Introduction

ABOUT THIS SUBMISSION

1. This submission to the United Nations Committee on Economic Social and Cultural Rights (CESCR) has been prepared by the National Association of Community Legal Centres, the Human Rights Law Resource Centre and Kingsford Legal Centre with substantial contributions from over 30 non-government organisations across Australia. The principal authors of this submission are Teena Balgi of Kingsford Legal Centre, Annie Pettitt of the National Association of Community Legal Centres, and Ben Schokman and Philip Lynch of the Human Rights Law Resource Centre.

2. The National Association of Community Legal Centres is the peak body for more than 200 community legal services across Australia. Each year, community legal centres provide free legal services, information and advice to over 250,000 disadvantaged Australians.

3. The Human Rights Law Resource Centre is a national specialist human rights legal service. It aims to promote and protect human rights, particularly the human rights of people who are disadvantaged or living in poverty, through the practice of law.

4. The Kingsford Legal Centre is a community legal centre in Sydney that provides free advice and ongoing assistance to members of the community in relation to a number of areas of law, including discrimination law. The Kingsford Legal Centre also undertakes law reform and community education work.

5. The authors would like to acknowledge the following organisations and individuals, who made invaluable contributions to this submission: Australian Council for Social Service, Australian Human Rights Centre, Australian Muslim Civil Rights Advocacy Network, Chris Sidoti, Claire Mahon, Clare Ozcich, Combined Community Legal Centres NSW, Disability Discrimination Legal Centre NSW, Disability Discrimination Legal Service Inc (Vic), Federation of Community Legal Centres (VIC), Foundation for Aboriginal and Islander Research Action, Hélène César, Howard Glenn, Human Rights Law Resource Centre, Indigenous Law Centre, Inner City Legal Centre Sydney, Intellectual Disability Rights Service, JobWatch Victoria, Kingsford Legal Centre, Maria Herminia Graterol, Dr Marie Segrave, Mental Health Legal Centre Victoria, National Association of Community Legal Centres, National Children and Youth Law Centre, National Human Rights Network of the National Association of Community Legal Centres, National Youth Advocacy Network, Olivia Girard, People with Disability Australia Inc, Public Interest Advocacy Centre, Public Interest Law Clearing House (Victoria), Rights Australia, Sisters Inside, Southern Communities Advocacy Legal & Education Service WA, Tenants Advice Service WA, UnitingJustice Australia, Victorian Council for Social Service, Welfare Rights Centre Sydney, Women With Disabilities Australia, Women's Legal Centre ACT, Women's Legal Services NSW, Women's Legal Service Victoria, Young Lawyers NSW and YWCA Australia.
6. This submission is supported, in whole or in part, by over 100 non-government organisations.

7. The National Association of Community Legal Centres, the Human Rights Law Resource Centre and Kingsford Legal Centre would like to acknowledge the substantial pro bono assistance of Mallesons Stephen Jaques, a leading commercial law firm, in assisting to research, edit and print this submission,¹ as well as the Keir Foundation and the Reichstein Foundation for the generous assistance provided to authors of this report.

SOCIAL AND POLITICAL CONTEXT OF SUBMISSION

8. Australia's Common Core Document, which incorporates Australia's Fourth Report under the International Covenant on Economic Social and Cultural Rights (ICESCR), was lodged with the CESC on 25 July 2007. It was prepared under the former Liberal/National Coalition Government (former Australian Government), which held federal office from 1996 to November 2007. In November 2007, there was a federal general election at which a Labor Government was elected (current Australian Government). Wherever possible, this submission therefore responds to Australia's Common Core Document but also seeks to address actual or proposed changes in relevant Australian law, practice and policy (including Australian Labor Party policy) between lodgement of the Common Core Document in July 2007 and this submission in April 2008.

