way. Priority areas for assistance are:

- educating and training human rights workers
- promoting international human rights standards including improved reporting to UN treaty bodies
- supporting national and regional human rights institutions and infrastructures
- human rights education and awareness raising, and
- promoting democratic principles.

Over one hundred activities, mostly in Asia, have been supported since the program commenced in 1998–99. Examples of such activities include: human rights monitoring, analysis and public information regarding development of East Timor's justice system; grassroots human rights education in Fiji; human rights training in gender issues for school teachers in Indonesia; and support for the rehabilitation of trafficked women in the northern border area of Vietnam.

### *Promotion of democratic institutions in the Asia-Pacific region*

The Australian Government established the Centre for Democratic Institutions (CDI) in 1998. The CDI harnesses the best of Australia's democratic experience to support good governance in developing countries. Working with Australian institutions, CDI provides short term, intensive training courses to meet the operational requirements of key democratic institutions and processes. Activities supported include: training for junior to mid level parliamentary officials; training for ombudsmen and their staff; placement of an Australian volunteer in the Indonesian Parliament to strengthen language and research capacities; establishment of the Asia Pacific Judicial Educators Forum comprising judicial training institutes (with the Philippine Judicial Academy as Secretariat); and creation of an email group for parliamentary officials from the region.

The Government is committed to strengthening the judicial systems in the region by providing judicial education opportunities, engaging in partnerships to promote legal and technical cooperation and by appointing Australian judges to courts of appeal in other countries. The Australian Government funds a range of initiatives to assist countries to develop effective, independent judicial systems, particularly in the Asia-Pacific region, and to enhance Australia's understanding of those systems. These include:

- A training program by the Federal Court of Australia for the Indonesian judiciary. This program is designed to use the strengths of the Australian judicial sector to support the Indonesian judiciary by enabling the Federal Court to work closely with the Indonesian judiciary to run training sessions for Indonesian judges in Australia and Indonesia.
- The ongoing work of the International Legal Services Advisory Council (ILSAC), which promotes greater awareness and understanding in the Asia-Pacific and other regions of Australia's legal system and encourages links between the legal and related services sector in Australia and other countries. The work of ILSAC includes facilitating study visits to Australia by senior members of the legal profession or by persons from the legal and related services sector of the Asia-Pacific region and targeted countries.
- Strengthening the developing links in law, legal cooperation and legal services between Australia and the People's Republic of China.
- A Memorandum of Understanding with the Government of the Republic of Indonesia which covers a range of issues, including drafting and administration of laws, the development of legal policy, good governance and human rights. The possible forms of legal cooperation include the exchange of legal material, the exchange of relevant personnel, including judges, and strengthening cooperation between relevant professional bodies, universities and legal training organisations.

### *Promotion of human rights in the Asia Pacific region*

The Government will continue its support for the work of non-government organisations in disseminating information about international humanitarian law. The Government provides both core and targeted funding to the International Committee for the Red Cross and the Australian Red Cross to assist in the promotion of

international humanitarian law and to perform prevention, protection and assistance activities for civilians and detainees in conflict situations in the Asia-Pacific region.

## **ANNEXURE A – THE PROTECTION OF HUMAN RIGHTS IN AUSTRALIA**

In Australia, the protection of human rights is founded on:

- a system of representative and accountable government
- an independent judiciary, a fair and accessible justice system and the common law
- specific human rights legislation and a national human rights institution
- State and Territory anti-discrimination and equal opportunity commissions, and
- an array of programs and initiatives at national, State and Territory levels directed at enhancing the enjoyment of human rights.

### **Strong free democracy**

Australia has a strong and representative democracy, signifying government by the people through their representatives. Our strong democratic system is built upon a robust, open and accountable system of responsible government, an independent judiciary and a free press. These democratic institutions provide a sound basis for the protection of fundamental human rights.

### **Australia's federal system**

Australia has a federal system of government in which legislative, judicial and executive powers are shared or distributed between the Commonwealth, six States (New South Wales, Victoria, Queensland, Western Australia, South Australia and Tasmania) and three self-governing territories, two internal (Australian Capital Territory and Northern Territory) and one external (Norfolk Island).

The Commonwealth, States and self-governing Territories are governed by elected parliaments. The legislative power of the Commonwealth is vested in the Australian Parliament, consisting of the Queen (who is represented in Australia by the Governor-General), the Senate and the House of Representatives. Before a proposed law (a Bill) becomes a Commonwealth Act of Parliament, both the House of Representatives and the Senate must pass it. A Bill becomes an Act when it is presented to and receives 'royal assent' by the Governor-General.

Each State, apart from Queensland, also has a bicameral legislature (that is, parliament consists of two houses), with the upper house functioning primarily as a house of review. A State parliament may make laws on any subject of relevance to that State. However, where a State law is inconsistent with a valid Commonwealth law, the Commonwealth Constitution provides that the Commonwealth law overrides the State law to the extent of the inconsistency.

At the Commonwealth level, the number of members of the House of Representatives chosen by the people of each State and each internal self-governing Territory is in proportion to the population of each State and Territory. The number of Senators

chosen by the people of each State is 12 senators, regardless of the State's population. The people of the internal self-governing Territories each elect two senators.

The Australian Government is formed by the parliamentary party or coalition of parties which holds a majority of seats in the lower house, the House of Representatives. By convention, the leader of the party commanding a majority in the House of Representatives becomes the Prime Minister. The government is required to maintain the confidence of a majority of members of the House of Representatives.

Section 61 of the Constitution provides that 'The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative.' Executive power is the power to administer laws and carry out the business of government through such bodies as government departments and statutory authorities. When exercising the executive power of the Commonwealth, in accordance with long established constitutional practice, the Governor-General acts on the advice of Ministers who are responsible to the Parliament.

## **Representative government**

### *ICCPR - Article 25*

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

In addition to responsible government, another fundamental principle which underlies Australia's Constitution is representative government: government by representatives of the people who are chosen by the people. The Constitution requires members of the Commonwealth Parliament to be directly chosen by the people. Australian citizens who are 18 years of age and eligible to vote can stand for election to the Commonwealth Parliament. Most candidates for election represent political parties, but independents (ie candidates not formally aligned with a political party) do stand and are sometimes elected.

Section 128 of the Constitution ensures that any change to Australia's Constitution must be supported by a majority of electors. In addition, there must be a majority vote in at least four out of the six States.

It is an essential requirement of any democratic system that, as far as possible, all those who are eligible to vote are able to do so. Enrolling and voting at federal elections is compulsory for a person who is an Australian citizen, 18 years of age and is eligible to vote. Voting at internal State and Territory elections is also compulsory.

To ensure impartiality and accuracy in elections, the Australian Electoral Commission (AEC) is responsible for conducting federal elections and by-elections, constitutional referenda, and maintaining the Australian electoral roll. It also provides electoral education programs and produces a range of publications to promote public awareness

of electoral, parliamentary and referenda matters to the general public and to special needs groups. Key initiatives include:

- electoral education centres in Canberra, Melbourne and Adelaide and support for a State-operated centre in Perth
- electoral education initiatives in schools and with community groups
- electoral education workshops for teachers and trainee teachers, and
- providing information and services to Indigenous communities.

The AEC and State and Territory electoral commissions also adopt strategies to minimise any impediments confronting a particular disadvantaged group of electors to receiving and understanding information about, and participating in, the election process. For example, at the 2001 and 2004 Australian Capital Territory elections, electronic voting enabled visually impaired persons to vote unassisted, thereby ensuring the secrecy of their vote.

Australian law does not place any restrictions on the formation of political associations, including political parties. However, the *Electoral Act 1918* (Cth), imposes some controls on the activities of Australian political parties. For example, an electoral candidate must provide the AEC with a statement of certain gifts received during an election, and prohibits the receipt of anonymous donations above a certain value.

Members of the Australian community can also play an active role in representative democracy by making submissions to Australian, State and Territory parliamentary committees, which examine issues of public concern or proposed legislation. For example, since 1996, members of the Australian community have been able to express their views in relation to whether Australia should enter into an international treaty through the Joint Standing Committee on Treaties.

Members of the Australian community can also seek appointment to various non-elected public offices or government boards, present petitions to Parliament, or form organisations to represent particular interests and to lobby politicians (such as the Victorian Council for Civil Liberties, and the National Farmers' Federation).

Access to the Australian Public Service (APS) is open to all Australian citizens, without discrimination. The *Public Service Act 1999* (Cth) sets out the values of the APS. These include that the APS is apolitical and impartial, free from discrimination, recognises and utilises the diversity of the Australian community, is openly accountable for its actions and has the highest ethical standards.

## **Independent Judiciary - equal recognition and protection before the law**

*ICCPR - Article 14*

All persons shall be equal before the courts and tribunals...

*ICCPR - Article 26*

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law...

In Australia, all governments comprise three arms: the legislature, the executive and the judiciary.

The independence of the judiciary in Australia and its separation from the legislative and executive arms of government are regarded as essential to the protection of people's rights. Judges interpret, apply and develop the law independently of government.

The independence of federal judges is guaranteed by the Commonwealth Constitution, which gives them security of tenure and provides that their remuneration cannot be reduced. Federal judges may only be removed at the request of both houses of the Australian Commonwealth Parliament on the ground of proved misbehaviour or incapacity. In the States and Territories, legislation provides security of tenure for judges to ensure judicial independence.

The Commonwealth, States and Territories have systems of courts and tribunals to which every person has access. The High Court of Australia is the final court of appeal in respect of all matters, whether decided in federal, State or Territory courts. In addition to the High Court, there are three federal courts: the Federal Court of Australia, the Family Court of Australia and the Federal Magistrates Court. The latter provides an accessible and quick forum for less complicated matters in many areas of federal jurisdiction, including discrimination cases.

All Australian courts are open to the public and the media, except where express provision is made to the contrary, for example in trials involving children. At common law, a judge must conduct proceedings in a manner that is both impartial and perceived to be impartial. Education programs, including those provided by the National Judicial College, aim to provide professional development for judicial officers.

Australia has also established a number of independent national and State tribunals and other bodies, through which individuals can seek review of administrative decisions and actions taken by government officials. Where necessary, these review bodies remake administrative decisions according to the merits of individual cases.

## **A fair criminal justice system**

### *ICCPR - Article 14*

- (1) ...In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law.
- (2) Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law

Under Australia's federal system of government, the States and Territories have primary responsibility for criminal law enforcement. The Commonwealth, however, is responsible for some very important categories of criminal offences, including the importation and exportation of narcotics, terrorism and people smuggling. Most criminal matters, whether arising under Commonwealth, State or Territory law, are dealt with by State or Territory courts.

It is a fundamental tenet of the administration of justice in Australia that a person accused of criminal offence is presumed innocent until proven guilty beyond reasonable doubt. In addition to the protection of having an independent judiciary to determine the guilt of an accused person, the question of whether to initiate criminal proceedings is determined by an independent office. At the Commonwealth level, the Director of Public Prosecutions makes this decision. Similar independent offices exist at the State and Territory level. Other fundamental principles of the criminal justice system include freedom from arbitrary arrest and legal professional privilege.

Generally, under State and Territory law, persons charged with a criminal offence are not detained pending trial (ie placed on remand), except where there is risk they will:

- avoid appearing in court to face the charges
- be a danger to themselves or the community, or
- interfere with witnesses, evidence or other aspects of the legal process.

An accused person has the right to a fair trial, including the right to be informed of the charges laid against them. If a court considers that an accused person has had insufficient time to prepare a defence, it may order a temporary cessation of legal proceedings. Generally, a trial for a serious offence only proceeds where the accused has legal representation. Legal aid services provide assistance and representation to accused persons, subject to a means test and other conditions. With some exceptions, an individual also cannot be compelled to provide self-incriminatory testimony in court.

