



**Economic and Social
Council**

Distr.
GENERAL

E/C.12/AUS/CO/4
12 June 2009

Original: ENGLISH

COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS
Forty-second session
Geneva, 4 to 22 May 2009

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLES 16 AND 17 OF THE COVENANT**

Concluding Observations of the Committee on Economic, Social and Cultural Rights

Australia

1. The Committee on Economic, Social and Cultural Rights considered the fourth periodic report of Australia on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/AUS/4) at its 3rd, 4th and 5th meetings, held on 5 and 6 May 2009 (E/C.12/2009/SR.3, 4 and 5), and adopted, at its 26th meeting held on 20 May 2009, the following concluding observations.

A. Introduction

2. The Committee welcomes the open and constructive dialogue with the delegation of the State party, as well as its comprehensive written replies to its list of issues (E/C.12/AUS/Q/4). However, it regrets that the format chosen in preparing the fourth periodic report of Australia did not provide the Committee with a substantive report on the measures adopted by the State party to give effect to the Covenant rights and on the progress made in achieving the observance of those rights.

3. The Committee welcomes the consultative contribution of the Australian Human Rights Commission to the State party reporting process, as well as the participation and fruitful contribution of non-governmental organizations to the Committee's work.

B. Positive aspects

4. The Committee welcomes the parliamentary apology to the indigenous peoples, victims of the “Stolen Generation” policies, issued on 13 February 2008, and acknowledges the State party’s commitment to build a sustained and constructive partnership with indigenous peoples, and to close the gap in the enjoyment of the Covenant rights between indigenous and non-indigenous Australians.
5. The Committee notes with satisfaction that the State party has repealed legal provisions which discriminated against same-sex couples in relation to financial and work related benefits.
6. The Committee notes with appreciation the Fair Work Act 2009, which introduces new employment standards, and improves the protection of the right to work, in line with the Committee’s recommendations adopted in 2000.
7. The Committee welcomes the steps taken to combat violence against women, in particular the establishment of the National Council to Reduce Violence against Women and their Children, in 2008.
8. The Committee welcomes the ratification by the State party of the United Nations Convention on Persons with Disabilities, and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, in 2008, as well as its formal support to the United Nations Declaration on the Rights of Indigenous Peoples.

C. Factors and difficulties impeding the implementation of the covenant

9. The Committee notes the absence of any significant factors or difficulties impeding the effective implementation of the Covenant in the State party.

D. Principal subjects of concern and recommendations

10. While welcoming the National Human Rights Consultation regarding the legal recognition and protection of human rights which is currently being carried out in the State party, the Committee regrets that the terms of reference for the National Human Rights Consultation do not specifically call for the consideration of economic, social and cultural rights.

The Committee affirms the principle of interdependency and indivisibility of human rights and calls on the State party to include economic, social and cultural rights when considering the submissions received.

11. The Committee regrets that the Covenant has not yet been incorporated into domestic law by the State party, despite the Committee’s recommendations adopted in 2000 (E/C.12/1/Add.50). It notes with concern the lack of a legal framework for the protection of economic, social and cultural rights at the Federal level, as well as of an effective mechanism to ensure coherence and compliance of all jurisdictions in the Federation with the State party’s obligations under the Covenant.

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

12. The Committee regrets that in 2008-2009 the State party has devoted only 0.32 percent of its gross national income (GNI) to official development assistance (ODA), whereas the United Nations target for ODA is 0.7 percent of GDP for developed countries.

The Committee recommends that the State party increase its official development assistance to 0.7 percent of its GDP, as reaffirmed at the Follow-up International Conference on Financing for Development to Review the Implementation of the Monterrey Consensus, held in Doha on 29 November-2 December 2008.

13. The Committee notes with concern that the Australian Human Rights Commission has limited competency as regard the Covenant rights and lacks adequate human and financial resources, which affects its capacity to fulfil its role and functions.

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

14. The Committee notes with concern that the State party's anti-discrimination legislation does not provide comprehensive protection against all forms of discrimination in all areas related to the Covenant rights (art. 2, para. 2).

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

15. The Committee remains concerned that some of the Northern Territory Intervention measures adopted by the State party in response to the 2007 *Little Children are Sacred* report, are inconsistent with the Covenant rights, in particular with the principle of non-discrimination, and have a negative impact on the realization of the rights of indigenous peoples. The Committee notes with regret that the Northern Territory Intervention measures were adopted without sufficient and adequate consultation with the indigenous peoples concerned. (art. 2, para. 2)

The Committee recommends that the State party (a) address the human rights violations identified in the 2007 *Little Children are sacred* report bearing in mind the recommendations of the 2008 report of the Northern Territory Intervention

Response Review board in this regard; (b) conduct formal consultations with the indigenous peoples concerned regarding the operation and impact of the Northern Territory Intervention; (c) establish a national indigenous representative body with adequate resources; (d) ratify ILO Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries.

