

3. Indigenous disadvantage and self-determination

This issue relates to questions 4 and 5 of the List of issues to be taken up in connection with the consideration of the third and fourth reports 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
- Similarly, there is little understanding within Australian society of the requirement to and legitimacy of adopting special measures
- Government policy does not acknowledge the applicability to Indigenous people of the right to self-determination. In 1997 the government actively rejected self-determination as the basis of Indigenous policy.
- 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 ICCPR

- Articles 2 and 26: Equality and special measures;
- Article 24: Rights of the child; and
- Article 1: Self-determination.

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

- Indigenous disadvantage;
- Health status;
- The government's response to Indigenous disadvantage;
- Adequacy of the Government's response;
- Self-determination; and
- Relevance to ICCPR (an analysis of relevant articles of the Convention).

Indigenous disadvantage

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.¹ This disadvantage is significant in explaining the under-representation of Indigenous people in civil society.

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 socioeconomic factors, and these disadvantages place them at greater risk of ill health and reduced well-being.²

3.3 The following statistics from the 1996 Census illustrate this disadvantage.³

Indicator	Indigenous Adults	Non-Indigenous Adults
Hold a post-school educational qualification	11%	31%
Unemployment rate	23% ⁴	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.⁵

¹ See, eg. Australian Report to the HRC, CCPR/C/AUS/98/3, pp 62-3.

² Australian Bureau of Statistics, *The health and welfare of Australia's Aboriginal and Torres Strait Islander Peoples*, ABS, Canberra, 1999, p2.

³ *ibid.*

⁴ 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. The unemployment rate for Indigenous people aged 15-29 years in 1996 was 28.6% (excluding CDEP participants).

⁵ 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.

Health status

- 3.6 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:

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.⁶

- 3.7 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.⁷

- 3.8 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.⁸

The government's response to Indigenous disadvantage

- 3.9 Australian governments *do* acknowledge the disadvantage facing Indigenous Australians and have programs in place that seek to redress this

⁶ Australian Institute of Health and Welfare, *Australian Health 2000*, AIHW, Canberra, June 2000, p208. Available online at: www.aihw.gov.au.

⁷ *ibid*, Australian Bureau of Statistics, p5.

⁸ Australian Institute of Health and Welfare, *Indigenous mothers and their babies 1994-1996*, AIHW National Perinatal Statistics Unit, Sydney, 1999.

disadvantage.⁹ For example, 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.¹⁰

3.10 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 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.

3.11 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.

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

3.13 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.¹¹

3.14 The report of the Inquiry, titled *Health is life*,¹² found that 'the planning and delivery of health services for Indigenous Australians is characterized by a general lack of direction and poor coordination.'¹³ 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:

⁹ 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.

¹⁰ See Reith, P., *op.cit*; *Indigenous Employment Policy*, Commonwealth of Australia, Canberra, 1999, <http://indigenousjobs.dewsrb.gov.au/default.htm>.

¹¹ House of Representatives Standing Committee on Family and Community Affairs, *Inquiry into Indigenous Health – Discussion Paper*, Parliament of Australia, Canberra, September 1999, p v.

¹² 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>.

¹³ *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.

- 3.15 The government has not responded to the report's recommendations to date.
- 3.16 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.¹⁴
- 3.17 The report of the Inquiry, *Katu Kalpa*, notes that 'equity for Indigenous people in most educational sectors had not been achieved'¹⁵ and identifies raising literacy and numeracy skills of Indigenous people to the level of non-Indigenous people as 'an urgent national priority'.¹⁶ The report makes 34 recommendations aimed at improving the educational outcomes for Indigenous people. The government has not responded to the report to date.
- 3.18 The Commonwealth Grants Commission has been empowered to undertake an independent assessment of the relative need of Indigenous Australians for services and programs.¹⁷ 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.
- 3.19 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.

Adequacy of the Government's response

¹⁴ Terms of reference to the Committee.

¹⁵ Senate Employment, Workplace Relations, Small Business and Education References Committee, *Katu Kulpa*, 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.

