



**Economic and Social  
Council**

Distr.  
GENERAL

E/C.12/AUS/Q/4  
11 June 2008

Original: ENGLISH

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COMMITTEE ON ECONOMIC, SOCIAL  
AND CULTURAL RIGHTS  
Pre-sessional working group  
19 – 23 May 2008

**AUSTRALIA**

**IMPLEMENTATION OF THE INTERNATIONAL COVENANT  
ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

**List of issues to be taken up in connection with the consideration  
of the fourth periodic report of Australia, consisting of the treaty-specific document on the  
rights covered by articles 1 to 15 of the International Covenant on Economic, Social and  
Cultural Rights (E/C.12/AUS/4) and the common core document (HRI/CORE/AUS/2007)**

**I. GENERAL FRAMEWORK WITHIN WHICH THE COVENANT IS IMPLEMENTED.**

1. Please indicate the measures, including training and awareness-raising for law enforcement officers, undertaken to combat discrimination against migrants, persons of foreign origin and indigenous people in the fields of employment, housing, health care, education and culture.
2. Please indicate the ways in which the domestic legal system provides an effective remedy to persons whose rights under the Covenant have been violated.
3. The International Coordinating Committee of National Institutions of Human Rights has encouraged the State party to consider the removal of the provision allowing the Minister to convene the Human Rights and Equal Opportunity Commission, on the basis that it could potentially compromise the independence of the Commission. Please indicate the progress achieved by the State party in implementing this recommendation.

## **II. FOLLOW-UP TO THE COMMITTEE'S PREVIOUS OBSERVATIONS**

4. Further to the information provided in paragraph 67 of the common core document (HRI/CORE/AUS/2007), please indicate whether, in accordance with the Committee's recommendations issued in 2000, the State party has taken steps to fully incorporate the Covenant in its domestic law. Please also indicate whether the State party has taken measures to ensure that no conflict exists between Commonwealth and State law in the implementation of treaty obligations.<sup>1</sup>

5. Please provide information on the measures undertaken to follow the High Court's position concerning the "legitimate expectations" arising from the ratification of the Covenant.<sup>2</sup>

6. Further to the information provided in paragraph. 419-422 of the common core document, please indicate whether the minimum wages are sufficient, with a view to providing all workers and their families with an adequate standard of living in accordance with article 7, paragraph (a) (ii) of the Covenant. Please also provide detailed and updated information, including disaggregated data, on home workers.

7. Please provide statistical information, disaggregated by geographical, economic and social sector, on the extent of poverty and extreme poverty in the State party, especially among indigenous people, migrants, asylum-seekers and other disadvantaged and marginalized groups.

## **III. ISSUES RELATING TO THE GENERAL PROVISIONS OF THE COVENANT (arts. 1-5)**

### **Article 2, paragraph 1 – realization of economic, social and cultural rights by all appropriate means**

8. Please indicate whether the national consultation regarding a federal Charter of Rights will consider the incorporation of economic, social and cultural rights in Australian law.

### **Article 2, paragraph 2 – international assistance and cooperation**

9. Please explain why the State party's commitment to providing foreign aid, despite the welcome increase from 0.3 per cent to 0.5 per cent of gross national income, falls short of the 0.7 per cent pledged by States in the Millennium Development Goals.

### **Article 3 – equal rights of men and women**

10. Please indicate what concrete steps, including legislative, budgetary and administrative steps, the State party intends to take to address the disadvantaged position of women, in particular that of indigenous women, compared to men in relation to income, access to health,

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<sup>1</sup> E/C.12/1/Add.50, para. 24.

<sup>2</sup> Ibid.

education, housing and political representation. Please also indicate what steps are planned to remedy the unequal conditions of employment faced by women?

#### **IV. ISSUES RELATING TO SPECIFIC PROVISIONS OF THE COVENANT (arts. 6 – 15)**

##### **Article 6 - Right to work**

11. Please provide detailed and updated information, including disaggregated data, on the rate of unemployment and underemployment in the State party.

12. Some provisions of the Workplace Relations Act 1996, such as the exclusion of employers with 100 employees or less from the remedies for unfair dismissal and the removal of recourse to appeal against terminations which purport to be based on operational reasons, appear to be inconsistent with international labour standards. Please indicate what measures will be taken to redress the situation.

13. Further to the information provided in paragraph. 442 of the common core document, please provide detailed and updated information on the measures adopted to strengthen employment security, especially for vulnerable workers, including protection against unfair dismissals.