16. The Committee regrets that insufficient measures have been taken by the State party to ensure an adequate standard of living for persons with disabilities. In particular, it notes with concern that section 52 of the Disability Discrimination Act 1992 exempts migration laws, regulations, policies and practices, from the effects of the Act, leading to negative immigration decisions based on disability or health conditions. The Committee expresses concern at the fact that this situation has had a particularly negative impact on the families of asylum-seekers. (arts. 2, para. 2; 10 and 11)

The Committee encourages the State party to strengthen its efforts towards the adoption of concrete measures to enable persons with disabilities to fully enjoy the rights guaranteed by the Covenant. It recommends that the Migration Act 1958 and the Disability Discrimination Act 1992 be amended to ensure that the rights to equality and non-discrimination apply to all aspects of migration law, policy and practice.

17. The Committee notes with concern that despite the State party's efforts to improve gender equality, a wage gap still persists between men and women in the workplace, particularly in managerial positions. It is also concerned at the low percentage of women in high-ranking positions in political and public life. (art.3)

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

18. The Committee notes with concern the high unemployment rates among indigenous people, asylum-seekers, migrants and people with disabilities, and the significant difficulties they face to enjoy their right to work equally. (arts. 2, para. 2; and 6)

The Committee recommends that special programmes and measures be designed to address the significant barriers to the enjoyment of the right to work faced by many indigenous people, asylum-seekers, migrants and people with disabilities, including measures to protect them from exploitation.

19. The Committee is concerned that provisions of the Building and Construction Industry Improvement Act 2005 seriously affect freedom of association of building and constructions workers, by imposing significant penalties for industrial actions, including six months of incarceration. The Committee is also concerned that before workers can lawfully take industrial action at least 50 per cent of employees must vote in a secret ballot and a majority must vote in

favour of taking the industrial action which unduly restricts the right to strike, as laid down in article 8 of the Covenant and ILO Convention No. 87 (1948) concerning Freedom of Association and Protection of the Right to Organise.(art. 8)

The Committee recommends that the State party continue its efforts to improve the realization of workers rights under the Covenant. It should remove, in law and in practice, obstacles and restrictions to the right to strike, which are inconsistent with the provisions of article 8 of the Covenant and ILO Convention No. 87 . In particular, the Committee recommends that the State party abrogate the provisions of the Building and Construction Industry Improvement Act 2005 that imposes penalties, including six months of incarceration, for industrial action and consider amending the Fair Work Act 2009. The State party should lift the restrictions on “pattern bargaining”, the pursuit of multi-employer agreements and matters that are not “permitted”, and to remove the secret ballot requirements for workers who wish to take industrial action.

20. The Committee is concerned that the social security system in the State party does not ensure universal coverage and that the insufficient amount of certain benefits does not provide an effective income support system. The Committee is concerned that existing conditionalities for the payment of benefits have a negative impact on disadvantaged and marginalized individuals and groups.(art.9)

The Committee recommends that the State party take additional measures, legislative or otherwise, to ensure universal coverage of the social security system so as to include asylum-seekers, newly arrived immigrants and indigenous peoples. The Committee also recommends that social security benefits, including unemployment benefits, old age pensions and youth allowance enable recipients to enjoy an adequate standard of living. The Committee strongly recommends that the State party review conditionalities such as “mutual obligations” in the welfare to work programme and the “quarantining” of welfare payments under the Northern Territory Intervention that may have a punitive effect on disadvantaged and marginalized families, women and children. The Committee further recommends that the State party consider ratifying ILO Convention No. 102 (1952) concerning Minimum Standards of Social Security..

21. The Committee notes with concern that the State party has not introduced a paid maternity leave scheme yet, in spite of the Committee's recommendations adopted in 2000.(art.10)

The Committee recommends that the State party introduce a compulsory paid maternity and paternity leave scheme and consider ratifying ILO Conventions No. 103 (1952) concerning Minimum Standards of Social Security and No. 183 (2000) concerning the Revision of the Maternity Protection Convention (Revised), 1952.

