



The Australian Human Rights Register

Reports, June 2001 - December 2002.

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International Human Rights Day

Catholic Commission for Justice, Development and Peace (Melbourne)



CATHOLIC COMMISSION FOR
JUSTICE,
DEVELOPMENT
& PEACE
MELBOURNE

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ACRONYMS

ACOSS	Australian Council of Social Services
ACTU	Australian Council of Trade Unions
CAT	Convention Against Torture and All Forms of Inhumane and Degrading Treatment or Punishment
CCJDP	Catholic Commission for Justice, Development and Peace (Melbourne)
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CROC	Convention on the Rights of the Child
DIMIA	Department of Immigration, Multicultural and Indigenous Affairs
DDRIP	Draft Declaration on the Rights of Indigenous Peoples
GATS	General Agreement on Trade and Services
HREOC	Human Rights and Equal Opportunity Commission
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
NACLC	National Association of Community Legal Centres
UDHR	Universal Declaration of Human Rights
UNCHR	United Nations Commission of Human Rights
UNHCR	United Nations High Commissioner for Human Rights

The Australian Human Rights Register – Disclaimer

The purpose of the Human Rights Register is to promote respect for and encourage universal and effective recognition of the rights and freedoms stated in the Universal Declaration of Human Rights and other United Nations human rights treaties and standards. Towards this end, the Human Rights Register reports information received from organisations, and compiled from the media, as a matter of public interest.

The Catholic Commission for Justice, Development & Peace, (Melbourne), makes assessments of reports as to whether information constitutes negative or positive developments in the observance of human rights standards agreed to by successive Australian governments.

We believe that a positive development is an activity, policy or statement by a body that may lead to the implementation or promotion of respect for human rights and fundamental freedoms. A negative development is defined as an activity, policy or statement that may undermine universal respect for human rights and fundamental freedoms.

Unless otherwise stated, a reference to a violation in this Register is a reference to an alleged violation. An alleged violation arises where disregard for or failure to comply with a declaration, treaty or law may have occurred. Alleged violations are reported in this Register where the CCJDP believes on the basis of information received or reported, that such conduct may violate human rights standards set out in the Universal Declaration of Human Rights and other UN human rights instruments, and standards agreed to by the Australian government.

Excerpts from this Register may be reproduced and used for the purpose of highlighting the human rights situation in Australia in 2002.

STATISTICAL BREAKDOWN

The cases in this Register are reported in fourteen categories. All reports except those contained in the Refugee category record a snapshot of events occurring between July 2001 and December 2002. In December 2001, the CCJDP published a Special Refugee Edition of the Register. The Refugee category of this current edition therefore contains reports only from December 2001 – December 2002. The Register cannot cover all human rights developments in Australia, but highlights the most significant developments reported by community legal centres, non-government organisations, and the media, during the year. The Register is the largest report from the community sector, on respect for human rights in Australia.

* The column marked total reports reflects the total entries received in each category. Some entries are both negative and positive developments and appear in both of these columns and violations are also counted as negative developments. Both the 2002 Register and 2001 Refugee edition can be viewed at: <http://www.ccjdp.org>

Category	NGO Report	Media Report	Alleged Violation	Negative Developments	Positive Developments	*TOTAL REPORTS
Children's Rights	6	6	6	10	3	12
Civil Liberties	20	9	18	24	5	29
Discrimination	9	2	8	11	1	11
Economic Rights	7	15	5	17	5	22
Education	2	9	1	11	0	11
Environmental Rights	2	2	4	4	0	4
Globalisation	0	3	3	3	0	3
Health	5	6	3	10	1	11
Housing	14	7	7	19	2	21
Indigenous Issues	31	30	31	47	15	61
People with Disabilities	13	7	15	19	1	20
Prisoners' Rights	17	3	15	19	1	20
Refugees	56	9	46	58	4	65
Women's Rights	4	1	2	5	1	5
TOTAL	185	109	164	257	39	294

EXECUTIVE SUMMARY

Number of Reports per Categories:

Refugees	65	Housing	21
Indigenous Issues	61	Health	11
Civil Liberties	29	Children's Rights	12
Economic Rights	22	Education	11
Prisoners' Rights	20	Environmental Rights	4
People with Disabilities	19	Women's Rights	5
Discrimination	11	Globalisation	3

SUMMARY OF REPORTS FROM JULY 1 2001 - 10 DECEMBER 2002

These reports are presented in order of the greatest number of entries received for each category and are more fully reported in the register and the section 'Key Developments in Human Rights in Australia July 2001- December 2002'.

1. Refugee rights. Fundamental violations of the human rights of asylum seekers are continuing to occur. There are 65 entries in the category of refugees, 58 of which are negative developments, including:

- The ongoing imprisonment of people without review by the courts or administrative bodies (arbitrary detention). There has been recognition by the Federal Court that arbitrary detention is occurring with a certain class of detained asylum seekers. On a Habeas Corpus application the Federal Court ordered the release from detention of a person whose claims having failed, and have expressed a desire to be repatriated, but whom the Government cannot repatriate, due to a lack of arrangements between the Australian Government and the country from which they fled.
- As of 7 October 2002, there were 217 children held in off-shore detention centres:
Offshore: 10 children held on Christmas Island, 169 Children held on Nauru, 38 children held on Manus Island.
On Shore: 139 children held in mainland detention centres, (including 7 in the Woomera Residential Housing Project) at 3/12/02. Another 12 children were living in the community under "administrative detention" which raises the question why the other 139 need to be detained.
- The continued imprisonment of approximately 356 children is in violation of the Convention on the Rights of the Child, the United Nations High Commissioner for Refugees Guidelines for the Detention of Asylum Seekers, and in opposition to the advice and recommendations of a host

of national and international experts who state that the practice is harmful and, in some cases, permanently damaging for children.

