

3. Indigenous disadvantage and special measures

This issue relates to questions 7 and 29 of the List of issues to be taken up in connection with the consideration of the third periodic report of Australia

Summary of issue

- Indigenous people in Australia, suffer grossly disproportionate rates of disadvantage against all measures of socio-economic status
- State, territory and federal governments have introduced programs, and continue to seek to identify further methods, for redressing this disadvantage
- Yet recent research indicates that government programs are inadequate when considered against the requirement to raise Indigenous people to a position of equality in Australian society
- Government programs are also inadequate to ensure the progressive realization of economic, social and cultural rights of Indigenous Australians
- Similarly, there is little understanding within Australian society of the requirement to, and legitimacy of, adopting special measures
- Key reports which make recommendations for redressing Indigenous disadvantage, including the Royal Commission into Aboriginal Deaths in Custody, and *Bringing them home*, the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, have not been fully implemented. Many recommendations, particularly those concerning the application of the principle of self-determination, have been actively rejected.
- The Social Justice Package, the third component of the government's response to the *Mabo* decision (alongside the *Native Title Act* and the National Aboriginal and Torres Strait Islander Land Fund), has been abandoned. Following broad consultations with Indigenous peoples, peak Indigenous organisations had proposed that the social justice package involve measures to redress Indigenous disadvantage and to recognise the unique status of Indigenous people.

Relevance to the ICESCR:

- Articles 2: Non-discrimination, special measures and progressive realization;
- Article 6: Right to work;
- Article 11: Adequate standard of living and housing;
- Article 12: Adequate standard of health;
- Article 13: Right to education; and
- Article 1: Self-determination.

The following section expands on this summary under the following headings:

- Introductory overview;
- Age structure of the Indigenous population;
- Health status;
- Domestic violence;
- Housing and infrastructure;
- Employment;
- Education;

- The government's response to Indigenous disadvantage; and
- Relevance to ICESCR (an analysis of relevant articles of the Convention).

3. Indigenous disadvantage

Introductory overview

3.1 Indigenous Australians remain the most disadvantaged of all Australians. There are clear disparities between Indigenous and non-Indigenous Australians across all indicators of quality of life.

3.2 The most recent publication of the Australian Bureau of Statistics notes that:

As a group, Indigenous people are disadvantaged relative to other Australians with respect to a number of socio-economic factors, and these disadvantages place them at greater risk of ill health and reduced well-being.¹

3.3 The following statistics from the 1996 Census illustrate this disadvantage.²

Indicator	Indigenous Adults	Non-Indigenous Adults
Hold a post-school educational qualification	11%	31%
Unemployment rate	23% ³	9%
Median income (males)	\$189	\$415
Median income (females)	\$190	\$224
Own house (or in process of purchasing it)	31%	71%

3.4 This disadvantage is also reflected in contact with welfare services and correctional services. As the Australian Bureau of Statistic has noted:

Although there are differences by State and Territory, Indigenous children are more likely than non-Indigenous children to be the subjects of substantiated cases of abuse and neglect (with rates about 2-8 times higher in most jurisdictions in 1997-98), under care and protection orders (about 4 times higher in 1998) and on out-of-home placements (almost 6 times higher in 1998). Indigenous children are also over-represented in the juvenile justice system, with about 40% of children in 'corrective institutions for children' identified as Indigenous in the 1996 Census. Indigenous adults are more likely to have contact with legal and correctional services, with almost 19% of the adult prison population in 1997 being identified as Indigenous. The imprisonment rate for Indigenous adults was over 14 times that for non-Indigenous adults.⁴

¹ Australian Bureau of Statistics, *The health and welfare of Australia's Aboriginal and Torres Strait Islander Peoples*, ABS, Canberra, 1999, p2.

² *ibid.*

³ This figure does not include Indigenous adults involved in Community Development Employment Projects (CDEP), which is effectively an Indigenous 'work for the dole program.' The actual unemployment rate rises to approximately 50% with participants in CDEP included: see Australia's 3rd periodic report under ICESCR, UN Doc: E/1994/104/Add.22, para 44. The unemployment rate for Indigenous people aged 15-29 years in 1996 was 28.6% (excluding CDEP participants).

⁴ Australian Bureau of Statistics, *The health and welfare of Australia's Aboriginal and Torres Strait Islander Peoples*, ABS, Canberra, 1999, p2. See further: Australian Institute of Health and Welfare, *Child protection: Australia 1998-99*, AIHW, Canberra, 2000.

- 3.5 The Royal Commission into Aboriginal Deaths in Custody concluded that the over-representation of Indigenous people in the criminal justice system is inextricably linked to their socio-economic status.