9. We consider that the Common Core Document is deficient in a number of ways. In particular, the Common Core Document omits a number of very significant human rights issues and largely fails to engage in a constructive assessment of the compatibility of Australian law, policy and practice with the ICESCR and the extent to which Australia has, or has not, made progress in the realisation of economic, social and cultural rights. We are also concerned about the lack of consultation and transparency in the former Australian Government's process of preparing the Common Core Document. In these respects, Australia's Common Core Document significantly fails to conform to many aspects of the Harmonised Guidelines on Reporting under the International Human Rights Treaties.²

10. It is disappointing that the former Australian Government did not use its Fourth Report under the ICESCR as an opportunity to conduct a comprehensive review of the measures it has taken to harmonise Australia's domestic law and policy with its international obligations. Periodic reports to UN treaty bodies should be used by Australian Governments to monitor progress made in promoting the enjoyment of fundamental human rights in Australia and to plan and develop appropriate policies to fully implement the rights contained in the treaties.

¹ The opinions expressed are solely those of the attributed authors and are not those of Mallesons Stephen Jaques or its staff.

² Harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents, UN Doc HRI/MC/2006/3 (2006).
OVERVIEW OF HUMAN RIGHTS FRAMEWORK IN AUSTRALIA

11. The ICESCR is not incorporated into Australian domestic law and ICESCR rights are not justiciable or enforceable in Australian courts or tribunals. Australia remains the only developed state in the world without a national bill or charter of rights, although the current Australian Government has committed to a ‘consultation’ about the need for enhanced legislative protection of human rights.

12. While Australia’s domestic law contains a number of pieces of legislation that protect certain human rights, particularly the right to non-discrimination, they do not cover all rights provided for in the ICESCR. In the absence of a federal bill or charter of rights, there are very significant gaps in the protection of human rights. These gaps and other human rights issues are discussed below under each of the relevant rights.

13. Although Australia does have an independent national human rights institution, the Human Rights and Equal Opportunity Commission, in accord with the Paris Principles, the authority of the Human Rights and Equal Opportunity Commission is limited to enquiry into complaints; it cannot make enforceable determinations and there is no requirement that the Australian Government implement or even respond to its recommendations.
Executive Summary

14. Fundamental human rights issues have been at the core of national political and social debate in Australia in the last decade. This report documents areas in which Australia is falling short of its obligations under the ICESCR and focuses on areas that have been the subject of extensive NGO activity and research in Australia.

15. This Executive Summary sets out:
   (a) key developments in the promotion of the ICESCR rights since the lodgement of the Common Core Document in July 2007; and
   (b) key concerns in relation to ICESCR breaches and implementation failures in Australia’s Third Report under ICESCR.

RECENT KEY DEVELOPMENTS IN THE PROMOTION OF ICESCR RIGHTS

16. Since its election in November 2007, the current Australian Government has taken a number of significant steps towards the realisation of ICESCR rights and the promotion of human rights generally, including:
   (a) committing to a public consultation regarding how best to recognise and protect human rights in Australia;
   (b) indicating support for the Declaration on the Rights of Indigenous Peoples and an intention to ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of Persons with Disabilities, and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment;
   (c) committing to more extensive and constructive engagement with the UN, including UN treaty bodies and Special Procedures;
   (d) the establishment of a new Social Inclusion Unit within the Department of Prime Minister and Cabinet, and the appointment of a senior minister to the portfolio of Social Inclusion;
   (e) the appointment of an expert committee to prepare a strategy to tackle the problem of homelessness in Australia through the development of a comprehensive, long-term plan;
   (f) the development of a ‘National Rental Affordability Scheme’ to address the issue of lack of housing availability and affordability;
   (g) the development of legislation to repeal certain aspects of the Northern Territory Intervention, Work Choices, and Welfare to Work;
   (h) directing the Productivity Commission to undertake an inquiry into the establishment of a national paid parental leave scheme; and
(i) committing to achieve equality of health status and life expectancy between Indigenous Australians and non-Indigenous Australians by 2030, including ensuring primary health care services and health infrastructure for Indigenous peoples which are capable of bridging the gap in health standards by 2018.