- High rates of psychological damage, including self harming, and suicide attempts by people detained, including children, and in particular a 11 year old girl who was held in Maribyrnong Immigration Detention Centre attempted to commit suicide in the first half of 2002.
- The incarceration of the disabled; in particular a mother and her three children (two of them are intellectually disabled) who have been held in Port Hedland Immigration Processing Centre over two years and three months.
- A discriminatory Bill which proposes to place refugees who are on temporary protection visas, who are thereby barred from English programs and the Job Network, under mutual obligation requirements. This means they would be 'breached' for failing to fulfil other conditions such as looking for work.
- The existence of thousands of asylum seekers in the community (on Bridging Visa 'E') who have been barred from accessing Medicare and some who have been prevented from accessing medical treatment as a result.

2. Indigenous rights. In total, there were 61 entries in the category of indigenous issues, 47 of which were negative developments, including:

- Four Aboriginal people have died in custody in Western Australia in 2002.
- While Indigenous Australians make up two percent of the Australian population, they are sixteen times more likely to be incarcerated than non-indigenous Australians.
- Western Australia is the only Australian State to retain mandatory sentencing laws. Indigenous juvenile males in WA are incarcerated at almost twice the rate of non-indigenous juvenile males. Aboriginal men in WA are incarcerated at a rate 63 times higher than non-Aboriginal men and women in Victoria.

'Practical Reconciliation' is a failure. It has failed to achieve a satisfactory level of economic and social rights for Indigenous Australians. For example:

- Life expectancy for Aboriginal people is 15 to 20 years below that of other Australians.
- Indigenous people make up 16 percent of those assisted by the government's Supported Accommodation Assistance Program.
- Aboriginal children are ten times more likely to become involved with the child protection system than are non-Aboriginal children.

Practical Reconciliation will remain a dead end for Indigenous Australians as long as the Government does not include discussion about Treaty/ies, self-determination and governance.

Issues of compensation for the Stolen Generation are also essential to the Reconciliation process. By 2002, the Federal Government had spent \$11.5 million fighting the Cubillo-Gunner stolen generation test case, including \$1 million on one lawyer and \$770,000 on private investigators. There have been some violations and some improvements within the criminal justice system.

3. Civil liberties. Entries were received regarding armed ASIO raids on more than fifteen homes of people on the grounds of suspicion that they may have information about terrorist activities. There have been attempts by Federal and State Governments to implement Bills which erode civil liberties either on the justification of the 'war on terrorism' or for reasons asserting limitations on the rights of people to assemble. In total, there were 29 entries in the category of civil liberties, 24 of which were negative developments, including:

- The armed raiding of homes of Islamic people and families by the Australian Security and Intelligence Organisation (ASIO).
- The proposal to increase the powers of ASIO which would remove the right to remain silent and allow interrogation of children and youth between the ages of 14-18. The Bill also proposes to detain people who've not been suspected of being in a terrorist crime of being involved in any terrorist act."
-
- The implementation of counter-terrorism legislation.
- The Northern Territory's *Public Order and Antisocial Conduct Act* passed in July 2001 gives police enormous discretion to determine when "antisocial conduct" is taking place and to arrest 'offenders'.
- A Coroner's Inquest in Victoria found that people in an acute psychotic state have died while under restraint by police. The Coroner's finding led the Victorian Police to establish a protocol and methods of restraining mentally ill persons.

4. Economic rights. Changes in the administration of social security have eroded the economic rights of the poor and disadvantaged in our community. In total, there were 22 entries in the category of economic rights, 17 of which were negative developments, including:

- There were 260,000 penalties at an average of \$800 each imposed by Centrelink in the 12 months to 30 June 2002. The first "Activity Test" penalty for a breach of a Centrelink requirement pushes unemployed adults 34% below the poverty line. Penalties for the breaches are often too severe, thereby causing unnecessary and unjustifiable hardship.
- Australia spends 43% less than the OECD average on help for unemployed people and yet has the eighth highest unemployment rate out of the 22 OECD countries reported. Australia spends

just 0.39% of GDP on employment assistance, compared with 1.13% for France, 1.19% for Germany, and 1.54% for the Netherlands.

5. Prisoners' Rights. Prisoners are continuously affected by constraints on the prison system. Overcrowding continues to be a key issue and prison superintendents are constantly moving prisoners around or between cells and facilities in an attempt to find sufficient bed space according to reports. Prisons are a costly alternative to more effective diversionary programs for a range of offences particularly non-violent ones. In total there were 20 entries in this category, 19 of which were negative developments, including:

- Seven people have died in custody in Western Australia in 2002.
- In Victoria an unknown number of prisoners have had DNA samples taken from them allegedly with the use of force including being stood over by police with riot gear, capsicum spray, tear gas and guard dogs.
- A prisoner at the Melbourne Custody Centre was paralysed and received permanent brain damage when held in a windowless holding cell crowded with ten other inmates, after being bashed by another prisoner who was mentally ill, according to a investigation into the incident which occurred on 29 April 2000.