Age structure of the Indigenous population

- 3.6 Nationally, Indigenous people constitute 2.1% of the total Australian population. By comparison, Indigenous people aged 15-29 years represent 2.6% and Indigenous children aged 0-14 years 3.9% of the total population for those age groups.
- 3.7 The higher proportion of Indigenous children and youth reflects the younger age structure of the Indigenous population when compared to the non-Indigenous population.⁵ This young age structure is also reflected in the median age of the Indigenous population, as recorded in the 1996 Census.⁶ The median age for the total Indigenous population was 20 years, compared to 33 years for the non-Indigenous population. For Indigenous males the median age was 18 years, compared to 33 years for non-Indigenous males; and for Indigenous females it was 21 years compared to 34 years for non-Indigenous females.⁷
- 3.8 This young age structure is a significant factor that needs to be considered in any discussion of policies affecting Indigenous people – particularly in relation to employment and education.⁸ As discussed below, the young age structure of the Indigenous population significantly impacts on the government's efforts to ensure the progressive realization of the economic, social and cultural rights of Indigenous Australians.

Health status

- 3.9 A recent report of a committee of the federal Parliament notes that:

Despite improvements in certain areas, the health and well-being of Indigenous Australians has failed to keep pace with the overall improvements in the health and well-being of non-Indigenous Australians, so that the level of disadvantage has continued to grow over time.⁹

- 3.10 Indigenous males have a life expectancy of 56.9 years compared to 75.2 years for non-Indigenous males. Indigenous females have a life expectancy of 61.7 years compared to 81.1 years. The Australian Institute of Health and Welfare commented in June 2000 that:

⁵ The higher percentage of Indigenous children also reflects higher fertility levels amongst Indigenous women. See further below.

⁶ Note: these figures exclude Torres Strait Islanders.

⁷ Australian Bureau of Statistics, *Population distribution, Indigenous Australians*, cat 4705.0, ABS, Canberra, 1997, p6.

⁸ See: Australia's 3rd periodic report under ICESCR, *op.cit.*, para 45.

⁹ FN 29 above

the figures for the Indigenous Australian population are similar to those for Australians born at the beginning of the twentieth century, when life expectancy was 55 years for Australian males and 59 years for Australian females.¹⁰

3.11 In relation to health status, the Australian Bureau of Statistics states in its most recent publication:

The health disadvantage of Indigenous Australians begins early in life and continues throughout the life cycle. On average, Indigenous mothers give birth at a younger age than non-Indigenous mothers. In most States and Territories, their babies are about twice as likely to be of low birth weight and more than twice as likely to die at birth than are babies born to non-Indigenous mothers.¹¹

3.12 In relation to fertility and infant mortality, the Australian Bureau of Statistics notes that:

- In 1996, the fertility rates for Indigenous women was 2.2 children, compared to 1.8 for non-Indigenous women;
- Indigenous women begin childbearing at a younger age, have higher birth rates in their teenage years and early twenties and tend to have more children than non-Indigenous women;
- The average age of Indigenous mothers was 24.0 years, compared to 28.6 years for non-Indigenous mothers. 23.1% of Indigenous mothers in 1996 were teenagers, more than four times the non-Indigenous rate (4.8%);
- The proportion of low birthweight babies (less than 2500 grams) of Indigenous mothers was 12.4%, more than twice the rate of non-Indigenous mothers (6.2%);
- the fetal death rate among births to Indigenous mothers of 13.9 per 1000 births was more than double that of 6.7 per 1000 for non-Indigenous births.¹²

3.12 The disadvantage experienced by Indigenous Australians is also borne out in mortality rates. In 1995-97, there were about 3 times as many deaths among Indigenous people as there would have been if the Indigenous population had the same age-specific death rates as the total Australian population.¹³ The difference was greatest, in relative terms, among those aged 35-54 years. There is no reliable data to determine whether and to what extent the death rates for the Indigenous population have been changing in recent years.

3.13 More than half (53%) of the deaths of Indigenous males and 41% of Indigenous females were of people aged less than 50 years. This is in stark contrast to the age distribution of all deaths, with the vast majority (72% of male deaths and 83% of female deaths) occurring among people aged 65 years or more.

¹⁰ Australian Institute of Health and Welfare, *Australian Health 2000*, AIHW, Canberra, June 2000, p208. Available online at: www.aihw.gov.au.

¹¹ *ibid*, Australian Bureau of Statistics, p5.

¹² Australian Institute of Health and Welfare, *Indigenous mothers and their babies 1994-1996*, AIHW National Perinatal Statistics Unit, Sydney, 1999.

¹³ Based on Western Australia, Northern Territory and South Australia combined. Australian Institute of Health and Welfare, *Australian Health 2000*, AIHW, Canberra, June 2000, p208.

- 3.14 Some of the differences in health status can be explained by differences in the health risk factors to which people are exposed, such as low socio-economic status, poor living conditions, poor nutrition, the abuse of harmful substances, and violence. As a group, Indigenous people are more likely to be exposed to such health risk factors.