Under no circumstances may physical force be used to obtain a confession, or to intimidate or coerce an accused person. Australian courts have a wide discretion in criminal cases not to admit evidence that has been unlawfully obtained, where it would operate unfairly against the accused.

A right of appeal is available against conviction and sentence on specified grounds including that there has been a miscarriage of justice.

Where appropriate, interpreting services are provided to safeguard a person's right to answer effectively the charges against him or her. An accused person who is unable to give evidence adequately in English can be given access to a competent interpreter.

The Australian Government's Translating and Interpreting Service (TIS) provides a range of services and may be accessed 24 hours a day, seven days a week. The State and Territory governments also provide a range of interpreter services. For example, the Western Australian Government provides funding for Aboriginal interpreter services in Western Australia. Similarly, the Northern Territory Government, with financial assistance from the Australian Government, has established an Aboriginal Interpreter Service.

## **Equality, tolerance and respect**

The Australian Constitution does not expressly confer on the Commonwealth Parliament any specific power to legislate in relation to human rights. However, it does contain a number of express or implied guarantees regarding non-interference by the Australian Government with the rights of citizens (eg the acquisition of property must be 'on just terms').

One of the distinctive features of Australian society is the broad commitment to 'a fair go for all'. Australia is a strongly egalitarian society and has a well-developed sense of social responsibility and respect for the dignity of others.

### **Achieving equality**

*ICCPR - Article 26*

'All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

Australia has a well-established anti-discrimination framework, including Commonwealth, State and Territory laws prohibiting discrimination on a number of grounds, and human rights institutions in each jurisdiction. The Government's vision for Australia is a society where all Australians can live, work and participate fully in community life.

### ***Commonwealth legislation***

At the nation-wide level, there is an extensive human rights legislative framework:

- The *Racial Discrimination Act 1975* (Cth) implements domestically Australia's obligations under the UN Convention on the Elimination of All Forms of Racial Discrimination. The Act prohibits discrimination against a person on the basis of race, colour, descent or national or ethnic origin in all fields of public life, with specific provisions dealing with the areas of employment, access to facilities, accommodation, trade unions and the provision of goods and services. The Act also prohibits offensive behaviour based on racial hatred (vilification) on these specific grounds, apart from descent, subject to certain exceptions to protect the right to freedom of speech.
- The *Sex Discrimination Act 1984* (Cth) implements domestically Australia's obligations under the UN Convention on the Elimination of All Forms of Discrimination Against Women and certain aspects of the International Labour Organisation Convention 156. The Act prohibits discrimination on the

grounds of sex, marital status, pregnancy and potential pregnancy in certain areas such as employment, accommodation, education, the provision of goods, facilities and services, the disposal of land and the activities of clubs. It also makes sexual harassment unlawful in these areas and prohibits discrimination involving dismissal of employees on the grounds of family responsibility.

- The *Disability Discrimination Act 1992* (Cth) makes it unlawful to discriminate against persons with disabilities in the areas of employment, education, the provision of goods, services and facilities, accommodation, the disposal of land, the activities of clubs, sport, access to premises, the administration of Commonwealth laws and programs and in requests for information.
- Section 31 of the Disability Discrimination Act allows the Minister to formulate standards, known as disability standards. It is unlawful to contravene a disability standard. On 23 October 2002 the Disability Standards for Accessible Public Transport (the Transport Standards) became law in Australia. The Transport Standards are practical measures to be taken by transport operators and providers so that public transport will be more accessible, particularly for people with disability, as well as the elderly and those travelling with young children. Disability Standards in the areas of access to premises and education are currently being developed.
- The *Age Discrimination Act 2004* (Cth) prohibits discrimination on the basis of age in many areas of public life, including employment, access to goods, services and facilities, access to premises, administration of Commonwealth laws and programs, education and accommodation, transfer of land and requests for information.
- The *Human Rights and Equal Opportunity Commission Act 1986* (Cth) establishes the Human Rights and Equal Opportunity Commission and gives it a wide range of functions, including educating and raising awareness in the community of human rights issues, complaint handling, the provision of advice on human rights compliance and assistance to the Government on human rights policy and legislative development. The Act enables individuals to lodge complaints of unlawful discrimination, for example under the Age, Sex, Racial and Disability Discrimination Acts, to lodge complaints of unlawful discrimination in employment and to lodge complaints about acts or practices of the Australian Government that are alleged to breach a person's human rights.
- The *Human Rights (Sexual Conduct) Act 1994* (Cth) provides that a Commonwealth, State or Territory law cannot 'arbitrarily interfere' with the sexual conduct of consenting adults 'acting in private'.
- The *Privacy Act 1988* (Cth) gives effect to the right of privacy recognised in Article 17 of the International Covenant on Civil and Political Rights, protecting personal information collected and held by Australian Government agencies and many private sector organisations.
- The *Workplace Relations Act 1996* (Cth) includes an extensive range of provisions intended to help prevent and eliminate discrimination in the workplace on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion,

political opinion, national extraction or social origin. This intention is reflected in the principal object of the Act, as well as in provisions relating to awards, agreements and termination of employment. Specific provisions also deal with ensuring equal remuneration for work of equal value without discrimination based on sex.

The legislation within this framework also provides certain exemptions that do not make it unlawful to discriminate in certain specific circumstances. For example, section 53 of the Disability Discrimination Act does not make it unlawful for a person to discriminate against another person on the ground of their disability in connection with employment in the Defence Force that involves combat duties or peacekeeping services.

### ***State and Territory legislation***

A comprehensive anti-discrimination legislative framework also exists at State and Territory level, including the legislation listed below.

Australian Capital Territory: *Discrimination Act 1991*, *Disability Services Act 1991* and *Human Rights Act 2004*.

New South Wales: *Anti-Discrimination Act 1977* and *Disability Services Act 1993 No. 3*.

Northern Territory: *Northern Territory Anti-Discrimination Act 1994*.

Queensland: *Anti-Discrimination Act 1991*.

South Australia: *Equal Opportunity Act 1984* and *Racial Vilification Act 1996*.

Tasmania: *Tasmanian Anti-Discrimination Act 1998*.

Victoria: *Equal Opportunity Act 1995* and *Racial and Religious Intolerance Act 2001*.

Western Australia: *Equal Opportunity Act 1984*.

### ***Human rights institutions in Australia***

*The Human Rights and Equal Opportunity Commission – the national body*

The Human Rights and Equal Opportunity Commission is Australia's national human rights body. It is an independent statutory authority established by the Australian Commonwealth Parliament and meets the criteria for independent human rights institutions set out in the *Paris Principles* (adopted under UN General Assembly Resolution 48/134). The Commission plays an important national role in promoting awareness of, and a respect for, human rights in the community. The Commission has functions under the Human Rights and Equal Opportunity Commission Act, the Racial Discrimination Act, the Sex Discrimination Act, the Disability Discrimination Act and the Age Discrimination Act.

The functions of the Commission include public education and human rights awareness functions and the power to investigate and conciliate individual complaints. It also has broader policy and promotional functions, including:

- advising the Government on human rights questions
- examining the potential domestic impact of draft treaties

- reviewing existing and proposed legislation to ensure compliance with human rights principles
- conducting research into human rights issues, and
- inquiring into, and if possible conciliating, complaints made under the Human Rights and Equal Opportunity Commission Act, the Racial Discrimination Act, the Sex Discrimination Act, the Disability Discrimination Act and the Age Discrimination Act.

If a complaint of unlawful discrimination under the Racial Discrimination Act, the Sex Discrimination Act, the Disability Discrimination Act or the Age Discrimination Act cannot be conciliated, the President of the Commission will terminate the complaint. The complainant can then take the matter to the Federal Magistrates Court or the Federal Court for determination. A small filing fee is payable, which can be waived in cases of hardship.

The Commission can also inquire into complaints concerning alleged breaches of human rights by the Australian Government or Government authority, or discrimination in the area of employment on numerous grounds, including political opinion, age, sexual preference or trade union activity. Such complaints, which cannot be resolved by conciliation, can be the subject of a report by the Commission to the Australian Attorney-General, who in turn must table the report in Parliament.

#### *State and Territory anti-discrimination commissions*

Each State and Territory has established an anti-discrimination or equal opportunity commission. Although the functions of each commission vary according to the respective legislation under which it is established, common functions include:

- the determination or conciliation of complaints of discrimination brought under legislation operating in the particular jurisdiction, and
- developing and conducting human rights education and awareness initiatives.

#### *Other institutions*

There are also a number of other institutions that contribute to the protection of human rights in Australia, including:

- the Office of the Federal Privacy Commissioner, an independent statutory office with responsibilities under the Privacy Act, whose functions are to:
  - - promote an Australian culture that respects privacy
  - - promote best practice in privacy standards
  - - provide information and advice about privacy issues, and
  - - investigate complaints about interference with an individual's privacy under the Privacy Act and related legislation.
- The Commonwealth Ombudsman, whose functions are to:
  - - investigate complaints about the actions and decisions of Australian Government departments and authorities to see if they are wrong, unjust, unlawful, discriminatory or just plain unfair; and

- - seek remedies for those affected by defective administration, and act to improve public administration generally.

State and Territory Ombudsmen (or an equivalent office holder) investigate complaints about the actions or decisions of State and Territory governments. Similarly, there are privacy commissioners established under some State and Territory privacy laws.

## **Achieving gender equality**

### *ICCPR - Article 3*

The States party to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

### *ICESCR - Article 3*

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

### *CEDAW – Article 2*

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women...

Women and girls have made steady progress in their participation in education, training and employment, decision-making and leadership, and health over the last five years. In some of these areas, women have had major gains. Some examples:

- new apprenticeships for women increased from 20.4 % in 1996 to 37.1% in 2003
- women have maintained a steady level of participation in vocational education and training (VET) at 46.5% of total VET participation in 1996 and 48.5% in 2003
- a general upward trend in the labour force participation rate of all women (15 years and over)
- women made up 57% of higher education students commencing an undergraduate qualification and 59% of post-graduate students in 2003
- women have consistently constituted about one third of candidates standing for Aboriginal and Torres Strait Islander Commission elections and between 25% and 30% of those elected as regional councillors
- women comprise over a quarter of Federal Parliamentarians
- life expectancy at birth continued to increase, with girls born between 1999-2001 having a life expectancy of 82.4 years, an increase from 81.1 years in 1994-1996
- significant decreases in the number of deaths resulting from breast cancer. In 2001 there were 24.7 deaths per 100,000 females, compared to 28.1 deaths per 100,000 females in 1996, and
- significant decreases in the number of deaths resulting from cervical cancer, with a 50% reduction in the last ten years.

Recognising the importance of schooling in promoting gender equality, the Australian Government is undertaking a revision of Gender Equity: A Framework for Australian Schools (MCEETYA, 1997) in conjunction with the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) Targeted Initiatives of National Significance Working Group on Gender Equity. The goal of the new framework seeks to promote equitable access to all aspects of schooling and comparable learning outcomes for all students (as the basis for equitable access to further study and employment), as well as encourage young people to develop self-confidence and respect for one another.

At the same time, there are some areas where progress has been slower and new challenges have emerged for some women. The key areas where the Australian Government is continuing to focus its efforts include:

- family/domestic violence and sexual assault against women and girls
- the concentration of women in some fields/sectors/occupations in education, training and labour markets such as hospitality, nursing and retail, and
- the under-representation of women in high level decision-making, particularly in political and judicial systems.

## **Equality for people with disability**

The Australian Government's disability discrimination policy is designed to break down, to the greatest extent possible, the social and economic barriers that prevent participation by people with disability in mainstream community life. The Government's approach is to ensure that measures that prevent discrimination on the ground of disability are based on fair, balanced and effective principles that widen the opportunities for people with a disability to gain independence, access to goods and services available to the rest of the community, and to participate in the broader community.