6. People with disabilities. People with disabilities face continuing discrimination. In total, there were 19 entries in the category of people with disabilities, all of which were negative developments (with one reported as a negative and positive development) including:

- Between July 1998 and February 2001, two female disabled children and six male disabled children, all with multiple physical and intellectual disabilities, died in a New South Wales home. In 2002 a further three children have died at the centre. Six of the children were suffering from malnutrition when they died.
- Proposed changes to the Disability Support Pension would lead to a tightening of DSP eligibility conditions and would cut the weekly income of large numbers of people with a disability by \$26 per week. These proposed changes threaten to expose large numbers of people to the harsh and unfair breach penalties applied to unemployed people.

7. Housing. There were 21 entries in the Housing category, 19 of which were negative developments including:

- The number of people using homeless services has risen between 1997 and 2001. In Victoria, this figure rose by 3,600 people to 27,300 in 2000-1; in Queensland, there has been an increase of 3,000 to 17,900; in South Australia there was an increase of 500 to 7000; in

Tasmania there has been an increase of 300 to 3,500; and in the Northern Territory an increase of 600 to 2,500. There were decreases in the ACT, NSW and Western Australia.

8. Women's Rights. The Federal government is refusing to ratify the First Optional Protocol to the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). This means that Australian women who are unsatisfied with the outcome of discrimination cases before Australian courts cannot make a complaint to the United Nations for an alleged violation of the CEDAW treaty.

- Australia's two million casual workers have been granted access to parental leave without pay, if they have been employed continuously for more than twelve months. This will enable more than one million women to return to work after having a family.
- Asian women are being illegally imported by brothel owners in Australia to make money requiring them to perform \$35,000 of sexual services.

INTRODUCTION

WE THE PEOPLES OF THE UNITED NATIONS DETERMINED

to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom,

AND FOR THESE ENDS

to practice tolerance and live together in peace with one another as good neighbours, and to unite our strength to maintain international peace and security, and to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and to employ international machinery for the promotion of the economic and social advancement of all peoples

HAVE RESOLVED TO COMBINE OUR EFFORTS TO ACCOMPLISH THESE AIMS.

Preamble United Nations Charter, 1945

Australia ends 2002 in a more uncertain and anxious state than at any other time in the last four decades. The carnage and pain of Bali is still sharp. The 'War on Terrorism' is gathering pace and Australians may be at war with the people of Iraq in an unprovoked war where the US aims to rid Iraq of Saddam Hussien. As early as July 2002, Prime Minister Howard told the head of the US European Command, General Joseph Ralston, that Australia would send an armoured brigade to Iraq.¹ Former UN Iraq weapons inspection head, Richard Butler, predicted in August 2002:

The Howard government can be expected to argue that the defence of national security, the duties of the alliance with the US and the need to rid

¹ Richard Butler, 'War – Only for the Right Reasons', The Bulletin, July 31, 2002

civilisation of the scourge of terrorism bring an inevitable cost, which decent, right-thinking Australians will pay.

The Australian public ought to be wary of any calls to arms, which would result in the killing of innocent civilians in Iraq, as this would be a violation of the first and most fundamental human right – the right to life. A full public discussion is critical and if war is likely during the parliamentary recess, then Parliament should be recalled. In this environment where an invasion of Iraq is highly likely, it is critical that we note that Article 20.1 of the *International Covenant on Civil and Political Rights (1976)* states: “*Any propaganda for war shall be prohibited by law*”.

It is in this grim context of the war on terrorism that the Catholic Commission for Justice Development and Peace (Melbourne) publishes the fifth annual Australian Human Rights Register containing eighteen months of reports from 30 June 2002 – 10 December 2002. The Catholic Commission for Justice, Development and Peace Melbourne established the Australian Human Rights Register in 1997.

Catholic social teaching has a strong regard for human rights, considering them indispensable to the dignity of the human person. Pope John Paul II has voiced his concern about States having “contempt for the fundamental human rights of so many people, especially children...”²

The Register represents an audit of human rights developments in Australia, recording individual reports from community legal centres, non-government organisations and the media about developments and violations of people's human rights arising from legislation, government policy and practice and the actions of other bodies. The Register analyses these reports against United Nations human rights conventions that Australia has signed and other UN human rights standards. The Register is the largest attempt in Australia by a community organisation to document human rights developments on an annual basis.

A core function of the Register is to document information from those experiencing disadvantage and to provide material to lobby governments to uphold people's rights.

² John Paul II *Novo Millennio Ineunte: At the Beginning of the New Millennium*, Strathfield, 2001, p.68.

The Register can be used as a tool for raising awareness in the community and for lobbying and other advocacy, by legal centres and non-government organisations.

Applicability of Human Rights Conventions in Australia

Human beings have certain rights and fundamental freedoms. Human rights are universal, inalienable and indivisible. Successive Australian governments have undertaken to “reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small,” as expressed in the UN Charter. Australia was a founding member of the United Nations, participating in the drafting of the landmark 1948 Universal Declaration of Human Rights. Australia has served frequently on the Commission on Human Rights since 1947 and will rejoin in 2003.³ Australian governments have had a long-standing commitment to the active promotion and protection of all human rights. Nevertheless, respect for human rights within Australia is far from perfect.