Domestic violence

- 3.15 Exposure to violence, including domestic or family violence, is an area of increased risk for Indigenous Australians. Deaths from intentional injury are more common for Indigenous people than for other Australians and Indigenous females are grossly over represented in hospitalisations recorded as being due to intentional injury.¹⁴ These issues were considered by the 1999 Queensland Aboriginal and Torres Strait Islander Women's Task Force on Violence Report (the Robertson Report). That Report pointed out that Indigenous Australians face enormous problems in health, education and employment, all of which act to exacerbate the high levels of domestic violence experienced by Indigenous communities. One of the primary recommendations of the Report was for collaboration and support between Indigenous communities and government, and between all levels of government, to respond to domestic violence.
- 3.16 The Commonwealth Government has acknowledged that the high level of family violence in indigenous communities requires that this be a special area of work under its *Partnerships Against Domestic Violence* initiative, which is the Commonwealth Government initiative to work with the States and Territories and the community to find better ways of preventing domestic violence. Accordingly, it has allocated \$6 million for national measures to address this issue with the establishment of a community grants program to strengthen indigenous community efforts to address family violence.¹⁵
- 3.17 Indigenous representatives remain concerned that violence on communities is so serious and entrenched that there is a need for unprecedented and sustained action from both the State and Federal government. They are looking for a style and scale of response from government never seen before in terms of a long term, major policy and program assault on this problem by the whole of government.
- 3.18 Whilst the Government's response to domestic violence, including Indigenous domestic violence, is supported, the main issue, therefore, is the adequacy of the level of the response, and the ongoing commitment of governments to assisting Indigenous communities meet these significant domestic violence problems which impact directly on their standard of living, health and well-being.

¹⁴ FN 33 above, pp 217-218

¹⁵ Senator Jocelyn Newman, *Launch of New Partnerships Against Domestic Violence Initiatives*, Speech 7 October 1999, <<http://www.dpmc.gov.au>>

Housing and infrastructure

- 3.19 Historically, Indigenous Australians, particularly in rural and remote areas, have not been provided with the same standard of housing, infrastructure and municipal services available to other Australian communities. This lack of basic infrastructure and municipal services continues to contribute significantly to the poor environmental health conditions in many Indigenous communities.
- 3.20 Indigenous households in the 1996 census were larger than other households (an average of 3.7 people versus 2.7) and were much more likely to live in crowded dwellings. Indigenous households occupied almost half of all private dwellings with 10 or more people. Indigenous people were more likely to live in improvised dwellings, such as sheds, humpies or other rough accommodation. Almost a third of all households counted in improvised dwellings were Indigenous households, even though Indigenous households account for less than 2% of all Australian households.
- 3.21 In 1991 the Aboriginal and Torres Strait Islander Commission (ATSIC) undertook a national survey of the community housing and infrastructure needs of rural and remote communities which estimated that, at the time, the cost of providing housing (\$1088 million); repairing houses (\$280 million); upgrading internal roads (\$155 million); and access roads (\$192 million) would total \$1,716 million nationally. The cost of upgrading other infrastructure such as water, electricity and sewerage was not estimated.¹⁶
- 3.22 A 1999 evaluation of ATSIC's Health Infrastructure Priorities Program noted that there has been 'a positive and real impact of governmental funding focus on housing in rural and remote Indigenous communities.'¹⁷ However, it also noted the need for more assistance to Indigenous people in urban situations 'who suffered much more from the reduction in access to State government housing from 1991 to 1996 without the compensation of increased access to community housing available to their rural counterparts.'¹⁸
- 3.23 In May 2000, the House of Representatives Standing Committee on Family and Community Affairs finalised a report into Indigenous Health, *Health is Life*. The Committee reported that they had visited many Indigenous communities and found that, with a few exceptions, a significant proportion of the housing stock was in poor repair, people were sometimes living in rough shelters, roads were basic and poorly maintained, water and sanitation services were often inadequate and that waste disposal was problematic.¹⁹

¹⁶ House of Representatives Standing Committee on Family and Community Affairs, *Health is life*, Parliament of Australia, Canberra, May 2000, p48.

¹⁷ Aboriginal and Torres Strait Islander Commission – Office of Evaluation and Audit, *Evaluation of the Health Infrastructure Priority Projects Program*, ATSIC Canberra 1999, p2.

¹⁸ *Ibid.*

¹⁹ *Health is life*, op.cit, p48.

- 3.24 The Committee noted that the cost of redressing the housing needs of Indigenous people, particularly in rural and remote communities 'are likely to be significant.'²⁰ They observed that:

Though governments may be reluctant to financially commit themselves to meeting this enormous unmet need, it should be considered that were the situation to have developed overnight, a state of national emergency would be declared.