Therefore, the Disability Discrimination Act makes it unlawful to discriminate against persons with disabilities in the areas of employment, education, the provision of goods, services and facilities, accommodation, the disposal of land, and a wide range of other social, cultural, economic and political activities. The Government's vision for Australia is a society where all Australians can live, work and participate fully in community life.

The Act also allows the Attorney-General to formulate disability standards which will specify rights and obligations under the Act in particular areas. The Disability Standards for Accessible Public Transport and accompanying guidelines, currently in force, specify minimum levels of access to mainstream public transport for people with disability.

## Achieving Indigenous equality

*CERD – Article 1, para 4*

Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved...

*CERD – Article 2(e)*

...States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

*CERD – Article 5*

...States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law...

*ICESCR – Article 2(2)*

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status

Indigenous Australians are among the most disadvantaged people within the Australian community. To address this situation, there is a range of special laws and programs at national, State and Territory levels that are designed specifically for the benefit of Indigenous Australians. For example, in addition to general laws prohibiting racial discrimination and promoting equal opportunity, there are special laws to enable Indigenous communities to claim or purchase land. In the 2004–05 Australian Budget, the Government committed a record \$2.9 billion to Indigenous-specific initiatives to reduce Indigenous disadvantage and increase the opportunities of Indigenous Australians to achieve self-reliance and independence from welfare. These initiatives are in addition to general government programs, such as health benefits, social security and employment assistance, that every Australian can access. The Government is also placing significant emphasis on the need for these “mainstream” services to be accessible to, and meet the needs of, Indigenous Australians.

In addition to prohibiting racial discrimination and ensuring racial equality under the law, the *Racial Discrimination Act 1975* includes an exemption for 'special measures', that is, benefits for persons of a certain race in order that they may enjoy and exercise human rights and fundamental freedoms equally with persons of other races. Therefore, special laws and programs to address indigenous disadvantage are consistent with the aims of the Act and with the CERD, provided that such laws and programs do not lead to the maintenance of separate rights for different racial groups and shall not be continued after the objectives for which they were taken have been achieved.

## ***Reconciliation***

The Australian Government is strongly committed to the ongoing process of reconciliation with Indigenous Australians.

It recognises the important role played by symbolic measures, such as the Government-funded construction of Reconciliation Place, opened in 2002 in the heart of Canberra's Parliamentary district. In 2000, the Australian Government provided seed funding and tax deductibility status to Reconciliation Australia to carry on the process of reconciliation started by the Council for Aboriginal Reconciliation. Reconciliation Australia is working towards the aim of "[a] united Australia which respects this land of ours; values the Aboriginal and Torres Strait Islander heritage; and provides justice and equity for all."

Recently, the Government provided funding of \$15 million to Reconciliation Australia to continue to promote and encourage the process of reconciliation between Indigenous Australians and non-Indigenous Australians. This is intended to ensure that reconciliation takes place at all levels, involving governments, communities, organisations and individual Australians.

In 2002 the Government also responded to the Council for Aboriginal Reconciliation's Final Report to the Parliament by reconfirming its awareness of the special place of Indigenous people in the life and history of Australia.

While symbolic measures are important, the Government also firmly believes that true reconciliation and equality of opportunity between Indigenous and non-Indigenous Australians require practical policies and initiatives.

To this end, it continues to support the reconciliation framework agreed by the Council of Australian Governments (COAG) in November 2000. This framework set out a trial whole-of-government cooperative approach in a number of communities or regions, involving Australian, State and Territory governments. The aim of the trials is to improve the way governments interact with each other and with communities, to deliver more effective responses to the needs of Indigenous Australians. The provision of adequate housing, education, and health services to Indigenous Australians, detailed elsewhere in this Plan, are all necessary before Indigenous and non-Indigenous Australians can achieve full reconciliation.

## **Appreciating diversity and the cultural rights of minorities**

### *ICCPR - Article 27*

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Australian society is diverse, encompassing a wealth of cultures, histories, religions and traditions, rural and urban, of Indigenous and other Australians. As at the August 2001 Census, 23.1% of the Australian population was born overseas. Of these, 33.1% were born in north-west Europe (mainly the United Kingdom and Ireland), 18.9% in southern and eastern Europe and 12.1% in South-East Asia. The largest countries of birth were the United Kingdom (25.2% of the overseas-born), New Zealand (8.7%) and Italy (5.3%). Indigenous people comprised 2.3% of the

population (for more population data, see the Australian Bureau of Statistics website: [www.abs.gov.au](http://www.abs.gov.au)). The Government is committed to ensuring all Australians have the opportunity to be active and equal participants in Australian society, free to live their lives and maintain their cultural traditions. This social equity is enshrined in Commonwealth, State and Territory legislation.

Every government in Australia acknowledges the rich heritage and history of Australia's Aboriginal and Torres Strait Islander peoples and the significance of this heritage to Indigenous and non-Indigenous Australians alike. Legislation exists at the Commonwealth, State and Territory levels which is designed to preserve and protect areas and objects that are of particular significance to Indigenous people. The Australian Government also believes that the promotion of Indigenous heritage and culture at a public level can do much to assist the cause of reconciliation and improve and expand community understanding of, and goodwill towards, Aboriginal and Torres Strait Islander people. It therefore considers that acknowledgment of the special place of Indigenous people in the life and history of Australia is appropriate on certain occasions and in certain national ceremonies, such as citizenship ceremonies.

### **Achieving equality and respect through human rights education**

The importance of human rights and respect for equality of persons has broad acceptance throughout the Australian community.

The Australian Government is strongly committed to fostering human rights education within Australia. In the long term, it believes that education and awareness about human rights are the most meaningful ways to promote greater respect for the value of human rights and reduce breaches of human rights within Australia.

Aside from handling discrimination complaints under relevant anti-discrimination laws, every Commonwealth, State and Territory human rights institution conducts a range of human rights education programs.

### **Liberty, security and dignity**

In any society, individual freedoms need to be balanced against the interests of others. Australian citizens enjoy one of the most free and democratic societies in the world. This freedom is maintained through effective democratic institutions — a robust parliamentary system, the rule of law and freedom of the press.

### **Safeguarding against arbitrary deprivation of life**

*ICCPR Article 6*

...No one shall be arbitrarily deprived of his life...

*Optional Protocol to ICCPR Article 1(2)*

Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.

The Australian Government shares community concerns about serious crime and supports the general principle that the punishment should fit the seriousness of the crime. However, the death penalty has not been supported by governments in Australia for over 25 years. A fundamental difficulty with the death penalty is that,

being a final remedy, an innocent person has no chance for corrective action once the sentence is carried out. The death penalty was formally abolished throughout Australia by federal and State legislation by 1985. There are no plans to reintroduce the death penalty in Australia as the Government acknowledges it as an unacceptable method to punish criminal offenders.

Australian criminal and civil laws provide redress against unlawful attacks on any person. In all Australian jurisdictions, the common law and Criminal Codes provide for the offences of murder, manslaughter and attempted murder.

Following the terrorist attacks in the United States of America on 11 September 2001, and in accordance with United Nations Security Council Resolution 1373, Australia's counter-terrorism arrangements were upgraded after a comprehensive review. The Australian Government enacted a package of legislation that, among other things, introduced into the *Criminal Code Act 1995 (Cth)* (Criminal Code) a range of offences relating to terrorism, terrorist bombings and terrorist financing. Under the Criminal Code, preparatory acts relating to terrorism will also constitute an offence, even where the terrorist attack does not occur.

The Australian Government has also played a leading role in promoting uniform national legislation to reduce firearm-related injury and death. The landmark 1996 *National Firearms Agreement* resulted in 660,000 firearms being permanently removed from the Australian community. More recently, the 2002 National Handgun Reforms restricted access to handguns and have resulted in the removal of almost 69 000 handguns from the Australian community. The result of these and other reforms has been a fall in firearm-related deaths, including homicide and suicide.

## **No arbitrary arrest or detention**

### *ICCPR - Article 9(1)*

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

Australian law protects the liberty and security of the person and prevents arbitrary arrest or detention. Generally, a person can only be deprived of his or her liberty in limited circumstances and only where it is reasonable and necessary to do so, such as pursuant to a court order, or for being unlawfully present in the country, or following arrest for an offence. Protective intervention is also allowed in areas such as mental health, communicable diseases, drug and alcohol abuse, and children in need of protection. Legislative safeguards operate to prevent abuse of power.

Australian law also defines when detention must come to an end. For example, under subsection 196(1) of the *Migration Act 1958*, an immigration detainee must be released from detention when he or she is either granted a visa or is removed from Australia. In cases of removal from Australia, the High Court has recently found that detention may continue until removal is reasonably practicable.

Australian law allows people (both Australian citizens and non-citizens) to take legal action in relation to unjustifiable interference with their liberty through mechanisms such as legal proceedings for a writ of habeas corpus, false imprisonment, assault or battery, malicious prosecution and abuse of process or public office.

### ***Human rights education for Police***

The Programme of Action from the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance urges States to implement effective policies to ensure accountability for misconduct by law enforcement officers motivated by racism and racial discrimination. In addition to Commonwealth, State and Territory anti-discrimination laws, police standing orders or regulations in each jurisdiction make it clear that discriminatory conduct by police personnel is unacceptable.

The Australian Federal Police provides equity and diversity training to its members which covers topics such as human rights legislation, gender issues, workplace harassment, and cross cultural awareness issues, including Indigenous-specific issues. State and Territory police also have a range of programs dealing with equity and diversity issues.

The Australasian Police Multicultural Advisory Bureau assists police services throughout Australia to provide police and ethnic and religious community policies, programs and initiatives which are appropriate, effective, efficient and in keeping with national standards, including community education on police and ethnic community issues. For example, the Bureau developed the National Anti-Racism Training for Police: In-Service Training Package through a 1999–2000 community grant under the *Living in Harmony* initiative. The package is designed to equip police with the necessary skills to provide a professional service in a culturally diverse society and enhance harmonious relations. It can be individually tailored to suit the needs of each State and Territory jurisdiction. The Bureau has been working with the Australian Federal Police to develop a tailored package to cover relevant Federal criminal and anti-discrimination laws, and complaint procedures. The program will also cover relevant case studies, police best practice and operational procedures, and local support and referral services. The program is being incorporated into existing training programs.

### **Humane conditions and treatment**

#### *ICCPR - Article 10*

- (1) All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
- (2) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons. Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication...

### ***Federal, State and Territory prisons***

Under Australian law and internal disciplinary procedures, correctional officers are required to respect the human dignity of persons on remand (pending trial) and convicted prisoners. The Standard Guidelines for Corrections in Australia, which are currently being revised, accord with the UN Standard Minimum Rules for the Treatment of Prisoners.

It is standard practice in Australia to separate accused persons from convicted persons and remand centres have been established in each State and Territory to support this

practice. Occasionally, where there is no viable alternative (eg in remote areas), persons on remand will be housed with convicted persons.

It is also standard practice in Australia to separate juveniles (persons below the age of 18 years, 17 years in Queensland and Victoria) from adult prisoners. State and Territory legislation specifically provides for juvenile detention centres. Only in unusual circumstances (eg extreme distance from a juvenile detention centre) would a juvenile prisoner be housed in an adult prison facility.

Australia's reservation to Article 10 of ICCPR and Article 37(c) of CROC, reflect the geographical consideration confronting Australian authorities that occasionally necessitates housing a person on remand with convicted persons or housing juveniles in adult facilities.

### ***Detention of unlawful non-citizens***

The primary purpose of the *Migration Act 1958* (Cth) is to regulate, in the national interest, the entry and presence in Australia of people who are not Australian citizens. This reflects Australia's sovereign right under international law to determine which non-citizens are admitted or permitted to remain in Australia and the conditions under which they may be removed. Under the Act, immigration detention of all unlawful non-citizens in mainland Australia is mandatory by operation of law.