Below are some of the human rights treaties Australia has ratified and the years they came into force in Australia:

- The International Covenant on Economic Social and Cultural Rights (ICESCR) 1975
- The International Covenant on Civil and Political Rights (ICCPR) 1980
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1983
- The International Convention on the Elimination of Racial Discrimination (ICERD) 1975
- The Convention Against Torture and other Cruel, Inhuman or Degrading Treatments or Punishments (CAT) 1984
- The Convention relating to the Status of Refugees and Related 1967 Protocol, 1954 & 1973
- The Convention on the Rights of the Child (CROC) 1990

Unless parliament has incorporated a human rights treaty, in part or completely, into domestic legislation, there is no domestic legal obligation for the Australian

³ Department of Foreign Affairs and Trade, website http://www.dfat.gov.au/un/aus_un3.html

government to respect human rights. Some areas where there has been legislation to cover human rights include:

- Racial Discrimination Act 1975 (CERD)
- Sex Discrimination Act 1984 (CEDAW)
- Human Rights Commission Act 1981; Human Rights and Equal Opportunity Commission Act 1986 (these cover ICCPR, CROC, Declarations on the Rights of Disabled Persons, ILO Convention on Discrimination in Employment)
- Privacy Act 1988 (ICCPR)
- Crimes (Torture) Act 1988 (CAT)
- Disability Discrimination Act 1992 (ICCPR)
- Human Rights (Sexual Conduct) Act 1994 (ICCPR)
- Evidence Act 1995 (ICCPR)
- Racial Hatred Act 1995 (ICERD)

Some human rights standards that Australia has not incorporated into domestic legislation include the Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights and most of the Convention Relating to the Status of Refugees, with the result that they are often disregarded. Moreover, for those that we have signed and legislated on, the Human Rights and Equal Opportunity Commission (HREOC) only has the power to identify and recommend changes of practice to the government – recommendations that can be, and often are, ignored.

Despite their obligations, Australian governments continue to have disregard for the human rights of people in Australia. This can take the form of a passive disregard for or uninterest or ignorance of international customary law, opposition to UN standards, or as a result of active violation. United Nations committees and agencies may monitor and comment on respect for human rights standards in Australia, but they do not have the power to intervene.

Disregard for human rights standards may be justified as being in 'the national interest' and by asserting the primacy of national laws above international law. However, using nationalist justifications for disregard for internationally agreed human rights law and standards is risky. It was common for Governments to do this between the two world wars, particularly the United States and the Soviet Union and the Nazi Government's contempt for human rights was the logical and extreme

extension of 'national interest' arguments. The political philosopher Hannah Arendt (herself a refugee from Nazism) described this trend in detail in her 1948 classic, The Origins of Totalitarianism in which she argued⁴

*The transformation of the state from an instrument of the law into an instrument of the nation had been completed; the nation had conquered the state, national interest had priority over law long before Hitler could pronounce "the right is what is good for the German people." Here again the language of the mob was the only language of public opinion cleansed of hypocrisy and restraint.*⁵

Unfortunately we see this trend emerging again with US resistance to the jurisdiction of the International Criminal Court (ICC), and Australia is not immune from claims that national priorities supersede respect for international agreed human rights principles. The Federal government has been widely criticised for refusing to implement the recommendations of United Nations Human Rights bodies.⁶ The Government does allow visits from UN inspectors however, and in May 2002, both the UN Working Group on Arbitrary Detention and Justice Bhagwati, the envoy of Mary Robinson, the UN Human Rights Commissioner, visited and inspected conditions in Australia's Immigration Detention Centres. More predictable though, was the Government's rejection of Justice Bhagwati's report about human rights violations occurring in Australia's detention centres.

The Federal government's ratification of the International Criminal Court in 2002 is a positive development, however, like the USA, Australia maintains a reservation on the ICC stating that any allegations of wrongdoing by Australians will be dealt with by the Australian judicial system, not the ICC.⁷

An area to watch in the future is the potential conflict between multilateral and bilateral Free Trade Agreements (FTAs) and protection of the human rights of the Australian people. On March 30th 2003, the Australian government will reply to

⁴ Hannah Arendt, The Origins of Totalitarianism, (Harcourt Brace) New York, 1976, pp.278-9.

⁵ Arendt, *ibid*, p.275.

⁶ For example, see Federation of Community Legal Centres, Right Off: The attack on Human Rights in Australia, 2002. In April 2002, Foreign Minister Alexander Downer's response to the Committee on the Elimination of Racial Discrimination's (CERD) recommendation that Australia remove its reservation to the CERD Convention was that the UN "would get its nose bloodied". In 2000, Mr Downer also announced Australia's partial withdrawal from the UN treaty body process in response to recommendations by the Committee on Economic, Social and Cultural Rights

requests from World Trade Organisation (WTO) members for access to Australian service markets as part of its participation in the new international trading framework, the General Agreement on Trade and Services (GATS). GATS will inevitably lead to more disputes about market access before the WTO Dispute Panel. A successful negotiation under GATS will lead to much more foreign private sector involvement in Australian media, education, health and provision of water supplies.

The GATS raises the possibility of companies lodging formal complaints in the WTO dispute resolution mechanism to override local regulations and international human rights standards, on the basis that they are unfair trading practices. For example, Article 13(2c) of the International Covenant on Economic, Social and Cultural Rights, states, "Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education". Australia has already indicated that it will open the higher education sector up for negotiation under GATS. This raises the possibility that foreign education providers may lodge claims to be paid the subsidies provided to private universities like Bond University, on the basis that it would be unfair trading practice not to. The budgetary consequences of extending public funding to foreign universities threaten the provision of free tertiary education in Australia.