The Committee commends a deficit reduction strategy on housing, sewerage, water and infrastructure programs. The nation's inability to address these needs is not something which we as Australians can be proud of.²¹

Employment

- 3.25 The rate of unemployment for Indigenous Australians was 23% at the 1996 Census, more than double the rate for the non-Indigenous population. This rate is closer to 50% when participation in the Community Development Employment Projects are included.²² The CDEP is a community-based 'work for the dole' scheme. For those in employment there is an over reliance on the public sector. Only 2% of Indigenous Australians are self-employed.

- 3.26 A significant challenge in reducing this level of unemployment is presented by the age structure of the Indigenous population. As a recent study of Indigenous unemployment noted:

Projections based on the 1996 Census suggest that, at the very least, the Indigenous population is likely to increase from an estimated 386,000 in 1996 to 469,100 by 2006 at an annual rate of growth of 2 per cent. This is twice the rate of growth projected for the rest of the population. There are also anticipated changes in age structure into the new millennium. Unlike the general population, for whom the consequences of population ageing will be increasingly apposite, the ascendant issues for Indigenous social policy will derive more from needs in the school-to-work transition years and in the prime working age group. It is conservatively estimated that the number of Indigenous adults will be greater by 64,800, or 28 per cent, in 2006. This is substantially above the projected increase in the rest of the adult population, which is only 12 per cent.

Implications for future labour force status

In the first half of the 1990s, growth in Indigenous mainstream (non-CDEP) employment was equivalent to that recorded for the population as a whole at 1.3 per cent per annum. On the assumption that Indigenous mainstream employment growth will continue to match employment growth generally, and that the labour force participation rate for Indigenous people will also remain constant (as it has during the 1990s), then the following labour market outcomes are anticipated:

- the mainstream employment/population ratio for Indigenous people will decline from its already low level of 30.8 per cent in 1996 to 27.4 per cent in 2006. This means that barely one quarter of Indigenous adults will be in mainstream

²⁰ *Ibid*, page 53.

²¹ *Ibid*.

²² See Australia's 3rd Periodic report, *op.cit*, para 44.

employment. By comparison, the proportion of non-Indigenous adults in mainstream employment is assumed to remain static at around 55 per cent, and

- in the absence of CDEP scheme work, the unemployment rate for Indigenous people will rise from 41 per cent of the labour force to 48 per cent by 2006. For non-Indigenous Australians, the unemployment rate is assumed to remain around the 1996 level of 8.5 per cent.

Of course, the official recorded level of Indigenous employment has been increasingly augmented over the past 20 years by individuals participating in the CDEP scheme. In 1996, one-fifth of all Indigenous workers were engaged in such schemes and it is expected that this proportion will increase further. The official level of Indigenous employment thus grew during the 1990s at 3 per cent per annum, which was twice the rate recorded for all other Australians. If these relativities were to continue, then:

- the employment/population ratio for Indigenous people will still decline but from the higher official level of 39 per cent in 1996 to 38 per cent in 2006. This is because employment growth will still lag behind population growth. Thus, by counting CDEP scheme participants as employed, the proportion of Indigenous adults in work will remain at just over one-third, and
- the unemployment rate for Indigenous people will remain essentially unchanged rising only slightly from its lower official level of 26 per cent of the labour force in 1996 to 28 per cent by 2006.²³

3.27 The report concludes that:

The policy implications of these projections are two-fold. First, without the contribution from CDEP scheme employment, labour force statistics for Indigenous Australians would be in order of magnitude, far worse. Second, even with relatively high growth in employment, which allows for an expansion in CDEP scheme work, the employment rate will continue to fall and unemployment will not improve due to sustained growth in labour supply.

Thus, simply to prevent Indigenous labour force status from slipping further behind it will be necessary to maintain a commitment to special employment programs as well as to generate additional outcomes in the mainstream labour market. However, to move beyond this, and attempt to close the gap between Indigenous and other Australians, will require an absolute and relative expansion in Indigenous employment that is without precedent.²⁴

3.28 To address this situation the federal Government launched an Indigenous Employment Program in May 1999. The program has three elements – a wage assistance and cadetship program; an Indigenous Small Business Fund; and Job network.²⁵ In formulating this program the Government has acknowledged the clear disadvantage faced by Indigenous Australians in employment status, as well as the difficulties in improving this situation. The

²³ Centre for Aboriginal Economic Policy Research, *The job still ahead*, CAEPR Canberra 1999, Executive summary, p ii.

²⁴ *ibid.*

²⁵ See Reith, P, *Indigenous Employment Policy*, Commonwealth of Australia, Canberra, 1999, <http://indigenousjobs.dewsr.gov.au/default.htm>.

Government acknowledges, for example, that in order to redress Indigenous unemployment they must consider the following characteristics of the Indigenous population: the unskilled or semi-skilled character of the workforce, the greater proportion of people in rural and remote areas, and the reliance upon publicly funded employment opportunities. The focus of the policy is on improving opportunities in private enterprise.