¹⁶ *ibid*, Recommendation 1.

¹⁷ See further: *Commonwealth Grants Commission Amendment Bill 1999, Explanatory Memorandum*, Parliament of Australia, Canberra, 1999.

- 3.20 Determining whether these and other initiatives in fact constitute an adequate response to Indigenous disadvantage is a more difficult task. We know that Indigenous disadvantage is grossly disproportionate and across most indicators has not improved in recent years.
- 3.21 A recent study of Commonwealth and State/Territory outlays on education, health, housing and employment programs provides us with some further detail against which to judge the adequacy of governmental responses.¹⁸ 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’¹⁹ or put differently, the effort required to ensure that Indigenous Australians are treated equally.
- 3.22 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.’²⁰ 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.²¹
- 3.23 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.²²
 - *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

¹⁸ 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.

¹⁹ *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.

²⁰ *ibid.*, p3.

²¹ *ibid.*, p xiii.

²² *ibid.*, pp16-17.

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'.²³

- *Health* – Drawing on analysis in the Deeble report,²⁴ 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.'²⁵
- *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.'²⁶

3.24 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.

3.25 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.

Self-determination

3.26 The Commission is particularly concerned at government policy on the applicability of the principle of self-determination to Indigenous peoples.

²³ *ibid.*, pp28-29.

²⁴ 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.

²⁵ Neutze, M, Sanders, W., Jones, G, *Public Expenditure on services for Indigenous people – Education, employment, health and housing*, *op.cit.*, p38.

²⁶ *ibid.*, pp55-56.

3.27 The present government has abandoned self-determination as policy guiding Indigenous affairs.²⁷ In November 1996 the Minister for Aboriginal and Torres Strait Islander Affairs announced that the government's Indigenous affairs policy would no longer be based on the principle of self-determination. In part, the justification put for this was an interpretation of the principle of self-determination that equates it solely with this external aspect. Instead, government policy is now based on the concept of 'self-empowerment.' This concept, which has no meaning in international law, is exemplified by the government's calls for Indigenous peoples to move beyond welfare dependency:

self-empowerment enables Aborigines and Torres Strait Islanders to have a real ownership of (their) programs thereby engendering a greater sense of responsibility and independence... In this sense, self-empowerment varies from self-determination in that it is a means to an end – ultimately social and economic equality – rather than merely an end in itself.²⁸

3.28 This misunderstands the scope and intent of the principle of self-determination. Self-determination cannot accurately be described as an end of itself. The right of self-determination is the right to make decisions and to control their implementation. As Dr Lowitja O'Donoghue has described it, 'self-determination is a 'dynamic right' under the umbrella of which Aboriginal and Torres Strait Islander peoples will continue to seek increasing autonomy in decision making.'²⁹

3.29 In July 1998 the Cabinet of the federal Government decided to urge Canada, New Zealand and the United States to support the removal of the term 'self-determination' from the Draft Declaration on the Rights of Indigenous Peoples.³⁰ This move is inconsistent with one of the fundamental principles of the human rights system – the universality of human rights, i.e the application of the right of *all* people to self-determination. Ironically, it also goes against the clearly expressed aspirations of Indigenous peoples – the very thing that the principle of self-determination reinforces should be valued by nation States. Furthermore, it breaches the obligation in article 1(3) to promote the realization of self-determination.

3.30 On 17 March 2000, the government again rejected a call for self-determination for Aboriginal peoples by rejecting wording in the Draft Declaration of Reconciliation, prepared by the Council for Aboriginal Reconciliation.

3.31 The government has also rejected the recommendations of key reports for redressing Indigenous disadvantage. Most notably, they have rejected or failed to implement recommendations of the Royal Commission into

²⁷ Social Justice Report 1999, pp. 19-20.

²⁸ Senator Herron, 9th Annual Joe and Enid Lyons Memorial Lecture, as quoted in ATSIC, *An analysis of the United Nations Draft Declaration on the Rights of Indigenous Peoples*, 2nd edition, March 1999, www.atsic.gov.au/indigrights/five_a.htm.