Another area of human rights is threatened by the proposed Free Trade Agreement with the United States, which will be negotiated from 2003, concerning Australia's local content rules which are a vital pillar of Australia's cultural identity, ensuring that Australian stories are produced and told on film, radio and television. The proposed agreements would weaken respect for article 15.2 of the International Convention on Economic, Social and Cultural Rights which states, "*The steps to be taken by the States Parties to the present Covenant to achieve the full realisation of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.*" The Screen Producers' Association, Film Commission and Media unions have strongly defended local content rules and pointed to wide community support and previous bipartisan political support for them. These rules ensure a local skill base, which enables quality films and television programs to be made here.

⁷ The Age, 20/6/02

KEY DEVELOPMENTS IN HUMAN RIGHTS IN AUSTRALIA 1 July 2001 – 1 December 2002

1. REFUGEES

The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened...

-Article 31 of the Convention Relating to the Status of Refugees (1958)

There were 65 entries about Refugees, 58 negative reports including 46 violations of human rights, and 4 positive reports. 56 entries came from the community sector.

The year 2002 commenced with a terrible incident of human suffering at Woomera detention centre when over 370 people went on hunger strike, over sixty sewed their lips together and a group of 15 children threatened suicide. The detention Centre was widely perceived to be dysfunctional, very damaging to humans detained in it and a cause of possible permanent damage to children. The Immigration Detention Advisory Group told the Minister for Immigration that the Detention Centre should be closed to help avert a "human tragedy of unknowable proportions".⁸

On 30 January 2002, twenty agencies of the Justice for Asylum Seekers Alliance wrote to UN High Commissioner for Human Rights, Mary Robinson, requesting:

your intervention in the humanitarian crisis that has developed in Woomera Immigration Detention Centre and the systemic violation of the human rights of refugees claiming asylum in Australia's Immigration Detention system.... We would especially welcome your personal attendance in Australia, or that of a special envoy, so that you can be fully apprised of the situation currently occurring in Australia.

Mrs Robinson sent her envoy and community organisations were heartened. Justice P. N. Bhagwati, the Regional Advisor for Asia and the Pacific of the United Nations

⁸ The Age, Tuesday 29 January 2002

High Commissioner for Human Rights, found that “the human rights situation of persons in immigration detention in Australia is a matter of serious concern”. Justice Bhagwati stated that the situation of persons in immigration detention in Woomera could be considered “inhuman and degrading”.⁹ The report identified specific human rights issues of concern, including:

- The situation of children in detention, including unaccompanied minors;
- The unduly long periods spent in detention by some individuals;
- The absence of proper judicial review of the detention itself;
- Concerns with regard to family unity and family life;
- The lack of adequate information to detainees about their rights;
- The absence of a permanent, institutionalised and independent body to conduct monitoring and reporting activities on a continuing basis, including unannounced visits with the right to unfettered access.

However, the Australian Government claimed that the former Chief Justice of India had “...clearly strayed from the mandate to consider whether Australia’s system of immigration detention is consistent with Australia’s human rights obligations.” His report contains a number of “emotive descriptions and assertions” that have no foundation in the human rights instruments to which Australia is a party.”¹⁰

On 20 August 2002 the Minister for Immigration agreed to an expansion of the Woomera Alternative Detention Project which is a lower security environment for women and children, and in the Government announced that Woomera would be scaled back.

Children in Detention:

As of 7 October 2002, there were 217 children held in off-shore detention centres:

Christmas Island.....	10
Nauru.....	169
Manus, PNG.....	38

As of 21 November 2002 there were 139 children held in mainland detention centres, (including 7 in the Woomera Housing Project). Another 12 children were living in the

⁹ Report of Justice P.N. Bhagwati, Regional Advisor for Asia and the Pacific of the United Nations High Commissioner for Human Rights, Mission to Australia, 24 May – 2 June 2002, Human Rights and immigration Detention in Australia.

¹⁰ http://www.minister.immi.gov.au/media_releases/media02/r02071.htm, 31 July 2002

community under “administrative detention” (which raises the question why the other 139 need be detained).

The psychological damage caused by prolonged detention is profound and many asylum-seekers suffer severe depression as a result and injure themselves, at the rate of one act of self-harm per day, as was revealed by a Freedom of Information request to the Department of Immigration:

- Between 1 March 2001 and 30 October 2001 there were 264 incidents of self inflicted injuries reported in Immigration Detention Centres:
- 238 males self-harmed in this period and 26 females, including:
- 26-35-age range: 116 people – 105 men and 11 women.
- 20-25 years: 103 – 98 males and 5 females.
- 18-20 years: 9 young adults had self-harmed:
- 29 Children self-harmed in the 8-month period: 22 males and 7 females¹¹

- In March 2002, an 11-year-old girl attempted to commit suicide by hanging herself at Maribyrnong Detention Centre.

- A Palestinian man, Al Masri, was released by order of the Federal Court. The case was concerned with whether there were certain implied limitations on the Minister's power to detain an unlawful non-citizen pending his removal from Australia when there is no real likelihood or prospect of the non-citizen's removal in the reasonably foreseeable future. The Court found the detention to be unlawful.¹²

- Hotham Mission Asylum Seeker Project reported that there are around four hundred asylum seekers who are ‘ineligible’ for work rights in Victoria. These people cannot receive social security or Medicare benefits. Many of these are completely dependent on family, friends and church handouts for support. These people are especially vulnerable to homelessness and ill health.

- The government is seeking to apply penalties to refugees on Temporary Protection Visas for failing to find work, despite having already barred them from Job Services. The effect of imposing mutual obligation requirements on Refugees

¹¹ Department of Immigration, April 2002 in response to a request from CCJDP.