3.29 At this stage the policy is in its formative stages, and it is too early to establish whether it is sufficient to ensure the progressive realization of equality in employment opportunities for Indigenous people. The uncertain outlook for rural industries that have been traditional mainstays of Indigenous employment, plus the demographics of the Indigenous population referred to above, indicate that providing adequate employment opportunities for the Indigenous population, and particularly for Indigenous youth, will require a major and sustained effort by Government. As well, the importance of native title and land rights as providing a secure base for economic development and employment opportunities that are consistent with Indigenous aspirations and maintenance of cultural autonomy cannot be overestimated. Government policies need to support the establishment of a firm land base and secure native title rights. Solutions to unemployment cannot be considered in isolation.

Education

3.30 The Commonwealth government, together with all the state and territory governments, recognise that Indigenous people are ‘the most educationally disadvantaged group in Australia.’²⁶

3.31 The following figures demonstrate this disadvantage:

- A significant number of Indigenous students do not complete compulsory years of schooling. Only 94.2% of Indigenous students progressed from year 8 in 1997 to year 9 in 1998;
- In 1994 over one third of Indigenous 15-24 year olds had not completed year 10. This non-completion rate is much higher in rural and remote communities;
- Attendance rates for Indigenous students who are enrolled is much lower than for non-Indigenous students, falling to as low as 20%;
- Nearly half of Indigenous peoples aged over 15 in 1996 had no formal education;
- Retention rates to year 12 are around 33% compared to approximately 73% for non-Indigenous Australians; and
- Literacy and numeracy skills of Indigenous students are well below those of non-Indigenous students in primary schools.²⁷

²⁶ Commonwealth Department of Education Training and Youth Affairs, Submission to the Human Rights and Equal Opportunity Commission Inquiry into Rural and remote education: HREOC, *Emerging themes – Rural and Remote Education Inquiry*, HREOC Sydney NSW 2000, p67.

²⁷ *Emerging themes, op.cit.*, pp67-68.

- 3.32 Poor health hinders many Indigenous children's school attendance and restricts their ability to learn. This poor health often co-exists with poverty. One endemic complaint in many indigenous communities is Otitis Media (middle ear infection). The resultant hearing loss directly impairs student's access to education. The National Inquiry into Rural and Remote Education conducted by the Human Rights and Equal Opportunity Commission heard that in some remote communities, Otitis Media could affect more than 90% of students in one school at any one time.²⁸ Despite this, many schools have no acoustic provision to improve reception by children with middle ear damage.
- 3.33 There have been some improvements in educational participation over the past 10 years. While retention rates are still low, year 12 retention has increased significantly and the school participation rate for Indigenous people aged 16 to 17 increased by 40%. Similarly between 1988 and 1996 the number of higher education Indigenous students more than doubled, while the number of higher education award course completions increased by threefold. Although these increases appear to have slowed in recent years, they do represent significant progress.²⁹
- 3.34 However there have been two recent changes to educational provision for Indigenous people which are of major concern, and may result in a diminution of the ability of Indigenous people to progressively realise their right to education. HREOC draws the attention of the Committee to these matters, as they appear to be retrogressive.
- 3.35 Firstly, changes have been introduced to the Abstudy scheme, which is the main source of support for individual Indigenous students from secondary through to post graduate studies. Abstudy has been critical to the improvements in educational outcomes of Indigenous students over the past three decades. Under the Government's changes it has been more closely aligned to mainstream student support schemes and will be subject to a more stringent means test. These changes are likely, in the view of a Parliamentary Committee, to disadvantage a significant proportion of mature age Indigenous students. The Committee has recommended that the relevant Department, the Department of Employment, Training and Youth Affairs, monitor and report on the impact of the changes to Abstudy, particularly their impact on mature age and rural and remote Indigenous students.³⁰
- 3.36 The other change relates to the abolition of bilingual education in the Northern Territory. Bilingual education programs involve the teaching of Indigenous children in traditional languages. Children who participate in bilingual education programs are taught mainly in their first language in the early years of schooling, while this language continues to be used as a language of instruction in later years. As the child progresses through primary school,

²⁸ Human Rights and Equal Opportunity Commission, *Recommendations – Rural and remote education inquiry*, HREOC Sydney NSW 2000, p59.

²⁹ Senate Employment, Workplace Relations, Small Business and Education References Committee, *Katu Kalpa, Report on the Inquiry into the Effectiveness of Education and Training Programs for Indigenous Australians*, Canberra March 2000, pp 2-3.

³⁰ Ibid, p135.