22. The Committee notes with concern that, despite the efforts undertaken by the State party to address domestic violence, including violence against women, this practice persists in Australia, and affects in particular indigenous women. (art.10)

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

23. The Committee is concerned at the persistence of trafficking of human beings, in particular women, in the territory of the State party, in spite the State party's efforts to combat trafficking in human beings, in particular the establishment of the National Round Table in 2008, as well as the funding provided to NGOs working in this area. (art.10)

The Committee encourages the State party to continue its efforts to combat trafficking of human beings, and in particular it recommends the adoption of a national strategy from a human rights perspective, to combat the trafficking of human beings and to address the exploitation resulting from this practice.

24. The Committee notes with concern that, despite the State party's economic prosperity, 12 per cent of the Australian population lives in poverty, and poverty rates remain very high among disadvantaged and marginalized individuals and groups such as indigenous peoples, asylum-seekers, migrants and persons with disabilities. It regrets that the State party has not yet adopted a comprehensive strategy to combat poverty and social exclusion, and that no steps have been taken to adopt an official poverty line, despite the Committee's recommendations adopted in 2000. The Committee recalls that this criterion is needed to determine the progress achieved over time by the State party to reduce poverty. (art. 11)

The Committee urges the State party to take all necessary measures to combat poverty and social exclusion, and to develop a comprehensive poverty reduction and social inclusion strategy which should integrate the economic, social and cultural rights, in line with the Committee's statement on Poverty and the International Covenant on Economic, Social and Cultural Rights (E/2002/22-E.12/2001/17, annex VII). The Committee recommends that the State party adopt evaluation measures to assess the impact of its poverty and social reduction strategies and identify its weaknesses, and requests that the State party include, in its next report, comparative data disaggregated by gender, age, rural and urban populations, as well as indicators on the number of persons living in extreme poverty, and on the progress made in its efforts to combat poverty.

25. The Committee is concerned at the retention of the mandatory detention policy for asylum-seekers for unauthorized arrivals and notes that in its 2008 Immigration Detention Report, the Australian Human Rights Commission expressed serious concerns about the

immigration detention facilities, in particular in Christmas Island. It is also concerned at the fact that some asylum-seekers are detained for prolonged and indefinite periods of time, which results in a negative impact on their mental health, in spite the measures taken by the State party to improve the protection of asylum-seekers, including its new “seven values” policy. (arts. 2, para. 2; 11 and 12)

The Committee encourages the State party to implement without delay its new “seven values” in policy, and carry out the Australian Human Rights Commission's recommendations adopted in its 2008 Immigration Detention Report, including the repeal of the mandatory immigration detention system and the closure of the Christmas Island detention Centre.

26. The Committee notes with concern that the incidence of homelessness has increased in the State party over the last decade, mainly affecting indigenous peoples, in spite of the measures undertaken by the State party to address homelessness in Australia, including its National Housing Strategy, as well as its commitment to halve homelessness by 2020 and to improve housing affordability for vulnerable individuals.(art.11)

The Committee recommends that the State party take effective measures, in line with the Committee's general comment No.4 (1991) on the right to adequate housing (art. 11, para. 1, of the Covenant), to address homelessness in its territory. The State party should implement the recommendations of the Special Rapporteur on the Right to Adequate Housing contained in the report of his mission to Australia (A/HRC/4/18/Add.2). The Committee requests the State party to provide, in its next periodic report, disaggregated data and information which will allow the Committee to assess the progress made by the State party in improving the housing situation in its territory, in particular with respect to indigenous peoples.

27. The Committee is concerned at the negative impact of climate change on the right to an adequate standard of living, including on the right to food and the right to water, affecting in particular indigenous peoples, in spite of the State party's recognition of the challenges imposed by climate change. (art. 1, para. 1)

The Committee recommends that the State party take all the necessary and adequate measures to ensure the enjoyment of the right to food and of the right to affordable drinking water and sanitation in particular by indigenous peoples, using a human-rights based approach, in line with the Committee's general comments No. 15 (2002) on the right to water, No. 14 (2000) on the right to the highest attainable standard of health and No. 12 (1999) on the right to food.. It also recommends that the State party intensify its efforts to address issues of climate change, including through carbon reduction schemes. The State party is encouraged to reduce its greenhouse gas emissions and to take all the necessary and adequate measures to mitigate the adverse consequences of climate change, impacting the right to food and the right to water for indigenous peoples, and put in place effective mechanisms to guarantee consultation of affected Aboriginal and Torres Strait-Islander peoples, so to enable them to exercise their rights to an informed decision as well as to harness the potential of their traditional knowledge and culture (in land

management and conservation).