¹² Al Masri v Minister for Immigration & Multicultural & Indigenous Affairs [2002] FCA 1099 (6 September 2002)

on Temporary Protection Visas will be to punish some of the most economically vulnerable people in our community. Refugees on the Temporary Protection Visas are already denied access to a range of services necessary for finding work including English language lessons and the Job Network. The government will be breaching its mutual obligation if the Family and Community Services Legislation Amendment (special Benefit Activity Test) Bill 2002 law is passed. The government has undertaken not only to provide income support but also to *"invest more widely in helping people of workforce age build their capacities for economic and social participation."* For refugees on TPVs however, the government has not only failed to do this for them, but is actively discriminating against them.

- More asylum seekers live in the community than are held in detention:

Asylum Seekers in the Community vs. Detention

Fin. Year	Immigration Reception & Processing Centre	Immigration Detention Centre	Living in the Community	Other	Total
1998/1999	306	792	7247	45	8390
1999/2000	3681	690	7904	438	12713
2000/2001	3986	925	8110	108	13129
2001/2002*	1539	403	5942	238	8122

Source: Department of Immigration 9 June 2002. (by lodgment of claim at 31 May 2002)

- Community based asylum seeker children do not have an entitlement to schooling, although the Department of Immigration, Multicultural and Indigenous Affairs claims that all children have access to education, according to the Refugee Claimant's Support Centre in Queensland. Any exemptions must be applied for individually to the relevant State Ministers and are totally dependent on their goodwill, or that of their bureaucrats. The application is therefore looked at as being ad hoc, rather than being seen as a 'human right.'
- The provision of housing for community based asylum seekers is poor, and these people are totally dependent on charity, and often the housing arrangements are short term, according to the Refugee Claimants Support Centre in Queensland. Housing sometimes comprises of rooms in houses already occupied by a family, garages set up for their family living, and space in back rooms of factories without showers and sometimes even toilets. The need for frequent moves adds to the stresses suffered by families who are already disadvantaged. What long-term

implications this has for a child's development is not known and needs urgent research.

2. INDIGENOUS ISSUES

Indigenous peoples, as a specific form of exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resources management, environment and entry by non-members, as well as ways and means for financing these autonomous functions.

- Article 31 of the Draft Declaration on the Rights of Indigenous Peoples

In total, there were 61 entries in the category of Indigenous Issues, 47 were negative developments including 31 violation of human rights. However there were 15 positive developments too.

'Practical Reconciliation' is a failure. It has failed to achieve a satisfactory level of economic and social rights for Indigenous Australians, for example:

- Life expectancy for Aboriginal people is 15 to 20 years below that of other Australians.¹³
- While Indigenous Australians make up two percent of the Australian population, they are sixteen times more likely to be incarcerated than non-indigenous Australians.¹⁴
- Indigenous People constitute 16 % of those assisted by the government's supported accommodation program.¹⁵

¹³ National Aboriginal Community Controlled Health Organisation, Proposal to Increase Access by Aboriginal People to Appropriate Primary Health Care, December 1998.

¹⁴ ABC Online, 5 October 2002. Indigenous people in NSW were eight times more likely than the general population to be imprisoned in 1991, this figure rose to almost ten times more likely in 1998.

¹⁵ Supported Accommodation Assistance Program

- Aboriginal children are ten times more likely to become involved with the child protection system than non-Aboriginal children.¹⁶
- In Western Australia, it is common practice for retail food outlets to withhold people's key cards when they cannot pay afford to pay for their food according. There is no legal regulation of this occurrence. This provides the potential of an invasion of privacy according to a community legal centre in western Australia.¹⁷
- Only 31 % of Aborigines own or are buying their own homes, compared with 72 % of the wider population.
- In 2002, the Australian Medical Association reported that educational outcomes for Indigenous children in the Northern Territory are deteriorating, with a serious impact on their health. In 1998 in the Northern Territory, 14% of indigenous students progressed from year 8 to Year 12 compared with 80% of non-Indigenous students, and in 1998, 20% of Indigenous students achieved the national reading benchmark in the Northern Territory, compared to 78% of non-Indigenous students.

Practical Reconciliation will remain a dead end for Indigenous Australians as long as the Government does not respond to calls from Indigenous Australians for discussion and negotiations about Treaty, self-determination and governance. Aboriginal leader Pat Dodson warned that Australia might have only ten years to save the world's oldest living culture from extinction, in a speech at the Howard University, United States. He called for a treaty between Aboriginal people and the Australian Government as a crucial means of stopping cultural extinction.¹⁸ The National Aboriginal Torres Strait Islander Catholic Council (NATSICC) has charged: "it is clear to us in our operations that the Reconciliation Process is no longer promoting and leading the Indigenous communities into a deeper understanding and respect for each other. ...both the symbolic and practical sides of Reconciliation are no longer being effectively fostered". NATSICC attributes this to the "lack of National leadership in dispelling the myths and fears" surrounding Native Title issues, the policy of self-determination, national apology and Treaty.

In late 2001, the Native Title Act was found by HREOC to be racially discriminatory on the grounds that any conflict between indigenous and non-indigenous interests on matters of validation, confirmation, and primary production, favour interests other

¹⁶ The Age, 26/5/2001.

¹⁷ Anonymous report from West Australian Community Legal Centre, 8/12/2001.