English plays an increasingly important part until it eventually becomes the main language of instruction. However, the Indigenous language continues to be recognised and used in the schooling program.³¹

- 3.37 In December 1998 the Northern Territory Government announced that it was abolishing bilingual education programs in government schools in Aboriginal communities, and replacing them with 'English as a Second Language' programs. The primary reason given by the Government for this change was the low standards of English literacy among Aboriginal students.
- 3.38 Many Aboriginal communities which currently have bilingual education programs have said the decision of the Northern Territory Government was made without appropriate consultation or a genuine desire to address the systemic issues underlying the vastly disproportionate rate of Aboriginal students' participation in education. The integration of Aboriginal languages into the formal education system through bilingual programs can make schooling more accessible to Aboriginal students, and also values Aboriginal educators and knowledge. Aboriginal communities state that the success of the education of their children should be measured not only by standards of English literacy, but also by respect for their rights to education, language, culture and land.
- 3.39 The lack of appropriate Indigenous participation in the NT decision also breaches Australia's obligations to respect the self-determination rights of its Indigenous peoples under article 1. For many Indigenous people, this announcement was an example of ongoing attempts to undermine their right to control their own lives, by denying the choice of mode of education for their children and threatening the viability of remaining languages. It is also inconsistent with the consistently expressed desires of Indigenous people in the Northern Territory for greater community control over educational processes.³²
- 3.40 Not all Indigenous communities, even where the first language of the students is an Indigenous language, support bilingual programs. However communities should be able to participate in decisions about the place of their languages in the formal education system. In the light of the strong concerns expressed by Indigenous communities in the Northern Territory, the Parliamentary Committee recommended that:

Support for bilingual education programs be maintained in those areas where they are seen as appropriate and necessary by Indigenous communities.³³

³¹ Aboriginal and Torres Strait Islander Commissioner, *Social Justice Report 1999*, p.104.

³² There has been government recognition of the benefits of increased community involvement and control in redressing Indigenous disadvantage: For example, the *Desert Schools Report: An investigation of English language and literacy among young Aboriginal people in seven communities*, AIATSIS, Canberra, 1996, was a Commonwealth-funded extensive study, of which principal recommendations focused on strengthening the involvement of communities in the education process.

³³ FN 55 above, p 98

- 3.41 HREOC is concerned that the decision to abolish bilingual education in the Northern Territory may be misconceived. Problems with outcomes from bilingual education may reflect a lack of resources and support rather than the approach to education concerned. Indigenous people want education to prepare their children to participate effectively in Australian society. Integral to this is the strong desire for education to support cultural traditions and a positive identity for children and younger people. Bilingual education provides a viable option for achieving these goals for a number of Indigenous communities. Replacing bilingual education with programs based on teaching solely in English will not necessarily improve students' educational experience and may come at considerable cultural cost.

The government's response to Indigenous disadvantage

- 3.42 Australian governments *do* acknowledge the disadvantage facing Indigenous Australians and have programs in place that seek to redress this disadvantage.³⁴ As discussed above, for example, the federal Government launched an Indigenous Employment Program in May 1999.

- 3.43 A number of initiatives have also been taken which are aimed at identifying ways of redressing Indigenous disadvantage, including the following.

- 3.44 The House of Representatives Standing Committee on Family and Community Affairs has recently concluded a wide-ranging inquiry into Indigenous health. The Committee's inquiry began in September 1997, and has considered issues relating to:

the coordination of service delivery and planning, barriers to access to services and professional education requirements, as well as consideration of the impact on health of a number of other matters such as location, access to transport, opportunities for employment and education and social and cultural factors.³⁵

- 3.45 The report of the Inquiry, titled *Health is life*,³⁶ found that 'the planning and delivery of health services for Indigenous Australians is characterized by a general lack of direction and poor coordination.'³⁷ It recommended that the Commonwealth accept that it has the major responsibility for the provision of primary health care to Indigenous Australians, and that it must assume responsibility for developing, in collaboration with the states and territories, an efficient, coordinated and effective mechanism for the delivery of services and programs which impact on the health and well-being of the Indigenous population (Recommendation 1). It then makes numerous recommendations on how this might be achieved, relating to the following areas:

³⁴ See, regarding indigenous health, Australian Report to the HRC, CCPR/C/AUS/98/4, paras 46-55. See also paras 127-129 regarding new initiatives on Indigenous employment in the armed forces.

³⁵ House of Representatives Standing Committee on Family and Community Affairs, *Inquiry into Indigenous Health – Discussion Paper*, Parliament of Australia, Canberra, September 1999, p v.

³⁶ House of Representatives Standing Committee on Family and Community Affairs, *Health is life*, Report on the Inquiry into Indigenous health, Parliament of Australia, Canberra, May 2000. The report is available on the internet at: <http://www.aph.gov.au/house/committee/fca/indhea/inqinde2.htm>.

³⁷ *ibid*, p1.

- Improved coordination, planning and delivery of health services;
- Indigenous community control of health services;
- Improved housing and infrastructure services; and
- Cultural, education and employment issues relating to health.