SIGNIFICANT CONCERNS REGARDING THE REALISATION OF ICESCR RIGHTS

17. This section summarises key concerns in relation to ICESCR breaches and implementation failures since Australia’s Third Report under ICESCR.

Article 1 — Right of Self-Determination

18. Indigenous Australians are not afforded the right of self-determination and are inadequately politically represented. The Aboriginal and Torres Strait Islander Commission, the only national representative body for Indigenous Australians, was abolished in 2004. There are currently no Indigenous representatives in the Australian Parliament.

19. The Australian Government’s historical policy of merely ‘consulting’ with Indigenous Australians regarding policies which are particularly likely to affect them does not meet the standards of meaningful engagement, participation and empowerment required by the right of self-determination.

20. Although the current Australian Government has recently issued an ‘Apology’ to the ‘Stolen Generations’ (Indigenous children forcibly removed from their families during the 20th century), it has not committed to making adequate reparations for the harm and suffering caused by previous government policies and programs.

21. The current ‘Emergency Intervention’ into the Northern Territory violates the right of self-determination through measures including the compulsory acquisition of land, the suspension and direction of representative community councils, and the quarantining of social security payments.

Article 2 — Treaty Entrenchment and Non-Discrimination

22. The ICESCR is not incorporated into Australian domestic law and is not justiciable or enforceable in Australia. Australia remains the only developed state in the world without a national bill or charter of rights.

23. Despite over a decade of unprecedented economic growth and national budgetary surpluses, real expenditure on the realisation of many economic, social and cultural rights has either not increased or has regressed.

24. The right to non-discrimination is protected in a piecemeal way and Australian equal opportunity and anti-discrimination laws do not cover all areas outlined in Article 2 of the ICESCR. Furthermore, the laws fail to address adequately the issue of substantive equality or systemic discrimination.
There are a number of communities and groups that do not enjoy the rights contained in the ICESCR on an equal basis in Australia, including particularly:

(a) Indigenous Australians;
(b) women;
(c) people with disability;
(d) people from non-English speaking backgrounds;
(e) homeless people;
(f) gay, lesbian, bisexual, transgender and intersex people;
(g) children and young people; and
(h) older persons.

Australia does not have a national action plan on human rights education. Human rights are not a formal component of the curriculum at a primary or secondary level in any Australian state or territory.

The current Australian Government’s commitment to increasing foreign aid from 0.3 per cent to 0.5 per cent of Gross National Income is welcomed but remains short of the 0.7 per cent required by the Millennium Development Goals.

**Article 3 — Equal Rights of Men and Women**

Women remain significantly disadvantaged compared to men in relation to key indicators of well-being, including income, access to health, education, housing and political representation. Indigenous women, women from non-English speaking backgrounds and women with disability are particularly disadvantaged.

Violence against women continues to occur at appalling levels in Australia. While the Australian Government has implemented a ‘Women’s Safety Agenda’ initiative, the resources allocated to both prevention of violence and assistance for women and children who experience violence are inadequate.

**Article 6 — Right to Work**

The ‘Welfare to Work’ changes to social security legislation introduced by the former Australian Government have resulted in a decrease in income for some marginalised and vulnerable groups. The policy can result in a person being deemed ineligible for any means of social support if they do not accept paid work, even where it may be inappropriate or result in significant disruption to family and private life.

There is a range of communities and groups that confront significant barriers to workforce participation, including Indigenous people, asylum seekers and migrants.

Prisoners are not fairly remunerated for their work, are often penalised through loss of other opportunities or privileges for refusing to undertake paid work, are not provided with adequate opportunities to acquire vocational skills to assist them to find post-release employment, and are not equally protected in relation to workplace injury as compared with other workers.
33. Australia has not formulated a comprehensive strategy to combat the trafficking of women and children and to address exploitation resulting from sexual servitude or ‘debt bondage’.