Australia's immigration detention policy is for administrative purposes. These include:

- ensuring that people arriving unlawfully do not enter the Australian community until their claims to do so have been properly assessed against internationally agreed standards
- providing asylum seekers access to appropriate services for the processing of their visa applications
- ensuring essential health, identity and security checks are conducted, and
- where claims to remain in Australia are unsuccessful, ensuring availability for removal.

In the case of *Lim v Minister for Immigration and Ethnic Affairs* (1992) 172 CLR 1, the High Court found that legislation mandating the detention of unlawful non-citizens was constitutionally valid, provided it was for the purposes outlined above. The High Court made similar statements in the recent judgement of *Al Kateb v Minister for Immigration and Multicultural and Indigenous Affairs* (6 August 2004), in which a majority found that detention of unlawful non-citizens is constitutionally valid provided that it is not for punitive purposes.

To reduce the period that unauthorised arrivals spend in detention, the Australian Government has taken significant steps to ensure expeditious processing of their applications. Every effort is made to ensure that people in detention are able to go about their daily life with as few restrictions as possible. For example, immigration detention is usually communal, with families remaining together and men, women and children able to mix. People are expected and encouraged to continue to take

responsibility for themselves, their families and their living areas, while recognising that detainees do not have the ability to control all aspects of their daily life.

Immigration Detention Facilities (IDFs) are managed by an outsourced Detention Services Provider (DSP), in conformity with the Detention Services Contract (“the contract”). The DSP must adhere to the Government’s Immigration Detention Standards (IDS) which form part of the contract. The IDS outline the quality of life expected in detention facilities and set out a service provider’s obligations to meet the individual care needs of detainees in a culturally appropriate way while at the same time providing safe and secure detention. Particular emphasis is placed on the sensitive treatment of people with special needs, including children. The Government closely monitors performance by service providers against the IDS and contractual requirements.

The Commonwealth Ombudsman and the Human Rights and Equal Opportunity Commission have statutory rights and duties to investigate complaints by detainees and to conduct their own inquiries in relation to immigration detention. Posters are displayed throughout the detention facilities to inform detainees about the services provided by the Ombudsman, the Commission and the Australian Red Cross. The UN High Commissioner for Refugees also has access on request and has visited detention facilities on a number of occasions.

An Immigration Detention Advisory Group advises the Minister on the adequacy and appropriateness of detention services, accommodation and facilities. Members of the Advisory Group have unfettered access to all detention facilities.

## **No slavery or servitude**

*ICCPR - Article 8*

No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited.  
No one shall be held in servitude...

Slavery is unlawful in Australia. The Commonwealth Criminal Code contains offences of slavery, sexual servitude and deceptive recruiting for sexual services. These offences criminalise some of the most serious forms of exploitation associated with trafficking in persons. New legislation will strengthen Australia’s laws against trafficking in persons, particularly trafficking in children.

Australia has also made child sex tourism an offence. The *Crimes Act 1914* (Cth) contains offences applying to Australian citizens and residents who engage in sexual activity with children under the age of 16 while overseas. Similar offences apply to conduct within Australia under State and Territory criminal law.

Australia regards the trafficking of women and girls as a form of violence against women. On 11 December 2002, Australia signed the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, which supplements the United Nations Convention Against Transnational Organised Crime. Australia will ratify the Protocol once all domestic requirements for ratification have been met.

The Australian Government Action Plan to Eradicate Trafficking in Persons focuses on four key elements: prevention, detection and investigation, criminal prosecution of

traffickers, and victim support and rehabilitation. More than \$20 million has been allocated to the fight against trafficking, through a dedicated Australian Federal Police team, comprehensive victim support measures, a range of regional development projects, new legislation and visa arrangements, and reintegration assistance for victims returning to key source countries in South East Asia.

Throughout Australia, adult prostitution is legal, but some activities surrounding and associated with prostitution attract criminal sanctions. The trend in Australia has been to decriminalise and regulate prostitution.

Violence perpetrated by men against women often involves forms of abuse which can result in physical restraint, sexual servitude, forced social isolation or economic deprivation. All Australian governments have legislation prohibiting violence against individuals, and provide a range of programs and services to prevent and respond more effectively to gender-based violence, particularly domestic violence and sexual assault.

Australia also supported the development of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. The Protocol was adopted by the UN General Assembly in May 2000 and entered into force on 18 January 2002 when the requisite number of ratifications was obtained. Australia signed the Protocol on 18 December 2001, and ratification is underway.

The Australian Government intends to ratify International Labour Organisation Convention No. 182, *Worst Forms of Child Labour*, 1999 once technical compliance problems have been addressed. The Convention prohibits the involvement of children in all forms of slavery and practices similar to slavery, the production of pornography, prostitution, illicit activities such as the production and trafficking of drugs, and work which, by its nature or the circumstances under which it is carried out, is likely to harm the health, safety or morals of children.

## **Freedom from torture or cruel, inhuman, or degrading treatment or punishment**

### *ICCPR - Article 7*

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Torture and other cruel, inhuman or degrading treatment or punishment constitutes a criminal offence and civil wrong in all Australian jurisdictions. Police officers are instructed to treat those in detention with respect.

In some circumstances, it has been considered necessary to create specific offences. For example, each State and Territory jurisdiction has criminalised the act of female genital mutilation and the removal of a child from a jurisdiction for the purposes of female genital mutilation. In addition, the Australian Government promotes an integrated approach to eradicating female genital mutilation by supporting women who may be at risk, through legislation and community education initiatives.

## Personal freedoms

Australians have a very high level of personal freedom, which is protected through legislative, administrative and democratic institutions, and legal frameworks.

Australians value highly their right to privacy, freedom of expression, freedom of religious belief and freedom of association. Individuals are not coerced, encouraged or discouraged to change any view or belief, other than to ensure respect for the rights and freedoms of others.

### Protecting the right to privacy

#### *ICCPR - Article 17*

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

Privacy is protected by a range of Commonwealth, State and Territory legislation, the common law and administrative instructions.

People's personal information held by the public sector is protected by Commonwealth privacy legislation in relation to Commonwealth public sector agencies and privacy legislation in the Australian Capital Territory, New South Wales and Victoria in relation to those jurisdictions' public sector agencies. Under these laws, Privacy Principles regulate the collection, storage, use and disclosure of such information as well as access to and the correction of personal information. Under freedom of information legislation individuals (including overseas residents) can obtain access to information about them that is held by most government departments and agencies. Access to personal information may be denied, however, where it would unreasonably disclose personal information about another person or if one of a number of other exemptions applied.

Australian civil and criminal laws of defamation protect persons from attacks on their honour and reputation. However, in very limited cases, such as parliamentary and judicial proceedings, redress for otherwise defamatory comments may not be available.

### Freedom of expression

#### *ICCPR - Article 19*

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others;
  - (b) For the protection of national security or of public order (order public), or of public health or morals.

In Australia, everyone has the right to hold opinions without interference. Every person also has the right to freedom of expression subject to certain laws to protect the

rights of others, such as defamation, vilification on proscribed grounds and the classification of films, computer games and certain publications.

The Australian Constitution contains an implied guarantee of freedom of communication in relation to political matters, which the High Court has determined is essential to the proper functioning of Australia's system of democratic and representative government.

Media organisations in Australia enjoy a high degree of freedom and play a significant role in promoting a free exchange of ideas and information and encouraging public debate. The media are also free to report parliamentary proceedings and court decisions, which is vital to ensuring accountable, democratic governance.

Decisions on the classification of films, computer games and certain publications give effect, as far as possible, to the principles that: adults are entitled to read, hear and see what they want; minors should be protected from material that may harm or disturb them; everyone should be protected from unsolicited material that they find offensive; and community concerns about violence, particularly sexual violence, and the portrayal of persons in a demeaning manner need to be taken into account.

The enforcement of classification decisions, and restrictions on who may read, hear and see certain kinds of material, is a matter dealt with by the States and Territories.

## **Freedom from advocacy of national, racial or religious hatred**

### *ICCPR - Article 20(2)*

Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

### *CERD - Article 4*

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

- (a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;
- (b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;
- (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

The *Racial Discrimination Act 1975* (Cth) prohibits public acts that are reasonably likely to offend, insult, humiliate or intimidate another person because of the race, colour, national or ethnic origin of the other person. The Act contains certain exceptions to strike a balance between freedom of expression and the right to live free from fear of violence and racial hatred.

Criminal acts, including acts of violence motivated by racial or religious hatred, remain criminal offences. A person who urges or encourages other persons to commit acts of violence or property damage could be guilty of an offence against State or Territory law or, in some circumstances, a Commonwealth law.

Complaints can be made to the Human Rights and Equal Opportunity Commission alleging racially offensive conduct. As in the case of unlawful racial discrimination, where the Commission is unable to conciliate a complaint concerning racially offensive behaviour, legal proceedings can be brought in the Federal Magistrates Service or the Federal Court of Australia seeking a remedy.

The UN Declaration on Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief has been declared by the Attorney-General to be an ‘international instrument’ for the purposes of the *Human Rights and Equal Opportunity Commission Act 1986*. This empowers the Commission to inquire into any act or practice of the Commonwealth that may be inconsistent with or contrary to any of the rights recognised in the Declaration. If the complaint cannot be conciliated and the President of the Commission finds that the complaint is substantiated, the President must provide a report to the Attorney-General. This report must be tabled in the Federal Parliament.

Australia’s reservations to Article 20 of ICCPR and Article 4(a) of CERD reflect the Australian Government’s belief that the protection of groups and individuals from racially offensive behaviour must be balanced against restrictions on freedom of expression. The Government considers that the Racial Discrimination Act strikes an appropriate balance.

### ***State and Territory legislation prohibiting religious vilification***

Most States and Territories prohibit religious discrimination via anti-discrimination laws (Australian Capital Territory, Northern Territory, New South Wales, Queensland, Tasmania, Victoria, and Western Australia). Depending on the location, a person cannot discriminate against another person because of their:

- “religious conviction” – *Discrimination Act 1991* (ACT) and *Equal Opportunity Act 1984* (WA)
- “religious belief or activity” – *Anti-Discrimination Act 1992* (NT)
- “ethno-religion” – *Anti-Discrimination Act 1977* (NSW)
- “religion” – *Anti-Discrimination Act 1991* (Qld)
- “religious belief or affiliation” and “religious activity” – *Anti-Discrimination Act 1998* (Tas), or
- “lawful religious belief or activity” – *Equal Opportunity Act 1995* (Vic).

## **Peaceful assembly**

*ICCPR - Article 21*

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

There are few restrictions on organising and participating in peaceful assemblies in Australia. Where such restrictions exist, they are designed to impinge upon the right to peaceful assembly as little as possible.

The Human Rights and Equal Opportunity Commission can investigate complaints against actions taken by Australian Government agencies which may infringe upon the right to peaceful assembly.

## **Freedom of association**

*ICCPR - Article 22(1)*

Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

In Australia, there are few restrictions on the right to freedom of association, other than associations that advocate or encourage, by force or violence, the overthrow of the Constitution or established governments. Political groups and human rights organisations have the same freedom to associate as organisations formed for other purposes.

The right to freedom of association in the industrial context is protected under the *Workplace Relations Act 1996 (Cth)* and similar State and Territory legislation. The Act protects and promotes the rights of employees and employers to join or not to join an organisation or association of their choice. The Building Industry Taskforce (in relation to the building and construction industry) and the Office of the Employment Advocate provide assistance and information in relation to freedom of association in the industrial context.

## **Freedom of religion**

*ICCPR - Article 18*

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others...

Australia is a multi-faith society. A majority of Australians profess adherence to Christian beliefs. A large number of Australians adhere to Islamic, Buddhist, Jewish, Hindu or Indigenous spiritual beliefs. There is also a diversity of other faiths currently practiced in Australia.