²⁹ *ibid.*

³⁰ 'Downer fears phrase will split Australia', *The Age*, 22 August 1998.

Aboriginal Deaths in Custody, and *Bringing them home*, the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children From their families. Many recommendations, particularly those concerning the application of the principle of self-determination, have been actively rejected.

- 3.32 Self-determination was prescribed by the Royal Commission into Aboriginal Deaths in Custody as being necessary for Aboriginal and Torres Strait Islander peoples to overcome their previous and continuing, institutionalised disadvantage and domination:

The thrust of this report is that the elimination of disadvantage requires an end of domination and an empowerment of Aboriginal people; that control of their lives, of their communities must be returned to Aboriginal hands.³¹

- 3.33 In *Bringing Them Home*, the Human Rights and Equal Opportunity Commission also recommended self-determination be implemented in relation to the well-being of Indigenous children and young people through the passage of national framework and standards legislation.³² The Commonwealth Government has failed to implement these proposals.³³

- 3.34 In addition, the government has failed to implement the Social Justice package of 1995.

- 3.35 In 1993, the government responded to the *Mabo* decision by announcing that they would take action in three areas - the introduction of the *Native Title Act 1993* to recognise and protect native title (and validate non-Indigenous forms of land usage); the introduction of an Indigenous Land Fund³⁴ – to redress dispossession for Indigenous people who would be unable to establish native title due to past extinguishment of their rights; and a Social Justice Package.

- 3.36 ATSIC, the Aboriginal and Torres Strait Islander Social Justice Commissioner, and the Council for Aboriginal Reconciliation undertook broad consultations in regard to the development of the Social Justice Package. Strategies and proposals were presented by these three bodies to the government in 1995. The proposals broadly called for the recognition of the rights of Indigenous people, for the implementation of self-determination as the basis of government policy and for governments to redress Indigenous disadvantage as a right and not out of welfare. In 1996, the newly elected government abandoned the Social Justice Package.

³¹ Royal Commission into Aboriginal Deaths in Custody, Volume 1, para 1.7.6.

³² Human Rights and Equal Opportunity Commission, *Bringing them home*, HREOC Sydney 1997, Recommendations 42, 43-53.

³³ For further details see Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report*, 1998, Chapter 4. Available online at: www.hreoc.gov.au.

³⁴ See Australian Government Third Report, UN doc. CCPR/C/AUS/98/3, paragraph 1401. See Australian Government Fourth Report, CCPR/C/AUS/98/4, paras 136-138.

Relevance to the ICCPR

Articles 2 and 26: Equality and special measures

3.37 The level of Indigenous disadvantage raises concerns in relation to Australia's obligations under Articles 2(1), 24 and 26.

3.38 The systemic and grossly disproportionate rate of disadvantage faced by Indigenous people, as demonstrated by virtually all socio-economic indicators, suggests that they do not enjoy the full spectrum of human rights in a non-discriminatory manner. The achievement of the non-discriminatory enjoyment of the full spectrum of human rights for all people is one of the core obligations undertaken by States parties under Articles 2 and 26 of the ICCPR.

3.39 In General Comment 18, at paragraph 10, the HRC has supported the concept of substantive equality as an essential aspect of the Covenant's non-discrimination provisions:

The Committee also wishes to point out that the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant. For example, in a State where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the State should take specific action to correct those conditions. Such action may involve granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population. However, as long as such action is needed to correct discrimination in fact, it is a case of legitimate differentiation under the Covenant.

3.40 The consequence of this disadvantage and discrimination is that Australia is required to take special measures to ensure the adequate development and protection of Indigenous people, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms.