3.46 The government has not responded to the report's recommendations to date.

3.47 The Senate Employment, Workplace Relations, Small Business and Education Committee has also concluded an inquiry into Indigenous education, which required it to:

review parliamentary, government and commission reports on Indigenous education presented during the past ten years, assess the recommendations made in these reports, investigate the extent to which action has been taken to address them, and to identify any impediments to the implementation of the various recommendations and recommend how these might be removed.³⁸

3.48 The report of the Inquiry, *Katu Kalpa*, notes that 'equity for Indigenous people in most educational sectors had not been achieved'³⁹ and identifies raising literacy and numeracy skills of Indigenous people to the level of non-Indigenous people as 'an urgent national priority'.⁴⁰ The report makes 34 recommendations aimed at improving the educational outcomes for Indigenous people. The government has not responded to the report to date.

3.49 The Commonwealth Grants Commission has been empowered to undertake an independent assessment of the relative need of Indigenous Australians for services and programs.⁴¹ It is anticipated that the Inquiry will determine whether funding allocated to Indigenous programs is spent on those programs, and identify relativities between Indigenous communities. It will not examine the absolute need of Indigenous people, or the size of the gap between Indigenous and non-Indigenous Australians.

3.50 The Council for Aboriginal Reconciliation is in the process of developing four national strategies for reconciliation, including national strategies to redress Indigenous disadvantage, for the recognition of Aboriginal and Torres Strait Islander rights and for Indigenous economic independence. An overview of the four strategies, known as the *Roadmap to Reconciliation*, was released in May 2000 and the final strategies will be presented to the federal Parliament in December 2000.

³⁸ Terms of reference to the Committee.

³⁹ Senate Employment, Workplace Relations, Small Business and Education References Committee, *Katu Kalpa*, Report on the inquiry into the effectiveness of education and training programs for Indigenous Australians, Parliament of Australia, Canberra, March 2000, p xi. The report is available on the internet at: http://www.aph.gov.au/senate/committee/eet_ctte/indiged/index.htm.

⁴⁰ *ibid*, Recommendation 1.

⁴¹ See further: *Commonwealth Grants Commission Amendment Bill 1999, Explanatory Memorandum*, Parliament of Australia, Canberra, 1999.

Relevance to ICESCR

Non-discrimination and the progressive realization of economic, social and cultural rights

3.51 Indigenous disadvantage in key social indicators such as health, housing, employment, and education raises serious questions about Australia's compliance with the Covenant. In particular, it does not appear that Indigenous Australians enjoy, on an equal footing with other Australians, the rights identified in:

- Article 6 (the right to work);
- Article 11 (an adequate standard of living including adequate food clothing and housing);
- Article 12 (the right to enjoy the highest attainable standard of physical and mental health); and
- Article 13 (the right of everyone to an education).

3.52 A recent study of Commonwealth and State/Territory outlays on education, health, housing and employment programs provides us with a basis against which to judge the adequacy of governmental responses in each of these areas.⁴² These four areas are the priority service delivery areas identified by the federal government in budget papers and policy statements. The report seeks to determine whether enough attention is given to Indigenous need in these areas. The concept of need used in the study is 'the additional effort (if any) required to bring outcomes for Indigenous people to comparable overall levels with the Australian population as a whole'⁴³ or put differently, the effort required to ensure that Indigenous Australians are treated equally.

3.53 One of the general conclusions of the study is that Indigenous people are more likely to access specific programs designed to address their needs, rather than general programs that are available, subject to eligibility criteria, to all Australians. This focus on specific programs has developed due to the 'unsuitability, or inaccessibility to Indigenous people, of general programs.'⁴⁴ Reasons why general services may be inaccessible or unsuitable include the geographical location of Indigenous people, cultural reasons and a preference for services delivered through organisations under Indigenous control. Accordingly:

a focus on special programs for Indigenous people alone will provide a misleading picture of the distribution of public expenditure between Indigenous and non-Indigenous people. While Indigenous people benefit substantially more than other Australians from specific programs, they benefit substantially less from many, much bigger, general programs.⁴⁵

⁴² Neutze, M., Sanders, W., Jones, G., *Public Expenditure on services for Indigenous people – Education, employment, health and housing*, Discussion Paper 24, The Australia Institute, Canberra, 1999.

⁴³ *ibid.*, p1. Note: the authors acknowledge the limitations of this approach, in particular that it does not recognise or take account of the diversity of circumstances and aspirations of Indigenous people.

⁴⁴ *ibid.*, p3.

⁴⁵ *ibid.*, p xiii.