The Australian Constitution prevents the Commonwealth Parliament from legislating to establish any religion, imposing a religious observance, preventing the free exercise of any religion or imposing a religious test for any government office or public trust.

A central feature of Australia's multicultural policy is the principle of cultural respect. Subject to the law, every person has the right to express their own culture and beliefs and a reciprocal obligation to accept the right of others to do the same.

Complaints alleging discrimination on the basis of religion in employment or occupation can be made to the Human Rights and Equal Opportunity Commission for investigation.

Some States and Territories have enacted legislation prohibiting discrimination on the grounds of religion or prohibiting religious vilification.

## **Opportunity and choice**

The Australian, State and Territory governments strive to create an environment that encourages as much choice as possible and provides assistance to those in need, to make the most of the opportunities available. Within this environment, the private sector plays a crucial role in delivering quality goods and services and creating opportunities.

## **Equal access to education**

### *ICESCR - Article 13(1)*

The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

Australia's strategic priorities in education, particularly for Indigenous Australians, include improving standards of literacy and numeracy, creating more effective transitions from school to work, and ensuring the continuing relevance of the education and training system in the context of the emerging knowledge-based economy. The Australian Government considers 'lifelong learning' to be the cornerstone of an inclusive and vibrant Australian society.

In Australia, education comprises the early childhood, primary and secondary education, vocational education and training and higher education sectors.

School education in Australia is compulsory between the ages of 6 and 15 years (16 in Tasmania). However, the majority of children start school when they are younger than 6 and remain at school beyond the age of 15. Parents or guardians may choose to enrol their children in free government-funded schools or fee-paying non-government schools. In addition to providing financial assistance to the States and internal Territories to fund a quality public school system, the Australian Government is the predominant source of government financial support for non-government schools.

In recent years, the vocational education and training (VET) sector has undergone significant change to become more responsive to and inclusive of the needs of a diverse Australian society, including those from disadvantaged groups. The VET sector provides an array of training opportunities that are focused on achieving diversity and flexibility to meet the needs of all Australians. Partners in a Learning Culture and Bridging Pathways are two strategies aimed at increasing the participation of, and improving the opportunities for, Indigenous Australians and people with disability. On-line learning programs and support for language, numeracy and literacy skills complement other initiatives to improve the flexibility and responsiveness of the National VET system to meet the learning needs of a diverse Australian community.

In 2002 the Australian Government undertook a review of the higher education system to determine future directions. The review resulted in a package of reforms, Backing Australia's Future (BAF), enshrined in the Higher Education Support Act 2003. Equity is an underlying principle of the BAF reforms.

Although the Australian Government funds the major part of the costs involved in the higher education system, it is considered reasonable that students who directly benefit from higher education should contribute part of the cost. To ensure equitable access to education, the Higher Education Contribution Scheme (HECS) provides an interest-free deferred-payment arrangement so that students who are unable to make the contribution up-front can access quality higher education. The reforms include a new suite of loans, called the Higher Education Loan Programme (HELP). HELP includes HECS-HELP, based on the existing HECS, a new loan program called FEE-HELP to help eligible students who are paying full fees in public and eligible private higher education institutions, and Overseas Study (OS-HELP) to help eligible students who wish to study overseas. Under HECS, students are not required to make any repayment until their income reaches a minimum level (\$35,000 in 2004–05, up from \$24,365).

Increased funding of \$1.5 billion over four years will be provided to universities and an additional 34,000 new university places will be provided by 2008. Students will also benefit under new regional loading measures targeted at regional universities.

The Commonwealth Learning Scholarships program was introduced in 2004, targeted to students from low socio-economic backgrounds, particularly Indigenous students and students from rural and regional areas. The scholarships program comprises the Commonwealth Education Costs Scholarships, which provides students with \$2000 per year for four years to assist with their education costs, and the Commonwealth Accommodation Scholarships, which provides students from rural and regional areas who have to move away from home to study with \$4000 per year for up to four years.

Additional equity initiatives include: the Enabling Loading to support the provision of enabling programs for people with particular types of disadvantage to undertake award courses in higher education; increased funding for the Higher Education Equity Programme, Students with Disabilities Programme and the Indigenous Support Fund; and the establishment of Indigenous Staff Scholarships and the Indigenous Higher Education Advisory Council.

### *Assisting disadvantaged groups*

The Australian Government has a continuing commitment to promote equity in higher education. Institutions receiving Australian Government funding have an obligation to support equity of access. Since 1990, particular groups have been targeted for equity of access planning, based on their history of relative disadvantage in accessing higher education. These groups are:

- people with disability
- people from rural and isolated areas
- people from a non-English speaking background
- people from socio-economically disadvantaged backgrounds
- women in non-traditional areas of study, and
- Indigenous peoples.

The Australian Government's Higher Education Equity Programme (HEEP) provides funding to encourage universities to improve the higher education participation of disadvantaged students (assistance for Indigenous students is provided separately through Indigenous Support Funding). In 2004 a review of HEEP was undertaken to ensure it is focused on groups experiencing significant educational disadvantage. The recommendations of the review will be implemented in 2005.

Indigenous Support Funding provides additional assistance to higher education institutions to assist them to support the special needs of Aboriginal and Torres Strait Islander students and advance the goals of the National Aboriginal and Torres Strait Islander Education Policy (AEP). Universities may offer enabling programs, comprising bridging or supplementary courses, to provide a pathway to higher education for students from disadvantaged groups who have not had the academic preparation to enrol directly in award courses. An enabling loading will be introduced from 2005, providing additional funding for universities which offer enabling courses.

The Australian Government works with States and Territories and industry to achieve agreed national objectives in a National Strategy for VET 2004–10, which builds equity into the core business of VET and seeks to be inclusive of people facing barriers to learning due to disability, age, gender, cultural difference, language, literacy, numeracy, cost, unemployment, imprisonment or isolation.

The Australian Government has recognised the need to do more for groups facing disadvantage in the labour market due to disability, age or family responsibilities. A program is being established in 2004 for the Australian Government to directly purchase additional training places for these groups to give them the qualification they need to get a job.

## **Taking advantage of employment opportunities**

*ICESCR - Article 6(1)*

The States Parties to the present Covenant recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

Australia's employment policies are directed towards creating an efficient and equitable labour market. The emphasis is on linking people to employment opportunities, and facilitating the transition of school leavers or those on welfare to paid employment. To this end, job seekers are able to access a range of employment services free of charge that are tailored to their individual needs and circumstances. The long-term unemployed are provided with additional assistance.

Australia encourages its citizens to contribute to being a part of the nation's workforce to the extent that they are able. The Australian Government maintains a basic structure of income support and assistance for all unemployed people. In return, unemployment benefit recipients are encouraged under the principle of 'mutual obligation' to undertake a range of activities such as voluntary or community work, training, or casual or part-time opportunities. All job seekers under the age of 49 who have been unemployed for 12 months must undertake an activity that satisfies their mutual obligation. Participants who complete a placement on Work for the Dole can access additional support and practical assistance to find paid employment. These arrangements encourage greater self-reliance and self-esteem while providing appropriate support and assistance to unemployed people to enhance their long-term employment opportunities.

The Government has developed a fully contestable market for publicly funded job placement services called the Job Network which provides targeted assistance to unemployed people on the basis of need and capacity to benefit, with the aim of attaining sustainable employment outcomes.

As part of an ongoing commitment to improving the welfare system, the Australian Government announced the Australians Working Together (AWT) package. AWT improves incentives to work and encouraged labour force participation. The Australians Working Together package commits substantial funding to reforming and improving employment services.

The Government has further improved Job Network with the introduction of the Active Participation Model. The Active Participation Model introduces measures and incentives that provide the means by which people can move from welfare to work and increase their self-reliance. The Active Participation Model comprises the following services:

- **Job Search Support:** The objective of Job Search Support is to help job seekers find work as quickly as possible. Job seekers have their vocational profile entered onto the Job Search database for daily matching against new job vacancies.
- **Job Placement:** Job Placement organisations (JPOs), which include Job Network members as well as other organisations, provide labour exchange services. JPOs will canvass employers for vacancies, lodge vacancies on Australian JobSearch, and screen and refer suitable job seekers.

- **Intensive Support:** The objective of Intensive Support is to maximise outcomes for eligible job seekers — particularly the long-term unemployed or those highly disadvantaged. Intensive Support begins if a job seeker has not found suitable work within three months of becoming unemployed. Job seekers who enter Intensive Support undertake either full time job search training to provide them with a range of job search techniques. During Intensive Support the job seeker develops a Job Search Plan setting out the activities the job seeker will undertake to improve their job prospects and find sustainable employment.
- **Intensive Support customised assistance:** Job seekers who are unemployed for 12 months or more participate in customised assistance. Intensive Support customised assistance is tailored to the needs of the job seeker and available job opportunities. Within customised assistance job seekers may receive intensive work preparation, training, work experience and counselling.
- **Job Seeker Account:** The Job Seeker Account is to be used to purchase services and products for individual job seekers. Once a job seeker enters Intensive Support, funds will be credited into the Job Network member's nominal Job Seeker Account. These funds can be used for the job seeker for fares to attend job interviews or interpreter related services. Additional funds will be deposited in the Job Network member's nominal account when a job seeker enters Intensive Support customised assistance. Providers will have flexibility to purchase required assistance for job seekers according to their individual needs.
- **Job Network Service Guarantee:** The Service Guarantee is a contractually underwritten obligation establishing a set of minimum standards for the services that Job Network members must deliver to job seekers. The guarantee requires Job Network members to deliver services in a manner sensitive to the job seeker's need, culture, circumstances and background and local labour market conditions.
- **Complementary programs:** When a job seeker has an additional vocational, motivational or foundational skills barrier which could be addressed by a complementary program administered by other Australian Government, state and territory funded providers.

Comprehensive information on employment programs and services is available online on the government's Internet portal Australian Workplace (<http://www.workplace.gov.au>).

***Governance framework for Australian workplaces: statutory protection for freedom of association***

The governance framework surrounding employee and employer representation in Australian workplaces is designed to safeguard the right to freedom of association. The *Workplace Relations Act 1996* (Cth) protects the freedom of individual employers, employees and independent contractors to join or not to join an industrial association. It provides protection from victimisation and discrimination on the basis of the choice made.

The Government's focus on the principle of freedom of association is consistent with the Universal Declaration of Human Rights, which lays the foundation for contemporary human rights instruments. Article 20 states: Everyone has the right to freedom of peaceful assembly and association; and no one may be compelled to belong to an association.

The *Conciliation and Arbitration Act 1904* included from its commencement provisions protecting an individual's right to join an industrial association, such as an employer association or union. The Act prohibited: employers from dismissing employees because they were a member or officer of a union or entitled to the benefit of an industrial agreement or award; and employees from ceasing work because their employer was a member of an employer organisation. In 1996, the Government was elected on a policy of ensuring there was legislative protection against discrimination on the basis of both membership and non-membership of an industrial association.

Part XA of the Workplace Relations Act provides protection from discrimination and victimisation on the basis of non-membership of an industrial association. In his second reading speech introducing into Parliament the Workplace Relations and Other Legislation Amendment Bill 1996, the then Minister for Industrial Relations, the Hon Peter Reith MP, identified the principle of freedom of association as being '...[a]mong the fundamental principles underpinning the government's industrial relations policy'.