34. Indigenous Australians have not been adequately compensated for ‘Stolen Wages’, being the wages of many Indigenous workers whose paid labour was controlled by governments for much of the 19th and 20th centuries.

**Article 7 — Right to Just and Favourable Conditions of Work**

35. The former Australian Government’s industrial relations policy, ‘Work Choices’, resulted in a significant reduction in workers’ rights, including in relation to hours of work, work loads, protection from unfair dismissal, fair wages and conditions, collective bargaining and leave entitlements.

36. Relative to men, women are paid less, occupy significantly fewer managerial positions, are over-represented in many low-paid sectors, and have less job security or predictability.

**Article 8 — Freedom of Association and Right to Strike**

37. While the former Australian Government’s industrial relations policy, ‘Work Choices’, protected the right of workers to join trade unions, it substantially limited the right to freedom of association, including by denying employees the right to engage in collective bargaining or to be represented by their union in negotiations. Work Choices also restricted the right of unions to determine their own rules or to enter workplaces.

38. The right to strike is not protected by Australian law and is denied to many workers in many situations.

**Article 9 — Right to Social Security**

39. The right to social security is not enshrined in Australian law.

40. Not all people who require social security are able to access it, including newly arrived migrants, asylum seekers, some New Zealand citizens, people unable to provide adequate proof of identity, and marginalised and disadvantaged people unable to satisfy ‘mutual obligation’ requirements.

41. Social security payments are pegged around or below the poverty line and, in many cases, are insufficient to support a dignified and adequate standard of living.

42. The conditionality of some social security payments may result in a total loss of income beyond a person’s control. People with mental illness and homeless people are particularly vulnerable to termination of payments.
**Article 10 — Right to Family**

43. Australia remains one of only two Organisation for Economic Co-operation and Development countries without a national paid maternity leave scheme, although the Productivity Commission is currently inquiring into the introduction of such a scheme.

44. Recent amendments to the *Family Law Act 1975* (Cth) concerning the care of children following family separation prioritise parents’ claims to equal custody at the expense of the principle that the best interests of the child are paramount in deciding where a child will live and with whom the child will spend time.

45. Australian law does not prohibit holding children in immigration detention centres.

46. Australian immigration law, policy and practice may interfere substantially with the right to family, particularly in cases where:
   (a) there are moves to deport a non-citizen family member;
   (b) a family member is denied the ability to bring family members to Australia; or
   (c) entry is denied to an individual seeking to join family members already residing in Australia.

47. The Human Rights and Equal Opportunity Commission has identified at least 58 Australian laws that discriminate against same-sex couples and their families.

48. Indigenous parents and parents with disability are disproportionately likely to have their children removed by child-protection services.

49. There is a range of areas of Australian law, policy and practice which do not adequately protect the rights or interests of children, including in relation to immigration detention, child labour and contact with parents in prison.

**Article 11 — Right to an Adequate Standard of Living**

50. It is estimated that, of a population of around 21 million people, between 2 and 3.5 million Australians live in poverty. Despite this, Australia does not have a comprehensive anti-poverty strategy and the current Australian Government has not yet committed to poverty reduction benchmarks or targets.

51. On any given night, there are at least 100,000 homeless people in Australia. Less than 15 per cent of these people are housed in crisis accommodation services, with the demand for homelessness services significantly exceeding supply. The current Australian Government has committed to addressing the issue of homelessness through the development of a comprehensive Homelessness Strategy.