¹⁸ The Sunday Age, on the 24/6/01

than native title interests. The Aboriginal Social Justice Commissioner has recommended remedying this unjust bias in the Native Title Act, by amending it:

*so that the agreements that will inevitably continue to be reached between Indigenous and non-Indigenous people over native title can form the basis of an enduring and stable relationship between them. Where racial discrimination remains a part of the agreement making process, the relationship between Indigenous and non-indigenous people will always be contingent upon its eradication.*¹⁹

- Issues of compensation for the Stolen Generation are also essential to the Reconciliation process. In contrast, by 2002, the Federal Government had spent \$11.5 million fighting the Cubillo-Gunner stolen generation test case, including \$1 million on one lawyer and \$770,000 on private investigators.

CUSTODY CONCERNS

- Four Aboriginal people have died in custody in Western Australia in 2002.
- Eleven years after the Royal Commission into Aboriginal Deaths in Custody, Federal, State and Territory governments still have a lot of work to do to effectively implement Recommendation 92, that incarceration be used as a measure of last resort. Three years ago, the UN Committee on the Elimination of All Forms of Racial Discrimination expressed "... grave concern that the rate of incarceration of indigenous people is disproportionately high compared to the general population", and "recommends [Australia] increase its efforts ... to address ... the discriminatory approach to law enforcement, and the lack of sufficient diversionary programs."²⁰
- In 2002, there have been cuts to prison budgets and the axing of prisoner support programs in West Australia. Cuts have been made to Peer Support Programs, Forensic Case Management Programs, Anger Management Programs in some prisons, Education Programs, and Health care. Psychiatric and medical services are extremely over stretched. Prisoners who are ill wait for at least 7-10 days

¹⁹ Aboriginal and Torres Strait Islander Social Justice Commissioner, [Native Title Report](#) 2001, p.91.

²⁰ Concluding comments to the Australian government by the UN Committee on the Elimination of All Forms of Racial Discrimination 24/3/00

before seeing a doctor and nursing staff do not have time to do anything but give the most basic medical care and medication.

- Western Australia is the only Australian State to retain mandatory sentencing laws. Indigenous juvenile males in WA are incarcerated at almost twice the rate of non-indigenous juvenile males.²¹ Aboriginal men in WA are incarcerated at a rate 63 times higher than non-Aboriginal men and women in Victoria.²²

POSITIVE DEVELOPMENTS

- On 15th August 2002, the West Australian government introduced legislation to abolish sentences of six months or less.²³ This will have the effect of diverting minor offenders from the prison system and will significantly reduce the cases of mandatory sentencing.
- The number of young Aboriginal people incarcerated in Tasmania has reduced significantly. In April 2002 there was only one young indigenous person in Ashley children's detention centre.²⁴ The Tasmanian based Aboriginal Legal Service's youth justice officer, Michael Beeton, says a change of attitude in a number of institutions, combined with a prevention program on Clarke Island has resulted in the positive result.
- There are now two Aboriginal courts in Victoria, a Munga Aboriginal court in South Australia, a "circle sentencing" court being trialed in New South Wales and various Aboriginal courts in Queensland. However, these courts face problems such as low levels of publicity and the fact that diversionary options are still not utilised as well as they could be.²⁵
- The Northern Territory Labour government wishes to introduce Joint Management in eleven National Parks, to maximise negotiation and avoid costly and time consuming Native Title court cases.²⁶

²¹ Australian Institute of Criminology, www.aic.gov.au/stats/juveniles/2000/review-1.html

²² Deaths in Custody Watch Committee WA website <http://www.deathsincustody.com/>

²³ Media Statement, Jim McGinty, Attorney General WA, 15/8/2002

²⁴ ABC Online 18/04/2002

²⁵ Interview with Robin Ingles, Victorian Aboriginal Legal Service, April 2002

²⁶ ABC 7:30 Report, 22/11/2002

3. CIVIL LIBERTIES

THE PRICE OF THE 'WAR ON TERRORISM'

In total, there were 29 entries in the category of civil liberties, 24 of which were negative developments including 18 violations.

Fifteen raids by armed officers of the Australian Security Intelligence Organisation (ASIO) and police were made on the homes of people in Australia after the Bali bombings of 12 October. The manner of these raids has been described by the Australian Foreign Minister Alexander Downer as "a little ruthless."²⁷ The raids have been conducted on the basis of suspicion, rather than prima facie evidence and a common factor of the raids is that no arrests have been made.²⁸

In a climate of public fear, encouraged by statements about 'generic threats,' such public and aggressive raids have the capacity to encourage intolerance of religions, cultural groups and racial discrimination within the community. The Executive Council of Australian Jewry reported that increasingly Muslims were bearing the brunt of racist comments on the radio.²⁹ One NSW Parliamentarian, Reverend Fred Nile said the chador, worn by Muslim women to cover their bodies, could be used to hide explosives and is a perfect disguise for terrorists. The Lebanese Muslims Association has labelled the comments outrageous and deeply offensive.³⁰

The period 2001-2 has seen attempts by Federal and State Governments to implement bills which erode civil liberties either on the justification of the 'war on terrorism' or for reasons asserting limitations on the rights of people to assemble. In some of these cases, the original proposals have been substantially watered down due to strong community concern about their human rights being adversely affected.

²⁷ ABC News Online, November 1, 2002.

²⁸ ASIO head Dennis Richardson has asserted that there was evidence about the people raided amounting to more than their mere presence, sometime in the late 1990s, at a teaching by alleged Jemaah Islamiyah leader, Abu Bakar Bashir. The fact remains however, that ASIO may never allow the Parliament or the public to know about this evidence. We are being asked to accept in good faith, the claim of the ASIO head that the agency's suspicions are sufficient to justify its actions.