Part XA consists of eight divisions:

- Division 1 sets out the additional objects and definitions of the Part
- Division 2 details the application of the Part, which draws on a range of constitutional powers
- Division 3 proscribes a range of conduct by employers (and principals that engage independent contractors) where that conduct is engaged in for one of a number of prohibited reasons relating to membership of an industrial association. The Division also contains a prohibition against inducing an individual to cease membership of an industrial association
- Division 4 prohibits employees and independent contractors from ceasing work for a number of reasons, including that their employer or principal is a member of an industrial association
- Division 5 prohibits specified action by industrial associations against employers, employees, independent contractors, members and other persons
- Division 5A prohibits any person making a false or misleading representation about another person's obligation to join an industrial association or pay a bargaining services fee
- Division 6 outlines the remedies available for breaches of Part XA, and
- Division 7 contains a number of miscellaneous provisions, including section 298Z which provides for the removal of clauses from collective industrial agreements certified by the Australian Industrial Relations Commission where they are found to impinge on the right to freedom of association.

### ***The Australian Government as an employer***

The *Public Service Act 1999* (Cth), like its predecessors, promotes equity in employment within the Australian Public Service. Employment is based on merit and is required to be free of any discrimination. The Australian Public Service Commission has issued *Guidelines on Workplace Diversity* to assist Australian Government agencies develop a Workplace Diversity Programme and incorporate workplace diversity principles in their culture and their management systems. Government agencies must put measures in place to address any employment-related disadvantage in their agency on the basis of gender, Indigenous status, race and ethnicity or physical or intellectual disability. Agencies must report annually on their Workplace Diversity Programme. The Public Service Commissioner reports annually to Parliament on workplace diversity in the Australian Public Service.

The Public Service Commission also provides training programs, publications and advice in relation to areas such as workplace harassment, bullying, workplace diversity, and best practice in the recruitment and development of Aboriginal and Torres Strait Islander employees.

### ***Just and favourable conditions of work***

*ICESCR - Article 7*

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work...

The Commonwealth Parliament does not legislate directly on conditions of employment (for example, pay rates, hours of work). Instead, the Workplace Relations Act is designed to create an industrial relations system whereby the principal means for determining conditions of work is through negotiation at the workplace between employees and employers or their freely chosen representatives. The aim is to create a flexible, fair and competitive labour market that promotes greater freedom of choice and opportunity.

This bargaining system is underpinned by a safety net of fair minimum wages and conditions through legally enforceable 'awards', which are made by Federal and State industrial tribunals in the resolution of industrial disputes.

### ***Gender equality***

In Australia, women and men are legally required to be paid at the same rate for work of equal value. This has been the case since the principle of equal pay for work of equal value was introduced by the Australian Conciliation and Arbitration Commission (now the Australian Industrial Relations Commission) in the early 1970s. However, women's average earnings remain lower than men's average earnings. This is due to a number of factors including:

- women often work fewer hours per week of paid work (primarily because of balancing work and family responsibilities)
- women's work and skills are often undervalued
- women are more likely to be employed in lower skilled and paid occupations

- women's career progression is more likely to be interrupted by child-rearing or other caring responsibilities, and
- discrimination against women.

## **Participation in cultural life**

*ICESCR - Article 15(1)(a)*

The States Parties to the present Covenant recognise the right of everyone to take part in cultural life.

The Australian Government gives a high priority to the development, promotion of, and access to, Australian culture and the arts, particularly through assistance to emerging and younger artists, a strong focus on the arts in rural and regional areas and in the production of new work. Australian, State and Territory governments seek to foster greater participation in the arts at all levels, by providing comprehensive funding assistance for individuals and organisations active in literature, music, performing and visual arts, to free or discounted admission to galleries, museums and libraries.

The Australian Government's *Culture & Recreation* Internet portal provides all Australians and overseas visitors with extensive information about research resources, grants, training and activities in all fields of arts, culture and recreation.  
<http://www.cultureandrecreation.gov.au/>

The Australian Government recognises the value of Australia's unique Indigenous culture and heritage and provides funding to organisations to protect, preserve and foster that heritage. For example, Australia's National Museum has a permanent display of Indigenous art, culture and history. Areas and objects of particular significance to Indigenous Australians are also protected by Federal and State legislation.

Australia's broadcasting legislation encourages broadcasting services in their important role of developing and reflecting Australian identity, character and cultural diversity. In addition, the corporate plans for government funded national broadcasters promote local Australian content.

Community broadcasting licences are issued to non-profit operators who provide services emphasising community participation and access to minority and special interest groups, including Indigenous Australians and other ethnic and religious groups. The Special Broadcasting Service Corporation (SBS) has a legislative charter that requires it to provide multilingual and multicultural radio and television services that reflect Australia's multicultural society.

Free to air television broadcasters are required to provide a captioning service for people who are deaf or hearing impaired for television programs transmitted during prime viewing hours and for news and current affairs programs transmitted outside prime viewing hours. Some cinemas also provide captioned films for the hearing impaired.

Sport plays a central role in the social and cultural lives of many Australians. It provides enjoyment and relaxation as well as employment opportunities, and health

and social benefits. At its best, it also promotes fairness, equity and good sporting behaviour.

On behalf of the Australian Government, the Australian Sports Commission seeks to enrich the lives of all Australians through sport. A key objective of the Commission is to secure an effective national sporting system that offers improved participation in quality sports activities by Australians.

The Australian Sports Commission works with national sporting organisations to establish structures and policies that ensure a fair, safe, ethical and inclusive culture pervades sport at all levels. Commission programs which assist sports to achieve this include:

- the Anti-Doping in Sport program
- the Harassment-free Sport Strategy
- initiatives such as the Year of the Official, Cross Cultural Awareness, Disability Education and the Good Sport Monitor, and
- coaching and officiating accreditation schemes.

The *Harassment-free Sport Strategy* is the Commissions' key initiative to address harassment, discrimination and abuse issues in sport. The Strategy comprises resources, policies (including a model anti-harassment policy), model complaint procedures, training and education, networks of trained personnel and expert consultants, research and informative websites.

A major component of the Strategy is a Member Protection Policy template developed following extensive consultation with the sport industry and experts in the fields of human rights, anti-discrimination and child abuse. The template is a risk management policy and includes complaint processes, obligations under anti-discrimination and child protection legislation and codes of behaviour for all roles in sport (eg coaches, officials, administrators, parents and spectators).

A number of State and Territory governments also fund initiatives to encourage participation in sporting activities free from harassment and discrimination. For example, *Play by the Rules*, a joint initiative of the Equal Opportunity Commission of South Australia and the South Australian Office for Recreation and Sport, is an on-line training and information resource for sport and recreation clubs and associations. *Play by the Rules* provides information on how to prevent and deal with inappropriate behaviour including discrimination, harassment, favouritism, bias and various forms of abuse.

## **The benefits of science**

*ICESCR - Article 15(1)(b)*

The State Parties to the present Covenant recognise the right of everyone to enjoy the benefits of scientific progress and its applications.

Australia has an international reputation for scientific achievement and excellence in many fields, which the Australian Government believes should be translated into employment opportunities for all Australians. The Government is therefore committed to fostering Australian innovation by:

- encouraging the generation of ideas through quality research and development (eg funding research facilities such as CSIRO and support for businesses undertaking research)
- encouraging the development of ideas into commercial products, and
- building and retaining a highly, skilled workforce (eg facilitating access to science and technology education).

These aims are supported through the Government's ten-year, \$8.3 billion science and innovation package, Backing Australia's Ability, which stretches from 2001-02 to 2010-11. This package is one element of the broader government support for science and innovation, expected to total around \$52 billion over that period.

The Australian Government has funded the creation of a Science Internet portal (<http://www.science.gov.au/>) to provide information on scientific research, research grants and programs, science policy and to raise awareness of science across the community.

Most Australians have a high level of education and are familiar with new technologies. Australia's take-up rates of new technologies (eg mobile phones, home computers and Internet access) are among the highest in the world. For example, mobile penetration in Australia is high and expanding. At end March 2004, 71% of all Australians aged 16 years or over had use of a mobile phone and total mobile subscriber numbers stood at 12.9 million. This compares with 66% of all Australians aged 16 years and over having had use of a mobile phone at end December 2001.

At September end March 2004, 66% of households owned or leased a personal computer. In addition, 58% of households were on-line, placing Australia amongst the leading group of countries in the world. By comparison with other countries, Australia ranks very highly in terms of equity of access to the Internet based on gender (85% of males and 83% of females ages 16 years and over have Internet access) and age (in excess of 80% of Australians ages 16-64 years of age have Internet access compared to 49% of Australians ages 65 and over).

The Australian Government recognises the importance of access to telecommunications services to participation in all aspects of contemporary Australian life. The open and competitive telecommunications market established in 1997 is key to improving the access of Australians to quality, lower cost telecommunications services. A range of other measures safeguard access to telecommunications. The Universal Services Obligation, for example, provides all people in Australia, including people with disability, with reasonable access to standard telephone and payphone services on an equitable basis, regardless of where they reside or carry on business.

In recognition of its growing importance, effective access to the Internet is safeguarded by the Internet Assistance Program and Digital Data Service Obligation. Targeted Government funding is improving access in other areas like mobile telephony and broadband, particularly for regional, rural and remote and Indigenous Australians. The Australian Government has also implemented measures to protect Australians from the misuse of telecommunications service, for example, by protecting the privacy of communications and personal data.

## Protection of intellectual property interests

*ICESCR - Article 15(1)(c)*

The States Parties to the present Covenant recognise the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Australia has a strong intellectual property rights regime and is harmonising our intellectual property practices with international practices to ensure growth through trade and investment. The underlying principle of Australian copyright legislation is to balance the rights of the copyright owner with the rights of the copyright user.

Australia's intellectual property (IP) system ensures that inventors, designers, authors and artists are rewarded for their creative effort. The period of protection, during which the creator is able to exploit his or her work exclusively, varies according to the type of IP. For example, under Commonwealth legislation, the term of patent is generally up to 20 years, whereas the period of protection of copyright is the lifespan of the creator plus 50 years. The Government is seeking to extend the copyright term from 50 to 70 years after the death of the creator in light of the recently negotiated Australia – United States Free Trade Agreement. This agreement will substantially harmonise Australia's copyright laws with those of the US, whilst allowing flexibility in the implementation of its provisions to reflect Australia's domestic environment.

The Australian Government is also committed to ensuring that Australia's IP system remains responsive to the needs of 'rights-holders' and 'users', particularly in the face of emerging technologies, consistent with agreed international norms.

For example, Australia's copyright laws are in the process of being updated to give effect substantially to the World Intellectual Property Organization (WIPO) Copyright Treaty and the Performances and Phonograms Treaty. Many of the standards required by these treaties have already been implemented as a result of the *Copyright Amendment (Digital Agenda) Act 2000*. Australia has committed itself to acceding to both of these treaties as part of its election commitments and obligations under the Australia-Singapore Free Trade Agreement and the Australia-United States Free Trade Agreement.

In Australia, the *Copyright Act 1968* (Cth) provides legislative recognition of, and protection for, the moral rights of authors. This Act gives explicit effect to Australia's obligations under article 6 of the Berne Convention for the Protection of Literary and Artistic Works.

Australia's IP laws play an important role in the promotion and protection of some aspects of Indigenous arts and cultural expression. The Australian Government is currently developing legislation to strengthen the protection of Indigenous arts and cultural expression that draw upon communal knowledge through the creation of Indigenous communal moral rights. Australia is participating actively in the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore whose work program addresses many of the issues relevant to the effective protection of Indigenous arts and cultural expression.

In addition, Australia has taken a lead role in the development of a Universal Dispute Resolution Process (UDRP) for domain name disputes by the WIPO and the Internet

Corporation for Assigned Names and Numbers. The UDRP is designed to protect the domain name system from abuses such as cyber-squatting. A self-regulatory body called auDA has been established to administer the '.au' domain space and has put in place a dispute resolution process to meet Australian needs.

The Australian Government also recently amended the patent legislation to increase the certainty and strength of granted patents. The amendments implement recommendations of the Intellectual Property and Competition Review Committee and of the Advisory Council on Intellectual Property review of patent enforcement. The novelty and inventive step requirements in the *Patents Act 1990* (Cth) were changed to align more closely these legislative tests with international standards.