52. Over the last decade, there has been a substantial reduction in the availability of adequate, affordable, accessible and safe housing in Australia. Public housing stock has declined across Australia, resulting in lengthy waiting lists and a substantial tightening of eligibility criteria. In the private market, over 1.1 million low and middle-income people live in housing stress, meaning that they spend at least 30 per cent of their income on housing.
53. A range of communities and groups are particularly vulnerable to poverty and social exclusion, including Indigenous people, asylum seekers, new migrants, people with disability, women, children and young people. The state of Indigenous Australians’ housing and homelessness has been described by the UN Special Rapporteur on Adequate Housing as a ‘humanitarian tragedy’.

54. Access to adequate and appropriate food, a critical determinant of realisation of the right to an adequate standard of living and the right to the highest attainable standard of health, is limited for many vulnerable groups, such as low-income earners, asylum seekers and Indigenous Australians.

55. The nature and extent of poverty in Australia is such that many disadvantaged Australians, particularly homeless people, asylum seekers, people with disability and Indigenous people, experience significant food insecurity. For all of these groups, lack of access to adequate food and appropriate food has deleterious effects on health, employment and educational attainment.

56. Australia does not have a national strategy to ensure that all Australians have adequate access to affordable drinkable water and sanitation services.

57. Access to clean water is unreliable for many Indigenous Australians, resulting in poor environmental health and Indigenous people suffering related diseases and infections at a higher rate than the non-Indigenous population.

Article 12 — Right to the Highest Attainable Standard of Physical and Mental Health

58. Certain population groups — including poor people, Indigenous people, people in rural and remote areas, homeless people, asylum seekers, prisoners and people from non-English speaking backgrounds — have significantly poorer health and less access to adequate health services than others.

59. The shift in funding from the public health system to private health insurance rebates has resulted in a widening of the gap in health services available to rich and poor Australians.

60. There is a serious shortage in the availability of dental care, with up to 40 per cent of Australians unable to access dental care when they need it.

61. The state of Indigenous health in Australia results from and represents serious human rights breaches. Indigenous Australians do not have an equal opportunity to be as healthy as non-Indigenous Australians. Many Indigenous Australians do not have the benefit of equal access to primary health care and many Indigenous communities lack basic needs, such as adequate housing, safe drinking water, electricity and effective sewerage systems. As a consequence, average life expectancy for Indigenous Australians is over 20 years less than that of non-Indigenous Australians.

62. The demand for mental health services significantly exceeds supply, with major investment required in mental health services in the short to medium term. There are significant correlations between mental illness, imprisonment, unemployment, homelessness, poverty, substance abuse and family dysfunction.
63. Health care in Australian prisons and detention centres is manifestly inadequate. There is significant evidence that conditions of detention may be deleterious to health. The use of solitary confinement (or ‘segregation’) as a management tool for people incarcerated in Australian prisons and detention centres is widespread. Women prisoners and Indigenous prisoners are particularly susceptible to poor health and inadequate treatments.

64. Certain groups of women continue to be denied access to reproductive technologies (such as artificial insemination and in vitro fertilisation), particularly lesbians, single heterosexual women, and financially disadvantaged women.

**Articles 13 & 14 — Right to Education**

65. A range of groups confront significant barriers to education and do not have equal access to educational opportunities, including children with disability, Indigenous children, children from low income families, and children from rural and remote areas.

66. The Australian Government has not invested progressively using the maximum available resources in public education, resulting in a substantial resource gap between government and non-government schools. This results in substantially less educational opportunities and resources for children from low income families.

67. Further strategies and resources are required to address the issues of bullying, truancy and exclusion from schools.

68. The level of support provided for children with disabilities to attend mainstream schools is manifestly inadequate, resulting in much lower levels of secondary school completion.

69. A substantial decline in government funding, in combination with significant increases in higher education fees, has resulted in declining and unequal tertiary opportunities for students with disability, Indigenous students, low income students, and students from rural and remote areas.

**Article 15 — Cultural and Scientific Progress Rights**

70. Inadequate protection of the titles and interests of Indigenous Australians in their native lands denies many Indigenous people the right to take part in cultural life. This is particularly the case in the Northern Territory, where the ‘Emergency Intervention’ provides for the compulsory acquisition of lands and the abolition of permits for entry onto traditional lands.