3.41 Furthermore, so long as Indigenous disadvantage within society remains, these measures must be seen as necessary to meet Australia's international obligations and not as benevolent government measures which are capable of being withdrawn due to political or other considerations. In this respect, the government must play a greater role in teaching the Australian public that special measures to redress Indigenous disadvantage are not only legitimate but necessary. This contention is supported by CERD, which stated in recent Concluding Observations on Australia, at paragraph 18:³⁵

The Committee acknowledges the efforts being made to increase spending on health, housing, employment and education programmes for indigenous Australians. Serious concern remains at the extent of the continuing discrimination faced by indigenous Australians in the enjoyment of their economic, social and cultural rights. The Committee remains seriously concerned about the extent of the dramatic

³⁵

CERD/C/56/Misc.42/Rev.3, 14 March 2000.

inequality still experienced by an indigenous population that represents only 2.1% of the total population of a highly developed industrialized State. The Committee recommends that the State party ensure, within the shortest time possible, that sufficient resources be allocated to eradicate these disparities.

Article 24: Rights of the Child

- 3.42 In General Comment 17, at paragraph 3, the HRC has stated in relation to article 24(1):

In most cases, ... the measures to be adopted are not specified in the Covenant and it is for each State to determine them in the light of the protection needs of children in its territory and within its jurisdiction. The Committee notes in this regard that such measures, although intended primarily to ensure that children fully enjoy the other rights enunciated in the Covenant, may also be economic, social and cultural. For example, every possible economic and social measure should be taken to reduce infant mortality and to eradicate malnutrition among children and to prevent them from being subjected to acts of violence and cruel and inhuman treatment or from being exploited by means of forced labour or prostitution, or by their use in the illicit trafficking of narcotic drugs, or by any other means. In the cultural field, every possible measure should be taken to foster the development of their personality and to provide them with a level of education that will enable them to enjoy the rights recognised in the Covenant, particularly the right to freedom of opinion and expression. ...

- 3.43 At paragraph 5 of the same General Comment, the HRC has stated:

The Covenant requires that children should be protected against discrimination on any grounds such as race, colour, sex, language, religion, national or social origin, property or birth. In this connection, the Committee notes that, whereas non-discrimination in the enjoyment of the rights provided for in the Covenant also stems, in the case of children, from article 2 and their equality before the law from article 26, the non-discrimination clause contained in article 24 relates specifically to the measures of protection referred to in that provision. Reports by States parties should indicate how legislation and practice ensure that measures of protection are aimed at removing all discrimination in every field ...

- 3.44 The 'protection' and 'non-discrimination' requirements of Article 24 indicate that the Commonwealth government must ensure that appropriate programmes are established to combat the socio-economic disadvantages of Indigenous youth.

Article 1: Self-determination

- 3.45 The HRC has recognised the relevance of the right to self-determination to Indigenous peoples in its Concluding Comments on Canada:

The Committee notes that, as the State party acknowledged, the situation of the aboriginal peoples remains "the most pressing human rights issue facing Canadians". In this connection, the Committee is particularly concerned that the State party has not yet implemented the recommendations of the Royal Commission on Aboriginal Peoples (RCAP). With reference to the conclusion by RCAP that without a greater share of lands and resources institutions of aboriginal self-

government will fail, the Committee emphasises that the right to self-determination requires, inter alia, that all peoples must be able to freely dispose of their natural wealth and resources and that they may not be deprived of their own means of subsistence (art. 1, para. 2). The Committee recommends that decisive and urgent action be taken towards the full implementation of the RCAP recommendations on land and resource allocation. The Committee also recommends that the practice of extinguishing inherent aboriginal rights be abandoned as incompatible with article 1 of the Covenant.³⁶

- 3.46 The government's abandonment of the principle of self-determination in guiding Indigenous policy
- 3.47 The government's rejection of the recommendations of the Royal Commission into Aboriginal Deaths in Custody and *Bringing them home*, and the abandonment of the Social Justice Package, are analogous to the Canadian government's failure to implement the RCAP recommendations and constitute a breach of article 1 of the ICCPR.
- 3.48 The failure to acknowledge the application of the principle of self-determination to Indigenous peoples also breaches Australia's obligations under Article 1(3) of the Convention to promote the realization of the right to self-determination.

³⁶ (1999) UN doc. CCPR/C/79/Add. 105, para 8.