At the same time, the Patents Act was also amended to bring it into line with the Patent Law Treaty (PLT). The PLT is intended to make it easier for patent applicants to obtain patent rights in a number of countries by standardising the formality requirements associated with the patent application process. Although Australia has yet to accede to this treaty, accession is likely because of the advantages it offers to patent applicants.

In 2001, Australia acceded to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks — a multilateral treaty administered by WIPO. This Protocol allows trade mark owners seeking protection for their marks in countries party to the treaty to do so by filing a single trade mark application and paying one set of fees, thereby simplifying the process of obtaining and maintaining international trade mark protection.

Finally, IP Australia is currently conducting market research into the need of IP Australia's customers for IP information and services. The results of this research will be used in the development of public education and awareness products and programs to ensure that they are appropriately structured and targeted.

## **Health and well-being**

### **An adequate standard of living**

#### *ICESCR - Article 11*

The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions...

The right to an adequate standard of living is recognised as fundamental in Australia. This right is underpinned by a system of social welfare which protects the disadvantaged in society such as the unemployed, older people, Indigenous people, people with disability and their carers, students and people from regional and rural Australia. Benefits are targeted to those most in need. Income support recipients are encouraged to contribute to Australian society to the extent that they are able.

The great majority of people in Australia are able to access housing. Public housing is targeted to those most in need including low-income earners, Indigenous people, people with disability, the unemployed and older people. Alternatively, Government-funded financial assistance is available to these groups to access the private rental market.

Australia has an abundant food supply, although access to a variety of healthy food choices can be challenging in some rural and remote communities (eg fresh vegetables and fruit). This is a particular issue for Aboriginal and Torres Strait Islander communities. Diet-related chronic disease (eg Type 2 diabetes, cardiovascular diseases and some cancers), disease risk factors (eg obesity, high blood cholesterol, hypertension) and nutritional deficiencies (eg iron, thiamine, and calcium) are significantly associated with poor long term eating patterns. Educational material promoting healthy eating patterns (including the promotion of breastfeeding as the optimal method of exclusive infant feeding to around six months of age) is widely available.

The Australian Government's Health Internet portal, called *HealthInsite*, provides access to a wide range of up-to-date and quality accessed information on important health topics such as diabetes, cancer, mental health and asthma (<http://www.healthinsite.gov.au/>).

### **National Research Priorities**

Following extensive consultation, the Prime Minister announced the National Research Priorities in December 2002. Enhancements were announced by the Minister for Education, Science and Training in November 2003 following further consultations with the social sciences and humanities research communities.

The purpose of the National Research Priorities is to:

- focus investment on research in key areas that can deliver significant economic, social and environmental benefits to Australia, and
- build on our national research strengths while seeking new opportunities in emerging areas; and provide a catalyst for the formation of teams and networks of researchers across many disciplines in Australia and internationally.

The four National Research Priorities are:

- An Environmentally Sustainable Australia
- Promoting and Maintaining Good Health
- Frontier technologies for building and transforming Australian industries, and
- Safeguarding Australia

The priorities are broadly based, thematic and multidisciplinary in nature and are underpinned by a number of priority goals.

The Promoting and Maintaining Good Health National Research Priority promotes good health and preventive healthcare - particularly among young and older Australians - and helps families and individuals to live healthy, productive and fulfilling lives. It is about promoting the healthy development of young Australians, developing better social, medical and population health strategies to ensure that older Australians enjoy healthy and productive lives, and encouraging all Australians to adopt healthier attitudes, habits and lifestyles. There are four goals under this priority: - A healthy start to life; Ageing well, ageing productively; Preventive healthcare; and Strengthening Australia's social and economic fabric.

Further information is available at <http://www.dest.gov.au/priorities>

## **Enjoyment of physical and mental health**

### *ICESCR – Article 12*

The State Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health...

The majority of Australia's population has good health status with an increasing life expectancy, which compares favourably with other countries.

Australian public health policy emphasises continuous improvement in the general health of Australia's population. Australia's public health programs include activities aimed at understanding and controlling the determinants of disease, promoting good health and reducing the public exposure to risks encountered as a result of poor lifestyle choices or the environment.

The Australian Government has a leadership role in health policy-making, particularly for national issues such as public health, safety and quality of health services, research and health information management. The Australian Government regulates therapeutic goods, pharmaceuticals, private health insurance and nursing home accreditation and certification. It is also responsible for funding and administering Medicare, Australia's national health insurance scheme.

Structural reforms have also been introduced to complement the public sector arrangements with a strengthened private health system that is fair, affordable and promotes choice for patients.

The States and Territory Governments are primarily responsible for funding and administering public hospitals (with Australian Government funding assistance), mental health services, dental health, community health services and environmental health programs. They are also responsible for a range of health regulations and the registration of health professionals. In the area of mental health, the emphasis is on promoting a community-based system of treatment and support, rather than separation and institutionalisation of patients.

The Australian government is committed to improving the lives of people with a mental illness. The Mental Health Strategy is a joint initiative between the Australian and State and Territory governments which provides a blueprint for the future delivery of mental health services in Australia. The aims of the National Mental Health Strategy are to:

- promote the mental health of the Australian community
- where possible prevent the development of mental health problems and mental disorders
- reduce the impact of mental disorders on individuals, families and the community, and
- assure the rights of people with mental disorders.

Generally, medical services and low-cost pharmaceuticals are available to those who need them. Specific target groups such as Indigenous people, senior citizens, people with a disability and people living in rural and remote areas of Australia are provided

with additional services which are specifically tailored to their needs. There are also a number of specific programs to assist particular disadvantaged groups.

## **Social security**

*ICESCR – Article 9*

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Australia has a well-established social security system. Social security payments are provided on the basis of need and target older people, people with disability and their carers, students, primary carers of children and the unemployed, including the long-term unemployed and their dependents. There is also an extensive system of supplementary payments for families and children.

The Australian Government is implementing a range of welfare reform measures to ensure that social security addresses the needs of those most in need while encouraging those who are able to engage in paid employment to be more self-reliant. Where self-reliance is not possible, the reforms are intended to encourage people to participate in the community to the extent they are able.

The State and Territory governments also provide supplementary assistance to low-income groups to help ensure equitable access to essential services such as water, gas and electricity.

## **Protection of the family**

*ICESCR - Article 10(1)*

The States Parties to the present Covenant recognise that the widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children...

*ICCPR - Article 23(1)*

The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

The family remains the basic building block of a cohesive and compassionate Australian society. The family is widely considered best able to provide support and assistance to individual members facing difficulties and to enable them to contribute to community and social life.

The Australian Government funds a range of programs and services to support and empower families both economically and socially.

The State and Territory governments also play an important role in supporting families and in the development of young people through the provision of health, education, child protection, and justice and police services. In addition, the Australian Government provides income support for young people who are studying or seeking employment, subject to a means test. For young unemployed people with poor literacy and numeracy skills, the Government funds remedial training to enhance their employment prospects. The Government is also committed to protecting families through the elimination of domestic violence.

In November 2002, some States agreed to refer constitutional power to the Commonwealth to enable national laws to govern the division of property of de facto couples who separate. This would complement the referral of power by most States in relation to children of separating de facto couples.

## **Protection of children**

### *ICESCR – Article 10(3)*

The States Parties to the present Covenant recognize that... special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions.

### *ICCPR - Article 24(1)*

Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

### *CROC - Article 3*

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration...

The Australian Government recognises that families have the primary responsibility for the development of Australia's children. The Government believes strong families and cohesive community networks are the most effective social support to nurture children. Australia fulfils its obligations under the UN Convention on the Rights of the Child by a range of laws and programs. While the Australian Constitution places primary responsibility for children's matters with the State and Territory governments, the Australian Government has responsibility for:

- the development of integrated policy and programs to strengthen families, enhance the quality of parenting and prevent child abuse and neglect
- maximising the potential for families to function cooperatively in the interests of children after separation
- income support and policy for those whose primary role is caring for children, such as Family Tax Benefit payments and Child Care Benefit subsidies, and
- national child care policy.

In 2002, the new position of Minister for Children and Youth Affairs was created to ensure an integrated government approach across the spectrum of Australian Government policies and programs for children and young people.

The primary objective of the *Family Law Act 1975* (Cth) when making a decision in relation to a child is to do what is in the child's best interests. The objectives of the *Family Law Act* and related Government policy is to seek to balance many competing considerations such as, for example, the right of children to know and be cared for by both parents, parents' duty to share the responsibilities concerning the care, welfare and development of their children and the need to protect children from possible harm. For instance, in court proceedings where there are allegations of family violence, the court is required to consider the best interests of the child in relation to a possible risk of family violence as a primary consideration but will also take account of the right of children to be cared for by both parents, and other relevant considerations. This approach is fully consistent with the provisions of CROC.

Australia ratified the 1996 Hague Child Protection Convention on 29 April 2003 and the Convention entered into force for Australia on 1 August 2003. The Convention is a new international initiative that provides for international cooperation in relation to parental responsibility and the protection of children. It establishes rules to determine jurisdiction in child welfare matters and facilitates the mutual recognition and enforcement of child protection measures made under the Convention.

The 1996 Convention is expected to improve the operation of the 1980 Hague Convention on the Civil Aspects of International Child Abduction by:

- ensuring that, apart from limited exceptions, the courts of a child's habitual residence country retain jurisdiction over matters of parental responsibility and thereby limit the opportunity for forum shopping by abducting parents, and
- improving contact arrangements as a means of discouraging abductions by facilitating the recognition and enforcement of foreign contact orders, or by making provision for "findings of suitability" of a non-resident parent for contact with a child in another country.

Australia also supported the development of an Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. The UN General Assembly adopted this Protocol in May 2000. Australia has signed the Protocol and ratification is proceeding in accordance with normal treaty procedures.

## **Special protection for mothers and children**

*ICESCR - Article 10(2)*

The States Parties to the present Covenant recognize that...special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or with leave with adequate social security benefits.

Australian, State and Territory anti-discrimination legislation prohibits discrimination in certain areas on a range of grounds, including pregnancy, potential pregnancy, marital status and family responsibilities. The Human Rights and Equal Opportunity Commission also conducts education programs for employers and employees on the issue of equality of treatment for pregnant employees (eg Rights of Pregnant Workers). In 2001, the Commission developed Pregnancy Guidelines to help people better understand and adhere to the existing anti-discrimination, industrial relations and occupational health and safety laws which cover pregnancy.

The Australian Government has supported measures to raise awareness and provide guidance to employers and employees about how they may prevent workplace-based discrimination related to pregnancy and about their rights and responsibilities.

Amendments to the *Sex Discrimination Act 1984* passed by Parliament on 7 October 2003 clarify the law in relation to discrimination against women on the grounds of pregnancy, potential pregnancy and breastfeeding. The Sex Discrimination Act has been amended to explicitly recognise breastfeeding as a potential ground of unlawful discrimination. The amendments also provide greater certainty about the scope and operation of the provisions of the Act relating to asking questions about pregnancy or potential pregnancy during job interviews and using pregnancy-related medical information.

The Australian Government also developed a booklet entitled *Working Your Way Through Pregnancy* to raise awareness about rights and responsibilities concerning pregnancy and potential pregnancy issues in the workplace. The booklet complements the Commission's Pregnancy Guidelines and the amendments made to the Sex Discrimination Act.

The federal workplace relations system currently ensures job security around the time of birth to a level exceeding that of many other OECD countries. The Workplace Relations Act provides a statutory guarantee of up to 12 months unpaid parental leave for permanent employees who have 12 months service with their employers. Employees taking parental leave have a right to return to the position they held prior to taking leave, or to one similar in status. Parental leave will not break an employee's continuity of service. In 2001 the Australian Industrial Relations Commission established that many casual employees should also enjoy job security rights on the same basis.