71. Indigenous cultural and intellectual property rights are not adequately protected by Australian laws.
List of Supporting Organisations

This submission is supported, in whole or in part, by the following non government organisations:

A Just Australia
Aboriginal Disability Network NSW Inc
ACON (formerly AIDS Council of NSW)
ACT Council of Social Service
Anex
Arts Access Australia
Arts Law Centre of Queensland Inc
Asylum Seeker Resource Centre Melbourne
Asylum Seekers Centre Sydney
Australian Association of Social Workers, National Social Policy Committee
Australian Bahá’í Community
Australian Human Rights Centre
Australian Council of Social Service
Australian Federation of Disability Organisations
Australian Lawyers for Human Rights
Australian Manufacturing Workers Union
Australian Muslim Civil Rights Advocacy Network
Australian Prisoners Union
Berry Street Victoria
Brotherhood of St Laurence
Castan Centre for Human Rights Law
Central Community Legal Service (SA)
Centre for Human Rights Education, Curtin University
Centre for Multicultural Youth Issues
Centre on Housing Rights and Evictions (COHRE)
Child Rights Taskforce
Combined Community Legal Centres Group (NSW) Inc
Conflict Resolution Network
Council of Social Service of NSW (NCOSS)
Council to Homeless Persons
Disability Discrimination Legal Service (Vic)
Edmund Rice Centre for Justice and Community Education
National Human Rights Network of National Association of Community Legal Centres
Ethnic Child Care Family and Community Services Co-operative Ltd
Federation of Community Legal Centres (Vic) Inc
Federation of Ethnic Communities’ Councils’ of Australia
Financial & Consumer Rights Council Inc
Fitzroy Legal Centre
Health Issues Centre, La Trobe University
Homelessness Australia
Hotham Mission Asylum Seeker Project
Human Rights Law Resource Centre
Immigrant Women’s Speakout Association
Indigenous Law Centre
Indigenous Social Justice Association Inc
International Disability Rights Service
International Human Rights Law Working Group, NSW
Young Lawyers Human Rights Committee
Jesuit Refugee Service Australia
Job Watch Inc
Jobs Australia Ltd
Justice Action
Kingsford Legal Centre
Koorie Women Mean Business Inc
Law Institute of Victoria
Legal Service Bulletin Cooperative
Liberty Victoria
Loddon Mallee Accommodation Network
Mental Health Legal Centre Inc
Micah Projects Inc
Multicultural Centre for Women’s Health
National Association of Community Legal Centres
National Children and Youth Law Centre
National Council on Intellectual Disability
National Employment Law Network of National Association of Community Legal Centres
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Freedom Respect Equality Dignity: Action

NGO Submission to the UN Committee on Economic, Social and Cultural Rights

Australia

Australia is not meeting its obligations under the International Covenant on Economic, Social and Cultural Rights, a treaty that Australia ratified in 1975.

Fundamental human rights issues have been at the core of national political and social debate in Australia in the last decade. This report documents areas in which Australia is falling short of its obligations under the International Covenant on Economic, Social and Cultural Rights. It focuses on areas that have been the subject of extensive NGO activity and research in Australia.

Subjects detailed in the report include:
(a) the lack of recognition and protection of economic, social and cultural rights;
(b) the current housing crisis and the significant problem of homelessness;
(c) groups within society that remain vulnerable to discrimination, such as Indigenous peoples, women and children, people with disability, asylum seekers and gay and lesbian couples;
(d) the regression of workers’ rights under Work Choices; and
(e) the chronic underfunding of both public health care and education in Australia.

The report includes specific recommendations of concrete steps that Australian authorities should take to bring Australia more fully into compliance with its obligations under the International Covenant on Economic, Social and Cultural Rights, an Australia in which all persons can live with freedom, respect, equality and dignity.