3.54 The authors concluded the following about expenditure in each of the four areas considered:

- *Education* – Public expenditure on education is 18% higher per capita for Indigenous people than for non-Indigenous in the 3-24 year age group. Equity considerations require that there be additional expenditure on the education of Indigenous Australians, and this difference per head is a ‘very modest contribution’ to reducing Indigenous disadvantage.⁴⁶
- *Employment* – Public expenditures on programs for the unemployed are 48% higher per unemployed Indigenous person than per non-Indigenous unemployed person. Part of this difference is explained by higher levels of long term unemployment and higher average costs of employment programs for Indigenous people, as well as the reliance upon Community Development Employment Projects (CDEP). The level of disadvantage faced by Indigenous people, the difficulties of maintaining employment levels for the rapidly expanding Indigenous population entering working age and the multiple objectives of the CDEP suggest that the margin ‘is not excessive’.⁴⁷
- *Health* – Drawing on analysis in the Deeble report,⁴⁸ the authors note that total funding per head, which includes privately and publicly funded health care, is 8% higher for Indigenous people. Given the health status of Indigenous people, ‘allocation of public expenditure according to need would almost certainly put more resources into health services for Indigenous people.’⁴⁹
- *Housing* – Housing benefits expressed on a per capita basis indicate that non-Indigenous people receive between 9 and 21 per cent more benefits than Indigenous people. Given the greater housing needs of Indigenous people, existing policies are ‘inequitable and inadequate’ and this justifies ‘increased resources being put into programs directed specifically towards addressing their housing needs.’⁵⁰

3.55 In terms of the resources required to adequately address the health needs of Indigenous Australians, a recent analysis, undertaken on behalf of the Australian Medical Association by Professor John Deeble, has estimated that a further \$250 million per year would be required to address the current unmet need.⁵¹ Such an amount is clearly within the resources available to government in Australia.

⁴⁶ *ibid.*, pp16-17.

⁴⁷ *ibid.*, pp28-29.

⁴⁸ Deeble, J., Mathers, C., Smith, L., Goss, J., Webb, R. and Smith, V., *Expenditures on health services for Aboriginal and Torres Strait Islander people*, Australian Institute of Health and Welfare, Canberra, 1998.

⁴⁹ Neutze, M, Sanders, W., Jones, G, *Public Expenditure on services for Indigenous people – Education, employment, health and housing*, *op.cit.*, p38.

⁵⁰ *ibid.*, pp55-56.

⁵¹ Professor Deeble based his estimates of relative need on the current differences in mortality between Indigenous and non-Indigenous Australians - see *Ibid* p 32

- 3.56 The above figures, when compared to the levels of disadvantage highlighted above, tend to indicate that while there are government funding and programs aimed at redressing Indigenous disadvantage, they are clearly not sufficient to raise Indigenous people to a position of equality within Australian society. International human rights principles provide justification for giving higher priority to Indigenous disadvantage and for the taking of further steps to redress this disadvantage and achieve equality of outcome.
- 3.57 The Commission is concerned that the full realisation of the economic, social and cultural rights of Indigenous Australians is not being progressively achieved, as required under **Article 2 of the Covenant**. Further, the Commission is concerned that the obligation to move as expeditiously and effectively as possible toward that goal is not being met. There has been an historic failure, which is continued to this day, to take the ‘deliberate, concrete and targeted’⁵² steps required under the Covenant.
- 3.58 The Commission is also concerned that there is a prominent view in Australian society that Indigenous people are treated ‘more favourably’ than non-Indigenous people due to the level of government expenditure on Indigenous issues. As noted above in relation to expenditure on health, housing, employment and education, the level of government expenditure is not excessive given the level of disadvantage faced. Greater education about the legitimacy of adopting special measures is required to address this concern.
- 3.59 The Commission is also concerned that key reports which make recommendations for addressing Indigenous disadvantage, including the Report of the Royal Commission into Aboriginal Deaths in Custody⁵³, and *Bringing Them Home*, the Report of the National Inquiry into the Separation Of Aboriginal and Torres Strait Islander Children from Their Families, have not been fully implemented. This is particularly so in respect of recommendations for the application of the principle of self-determination (see further below under issue 4). Overall there has been a lack of urgency and insufficient priority accorded to addressing systemic discrimination and redressing inequality.
- 3.60 Finally, in respect of housing, General Comment 4 of the Committee draws attention to the need to increase access to land by landless or impoverished segments of the population and that this should constitute a central policy goal of governments. This requirement has a particular resonance for Indigenous Australians given their dispossession from their lands. Amendments to the *Native Title Act* (see above), in particular those providing for legislative confirmation of extinguishment of native title, go in the opposite direction to this requirement. All around the remote areas of Australia, many Aboriginal groups remain dispossessed and disconnected from their ancestral lands. In many cases they wish to return to their country and re-establish their communities.

⁵² ICESCR General Comment 3 (see FN 1 above)

⁵³ Royal Commission into Aboriginal Deaths in Custody, *National Report*, Canberra 1991