##### **Article 7 - Right to just and favourable conditions of work**

14. Please comment on the impact of the introduction of Work Choices on Australian Workplace Agreements, which previously ensured working conditions through a system of awards and collective bargaining, in respect of employee working conditions, particularly the Agreements lodged in the six months following the introduction of Work Choices.

15. Please provide details of policies and programmes aimed at ensuring the rights of home workers to receive compensation at least at the level of the official minimum wage, to benefit from adequate social security and to enjoy just and favourable working conditions.

##### **Article 8 – Trade union rights**

16. According to paragraph 451 of the common core document, the Human Rights and Equal Opportunity Commission (HREOC) is empowered to inquire, on its own motion or upon receipt of a complaint, into acts or practices which may constitute discrimination in employment on the basis of trade union activities. Please provide detailed and updated information on: (a) the complaints received; (b) the cases between employers and employees pending trial; and (c) the implementation of the decisions of HREOC.

17. Please elaborate on the implementation of workers' rights, including collective bargaining rights, under the December 2005 Workplace Relations Amendment Bill. Please also:

a) provide information on the incidences of strikes; and b) elaborate on the compatibility with the Covenant of the restrictions on the right to strike under domestic law.

#### **Article 9 - Right to social security**

18. Please provide information on the extent to which social security payments are adequate to ensure a dignified life and an adequate standard of living.

#### **Article 10 – Right to marry and found a family, protection of the family, mothers and children**

19. According to paragraph 384 of the common core document, child abuse remains a major concern in the State party. The large number of indigenous children in the child protection system indicates that the problem is particularly acute in the indigenous communities. Please elaborate on the measures which will be undertaken by the State party to redress this situation. Please provide further information on the indigenous-specific programmes mentioned in paragraph 122 of the common core document, as well as on the results achieved.

20. With respect to articles 7 and 10 of the Covenant, please comment on the extent to which the laws that specifically protect children from particular health risks in the workplace apply uniformly across the industries. In addition, please also indicate whether the State party envisages ratifying ILO Convention 138 (1973), concerning the Minimum Age for Admission to Employment.

21. Please provide further information on whether the State party intends to proceed with the Draft Children with Intellectual Disabilities (Regulation of Sterilizations Bill 2006).

#### **Article 11 – The right to an adequate standard of living**

22. Please provide information on (a) the extent of homelessness and malnutrition among asylum-seekers; and (b) the eligibility of asylum-seekers who have initiated an appeal against the primary decision of their asylum application to apply for assistance under the Asylum-Seeker Assistance Scheme.

23. Please provide further information on the programme to support indigenous households at risk of eviction to maintain their tenancies, and on the Joint Planning Committee (common core document, para. 492), as well as on the results of the programme.

24. Please outline the measures taken toward the development of a national housing strategy. In this regard, please explain the extent to which attention is paid to remedying the situation of the most disadvantaged and marginalized groups, the efforts undertaken or envisaged to promote their participation in the development of the strategy, as well as the efforts undertaken or envisaged to address the structural root causes of the problems now faced.

25. Please provide detailed and updated information, including disaggregated data, on the nutritional status of indigenous people, homeless people, single-parent families, children, unemployed people, low-income earners, older persons, persons with disabilities, persons living in rural areas, refugees and asylum seekers, and their ability to access adequate, affordable and appropriate food and water.

26. Please indicate the measures being taken to ensure adequate access to affordable and potable drinking water and sanitation services for all.

#### **Article 12 – Right to the highest attainable standard of physical and mental health**

27. Please provide information on the universal health coverage offered to Aboriginals and Torres Strait Islanders. How is the right to health guaranteed to such persons in comparison to other Australians?

28. Please provide details of the plans to ensure primary health care services and infrastructure for indigenous peoples that will bridge the gap in health standards by 2018.

29. Please provide details of the proportion of public expenditure spent on mental health care.

#### **Articles 13 and 14 – Right to education**

30. Please provide details on the proportion of public expenditure spent on primary and secondary education, disaggregated on an annual basis according to public and private schools.

31. Please indicate the ways in which the educational system is culturally appropriate for Australian children of indigenous origin. Please also indicate what steps are being taken to bridge the gap between the percentage of indigenous students who complete secondary school in comparison with that of non-indigenous students.

32. Please provide information on: (a) the proportion of children with disabilities in secondary education and;(b) the adequacy and effectiveness of support for children with disabilities aimed at enabling them to participate fully in and complete secondary education.

#### **Article 15 – Cultural rights**

33. Please indicate the measures, legislative or otherwise, taken or foreseen by the State party to protect and promote ancestral rights and the traditional knowledge of indigenous peoples.

34. Please explain whether the State party envisages adopting legislation to protect the moral and material rights of indigenous authors.

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