In recognition of the costs that parents incur through the birth of a child, the Australian Government provides a \$3,000 Maternity Payment for each new child born after 1 July 2004. This is a universal payment to all families. The rate of payment will increase to \$4,000 in July 2006 and \$5,000 in July 2008.

The Government provides a safety net of income support for parents in the form of Parenting Payment, for parents outside the labour force or in low-paid employment who have primary care of a dependent child aged under 16. Further, the Government's flexible workplace relations framework allows for paid maternity leave to be negotiated at workplace level where it is a high priority for employees. It is estimated that currently 38% of Australian women workers, including 54% of permanent employees, have access to paid maternity leave, at an average length of seven weeks. Australian Government employees are entitled to 12 weeks' paid maternity leave on full pay if they have 12 months of continuous service.

The Australian Government provides additional financial support through:

- the Family Tax Benefit Part A, which is a means-tested per-child payment to families
- the Family Tax Benefit Part B, which provides support for single income families, and
- the Child Care Benefit, which assists parents with the costs of child care.

Further information on the Australian Government family assistance is available at [www.centrelink.gov.au](http://www.centrelink.gov.au).

## Marriage and family

### *ICCPR - Article 23*

...The right of men and women of marriageable age to marry and to found a family shall be recognized.

No marriage shall be entered into without the free and full consent of the intending spouses.

States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

The Commonwealth Parliament has responsibility for making laws in relation to marriage and divorce. Marriage according to law in Australia is the union of a man and a woman to the exclusion of all others, voluntarily entered into for life.

Legislation has been enacted to enshrine this definition in the *Marriage Act 1961*. A valid marriage requires both parties to have given their free consent and to understand fully the nature of the commitment being entered into.

There are few restrictions or eligibility requirements on the right to marry in Australia. The eligibility requirements include the absence of a prior subsisting marriage, the parties not being in a prohibited relationship, and the need for the parties to have given a free and full consent to the marriage. The marriageable age in Australia is 18 for both men and women. A person aged between 16 and 18 wishing to marry must obtain judicial approval.

The Australian Government funds a range of services through the Family Relationships Services Programme (FRSP) to assist children, young people and adults in all their diversity to develop and sustain safe, supportive and nurturing family relationships and to minimise the emotional, social and economic costs associated with disruption to family relationships.

The States and Territories have primary responsibility for the recognition of de facto relationships and have legislated for the distribution of property on the breakdown of these relationships. However, some States have agreed to refer this power to the Australian Government and Commonwealth Parliament, to enable consistent national laws to be developed to deal with the distribution of property on the breakdown of de facto relationships. In most States and Territories, same sex relationships are accorded the same rights as opposite sex relationships in this respect. The Australian Government believes that the responsibility for legislating for the distribution of property on the breakdown of a same sex relationship is properly the responsibility of the States and Territories.

## **ANNEXURE B - INTERNATIONAL HUMAN RIGHTS TREATIES TO WHICH AUSTRALIA IS A PARTY**

Australia is a party to the following major international human rights instruments:

- International Covenant on Civil and Political Rights (ICCPR), 1966
- International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966
- Convention on the Elimination of All Forms of Racial Discrimination (CERD), 1965
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979
- Convention on the Rights of the Child (CROC), 1989
- Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), 1984

Australia is also a party to the following International Labour Organisation (ILO) Conventions:

- Rights of Association (Agriculture) (ILO convention No. 11)
- Forced Labour (ILO Convention No. 29)
- Freedom of Association and Protection of the Right to Organise (ILO Convention No. 87)
- Right to Organise and Collective Bargaining (ILO Convention No. 98)
- Equal Remuneration (ILO Convention No. 100)
- Abolition of Forced Labour (ILO Convention No. 105)
- Discrimination (Employment and Occupation) (ILO Convention No. 111)
- Worker's Representatives Convention (ILO Convention No. 135).

Details on the status of ratification of these instruments by Australia (and other States) are available in the Human Rights Manual, which can be accessed via the website of the Department of Foreign Affairs and Trade ([www.dfat.gov.au/hr](http://www.dfat.gov.au/hr)) and via the website of the United Nations High Commissioner for Human Rights ([www.unhchr.ch/html/intlinst.htm](http://www.unhchr.ch/html/intlinst.htm)).

### **Reservations to these Treaties**

#### ***ICCPR***

The instrument of ratification of the Covenant on Civil and Political Rights, deposited for the Government of Australia with the Secretary-General of the United Nations, contained the following reservations and declarations:

### *Articles 2 and 50*

Australia advises that, the people having united as one people in a Federal Commonwealth under the Crown, it has a federal constitutional system. It accepts that the provisions of the Covenant extend to all parts of Australia as a federal State without any limitations or exceptions. It enters a general reservation that Article 2, paragraphs 2 and 3 and Article 50 shall be given effect consistently with and subject to the provisions in Article 2, paragraph 2.

Under Article 2, paragraph 2, steps to adopt measures necessary to give effect to the rights recognised in the Covenant are to be taken in accordance with each State Party's Constitutional processes which, in the case of Australia, are the processes of a federation in which legislative, executive and judicial powers to give effect to the rights recognised in the Covenant are distributed among the federal (Commonwealth) authorities and the authorities of the constituent States.

In particular, in relation to the Australian States the implementation of those provisions of the Covenant over whose subject matter the federal authorities exercise legislative, executive and judicial jurisdiction will be a matter for those authorities; and the implementation of those provisions of the Covenant over whose subject matter the authorities of the constituent States exercise legislative, executive and judicial jurisdiction will be a matter for those authorities; and where a provision has both federal and State aspects, its implementation will accordingly be a matter for the respective constitutionally appropriate authorities (for the purpose of implementation, the Northern Territory will be regarded as a constituent State).

To this end, the Australian Government has been in consultation with the responsible State and Territory Ministers with the object of developing co-operative arrangements to co-ordinate and facilitate the implementation of the Covenant.

### *Article 10*

Australia accepts the principle stated in paragraph 1 of Article 10 and the general principles of the other paragraphs of that Article, but makes the reservation that these and other provisions of the Covenant are without prejudice to laws and lawful arrangements, of the type now in force in Australia, for the preservation of custodial discipline in penal establishments. In relation to paragraph 2(a) the principal of segregation is accepted as an objective to be achieved progressively. In relation to paragraphs 2(b) and 3 (second sentence) the obligation to segregate is accepted only to the extent that such segregation is considered by the responsible authorities to be beneficial to the juveniles or adults concerned.

### *Article 14*

Australia accepts paragraph 3(b) on the understanding that the reference to adequate facilities does not require provision to prisoners of all the facilities available to a prisoner's legal representative.

Australia accepts the requirement in paragraph 3(d) that everyone is entitled to be tried in his presence, but reserves the right to exclude an accused person where his conduct makes it impossible for the trial to proceed.

Australia interprets paragraph 3(d) of Article 14 as consistent with the operation of schemes of legal assistance in which the person assisted is required to make a contribution towards the cost of the defence related to his capacity to pay and determined according to law, or in which assistance is granted in respect of other than indictable offences only after having regard to all relevant matters.

Australia makes the reservation that the provision of compensation for miscarriage of justice in the circumstances contemplated in paragraph 6 of Article 14 may be by administrative procedures rather than pursuant to specific legal provision.

#### *Article 17*

Australia accepts the principles stated in Article 17 without prejudice to the right to enact and administer laws which, insofar as they authorise action which impinges on a person's privacy, family, home or correspondence, are necessary in a democratic society in the interests of national security, public safety, the economic well-being of the country, the protection of public health or morals, or the protection of the rights and freedoms of others.

#### *Article 19*

Australia interprets paragraph 2 of Article 19 as being compatible with the regulation of radio and television broadcasting in the public interest with the object of providing the best possible broadcasting services to the Australian people.

#### *Article 20*

Australia interprets the rights provided for by Articles 19, 21 and 22 as consistent with Article 20; accordingly, the Commonwealth and the constituent States, having legislated with respect to the subject matter of the Article in matters of practical concern in the interests of public order (*ordre public*), the right is reserved not to introduce any further legislative provision on these matters.

#### *Article 25*

The reference in paragraph (b) of Article 25 to "universal and equal suffrage" is accepted without prejudice to laws which provide that factors such as regional interests may be taken into account in defining electoral divisions, or which establish franchises for municipal and other local government elections related to the sources of revenue and the functions of such governments.

#### *Convicted persons*

Australia declares that laws now in force in Australia relating to the rights of persons who have been convicted of serious criminal offences are generally consistent with the requirements of Articles 14, 18, 19, 25 and 26 and reserves the right not to seek amendment of such laws.

#### *Discrimination and distinction*

The provisions of Articles 2(1) and 24(1), 25 and 26 relating to discrimination and distinction between persons shall be without prejudice to laws designed to achieve for the members of some class or classes of persons equal enjoyment of the rights defined in the Covenant. Australia accepts Article 26 on the basis that the object of the

provision is to confirm the right of each person to equal treatment in the application of the law.

#### *End of Reservations and Declarations*

On 6 November 1984 Australia withdrew reservations and declarations made upon ratification, with the exception of reservations to Article 10, paragraphs 2(a), 2(b), and 3, Article 14, paragraph 6 and Article 20. At the same time the following declaration [federal statement] was deposited:

Australia has a federal constitutional system in which legislative, executive and judicial powers are shared or distributed between the Commonwealth and the constituent States. The implementation of the treaty throughout Australia will be effected by the Commonwealth, State and Territory authorities having regard to their respective constitutional powers and arrangements concerning their exercise.

#### *CEDAW*

The Government of Australia states that maternity leave with pay is provided in respect of most women employed by the Commonwealth Government and the Governments of New South Wales and Victoria. Unpaid maternity leave is provided in respect of all other women employed in the State of New South Wales and elsewhere to women employed under Federal and some State industrial awards. Social Security benefits subject to income tests are available to women who are sole parents.

The Government of Australia advises that it is not at present in a position to take the measures required by Article 11(2)(b) to introduce maternity leave with pay or with comparable social benefits throughout Australia.

The Government of Australia advises that it does not accept the application of the Convention in so far as it would require alteration of Defence Force policy which excludes women from combat and combat-related duties. The Government of Australia is reviewing this policy so as to more closely define "combat" and "combat-related duties".

Australia has a federal constitutional system in which legislative, executive and judicial powers are shared or distributed between the Commonwealth and the constituent States. The implementation of the treaty throughout Australia will be effected by the Commonwealth, State and Territory authorities having regard to their respective constitutional powers and arrangements concerning their exercise.

On 30 August 2000, with effect from that date, Australia withdrew that part of the reservations which reads:

The Government of Australia advises that it does not accept the application of the Convention in so far as it would require alteration of Defence Force policy which excludes women from combat and combat-related duties. The Government of Australia is reviewing this policy so as to more closely define "combat" and "combat-related duties"

and deposited the following reservation:

The Government of Australia advises that it does not accept the application of the Convention in so far as it would require alteration of Defence Force policy which excludes women from combat duties.

### ***CERD***

The Government of Australia furthermore declares that Australia is not at present in a position specifically to treat as offences all the matters covered by Article 4(a) of the Convention. Acts of the kind there mentioned are punishable only to the extent provided by the existing law dealing with such matters as the maintenance of public order, public mischief, assault, riot, criminal libel, conspiracy and attempts. It is the intention of the Australian Government, at the first suitable moment, to seek from Parliament legislation specifically implementing the terms of Article 4(a).

### ***CROC***

#### *Article 37*

Australia accepts the general principles of this Article. In relation to the second sentence of paragraph (c), the obligation to separate children from adults in prison is accepted only to the extent that such imprisonment is considered by the responsible authorities to be feasible and consistent with the obligation that children be able to maintain contact with their families, having regard to the geography and demography of Australia.