28. In spite of the State party's commitment to "close the gap" in key health indicators between indigenous and non-indigenous people, the Committee notes with concern the continuing high levels of ill health among indigenous people, in particular women and children.(arts. 2, para. 2; and 12)

The Committee calls on the State party to take immediate steps to improve the health situation of indigenous people, in particular women and children, including by implementing a human rights framework that ensures access to the social determinants of health such as housing, safe drinking water, electricity and effective sanitation systems. Further, the Committee invites the State party to identify disaggregated health indicators and appropriate national benchmarks in relation to the right to health, in line with the Committee's general comment No. 14 , and to include information on the process of identifying such indicators and benchmarks in its next periodic report.

29. The Committee notes with concern that health services in prisons are generally inadequate, and in particular, drug abuse and the high rates of sexually transmitted diseases remains a serious problem. (art. 12)

The Committee recommends that the State party(a) develop adequate strategies to provide all detainees with appropriate health and medical care, in line with the Committee's general comment No. 14 and the relevant United Nations standard minimum rules for the treatment of prisoners; (b) ensure that adequate health care for prisoners be taken into account in the its health programmes and policies; (c) encourage the Detention Health Advocacy Group to adopt a human rights based-approach when proposing reforms to the detention care system.

30. The Committee notes with concern the insufficient support for persons with mental health problems, as well as the difficult access to mental health services, in particular for indigenous peoples, prisoners and asylum-seekers in detention. (arts. 2, para. 2; and 12)

The Committee recommends that the State party take effective measures to ensure the equal enjoyment of the right to the highest attainable standard of mental health, including by (a) allocating adequate resources for mental health services and other support measures for person with mental -health problems in line with the United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care; (b) implementing the recommendations of the Australian Medical Association's 2008 report on indigenous health; (c) reducing the high rate of incarceration of people with mental diseases; (d) ensuring that all prisoners receive an adequate and appropriate mental health treatment when needed.

31. The Committee notes with concern the persistence in the State party of disparities in access to the educational system for indigenous peoples, including those living in remote areas, compared with the rest of the population, as well as the deficient quality of education provided to

persons living in remote areas, in particular indigenous peoples. It regrets that access to pre-school education is not equally guaranteed throughout the State party. (arts. 2, para. 2; and 13)

The Committee recommends that the State party produce accurate national data on indigenous school-age children in remote areas to assess whether the existing education infrastructure and services meet the needs of indigenous peoples living in remote areas. The Committee also recommends that wherever the school provision does not meet the populations' needs, the State party develop an adequate national plan to improve the educational system for indigenous peoples, including in remote areas.

32. The Committee notes with concern that, despite the reforms to the native title system, the high cost, complexity and strict rules of evidence applying to claims under the Native Title Act, have a negative impact on the recognition and protection of the right of indigenous peoples to their ancestral lands. (art.15)

The Committee recommends that the State party increase its efforts to improve the operation of the Native Title system, in consultation with Aboriginal and Torres Strait Islander Peoples, and remove all obstacles to the realization of the right to land of indigenous peoples.

33. The Committee notes with concern that according to the National Indigenous Languages Survey, only about 145 of the original estimated 250 indigenous languages exist today in the State party, and most of them are critically endangered. The Committee is also concerned that, despite the national programmes, including the National Arts and Crafts Industry Support Program, the indigenous cultural and intellectual property are not adequately protected in the State party. (art. 15)

The Committee recommends that the State party (a) strengthen its efforts to guarantee the indigenous peoples' rights under articles 1 and 15 to enjoy their identity and culture, including through the preservation of their traditional languages; (b) consider improving the Maintenance of Indigenous Languages and Records Program; (c) preserve and promote bilingual education at schools; (d) reform the Copyright Act 1986 to extend its legal protection to indigenous people; and (e) develop a special intellectual property regime that protects the collective rights of indigenous peoples, including protection of their scientific products, traditional knowledge and medicine. The Committee also recommends that a registry of intellectual property rights of indigenous peoples be opened and that the State party ensure that the profits derived thereof benefit them directly.

34. The Committee recommends that the State party provide human rights education on economic, social and cultural rights to students at all levels of education and make available extensive human rights training for members of all professions and sectors having a direct role in the promotion and protection of human rights, including judges, lawyers, civil servants, teachers, law enforcement officers, migration officers, the police and the military.

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

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

37. The Committee requests the State party to disseminate the present concluding observations widely among all levels of society, particularly among State officials, the judiciary and civil society organizations, and to inform the Committee on the steps taken to implement them in its next periodic report. It also encourages the State party to continue consultations with non-governmental organizations and other members of civil society in the process of discussion at the national level prior to the submission of its next periodic report.

38. The Committee urges the State party to prepare a fifth periodic report in accordance with the revised reporting guidelines of the Committee, adopted in 2008 (E/C.12/2008/2) and requests the State party to submit its next periodic report by 30 June 2014.