²⁹ Australian Council of Jewry, Report on Anti-Semitism in Australia: October 1, 2001 – September 30, 2002

³⁰ The Anglican Church in Sydney has dissociated itself from the remarks. The Bishop of South Sydney Robert Forsythe says the comments demonstrate a profound misunderstanding of religious freedom in a democratic society.

ISSUES OF CONCERN:

- The *Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002*, the subject of two inquiries by the Senate Legal and Constitutional References Committee³¹, has been dubbed by the committee chair "one of the most controversial pieces of legislation considered by Parliament in recent times".³² The Bill will effectively provide ASIO with the power to detain people for up to seven days without questioning. The laws also remove the right to silence when under questioning. Non-suspects including journalists, politicians, human rights workers, activists, lawyers or any other adult may be detained without charge for questioning. According to the Federation of Community Legal Centres, this Bill may violate up to 39 different articles of various human rights conventions.³³
- The proposed provisions concerning powers of denial of access to legal advice in the first 48 hours of detention, making it possible for people to be held incommunicado for 48 hours, and for up to a week without charge, are obvious cases of denial of fundamental human rights.³⁴ The Bill removes the right to silence and removes the right to be presumed innocent by reversing the onus of proof in relation to answering or failing to answer a question.³⁵ These provisions

³¹ The Senate Committee's second report can be found

at: http://www.aph.gov.au/senate/committee/legcon_ctte/Asio_2/report/contents.htm

³²David Jull MP, Chairperson of the Joint Committee on ASIO, ASIS and DSD Inquiry into the ASIO Legislation Amendment (Terrorism Bill 2002), stated in the Committee's report that: "The Bill is one of the most controversial pieces of legislation considered by Parliament in recent times. ... The Bill, in its original form, would undermine key legal rights and erode civil liberties that made Australia a leading democracy." Joint Committee on ASIO, ASIS and DSD: *An advisory report on the ASIO Legislation Amendment (Terrorism Bill 2002)*, Canberra, May 2002, Foreword.

³³ Freedom of Assembly – UDHR, Article 20, 21 and 22; Freedom of Association – UDHR, article 20, 21 and 22; Freedom from arbitrary detention – UDHR article 9 and ICCPR article 9; Right to Legal Representation – ICCPR, Article 14(2)(b), UN Principles for the protection of all persons under any form of detention or imprisonment, principle 16, 17 and 18; Right to Humane Treatment – ICCPR article 10(1), Freedom from Torture, Inhuman and other Degrading Treatment or Punishment – UDHR, article 5, ICCPR, article 7; Right to a presumption of innocence – UDHR, article 11(1) and ICCPR, article 14(2), and UN Principles for the protection of all persons under any form of detention or imprisonment, principle 36(1); Right against self-incrimination – ICCPR article 14(3)(g); Right to a fair trial - UN Principles for the protection of all persons under any form of detention or imprisonment, principle 4, 9 and 37 (control of judicial body), principles 11(1), 32, 33 and 37 (right to judicial review) and ICCPR, article 5 (right to compensation for unlawful detention); Freedom from Discrimination – UDHR article 7, ICERD (racial), Declaration on the Rights of Mentally retarded persons 1971, article 6, Declaration on the rights of disabled persons 1975 (disability), CROC, article 2.2 (children and discrimination based on the expressed opinion of their parents) CROC – article 3.1, 19.2, 36, 37, and 40.

³⁴ Article 14.3 (b) of the ICCPR confers rights: "To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing".

³⁵ These provisions appear to breach Article 14.3 (g) of the ICCPR: "[A person] Not to be compelled to testify against himself or to confess guilt;" and Article 14. 2 of the ICCPR: " Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law."

appear to breach Article 14.3 (g) of the ICCPR: "[A person] Not to be compelled to testify against himself or to confess guilt;" and Article 14. 2 of the ICCPR: " Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law." At the time of going to print (5/10/02), the Senate committee's second report had recommended limits be imposed on the duration of interrogations and that a retired judge supervise any questioning.³⁶ However, Greens Senator, Kerry Nettle, had released her own dissenting minority report arguing "it [the Bill] still proposes to detain people who've not been suspected of being in a terrorist crime of being involved in any terrorist act."

- The Bill applies to children of the age of 14 and over. Given the appalling treatment of children in immigration detention centres over the past decade including arbitrary detention, there is good reason to be concerned about new powers which give ASIO the right to hold and interrogate children. Recommendation 10 of the Parliamentary Joint Committee on ASIO, ASIS and DSD called for:

The Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 (to) be amended to ensure that no person under the age of eighteen years may be questioned or detained under the legislation.

- New "anti-terrorist" legislation was enacted in June 2002 after strong community opposition which succeeded in achieving significant amendments to the original Bill.³⁷ This legislation creates a whole new classification of crimes. Political, ideological and religious violence now attracts a maximum penalty of 25 years imprisonment. Problems with the Act remain. The amendments did not prevent the legislation from allowing the arrest of suspects, without clear evidence. Organisations can be banned and can have their bank accounts frozen if they are merely suspected of having links with terrorist organisations. In both of these instances, there is scope for mistakes to be made. For example, in December 2001, a small business owner had his bank accounts frozen after the business was listed on ASIO's list of suspected terror organisations. The business,

³⁶ ABC Online Wed, Dec 4 2002 1:10 PM AEDT

³⁷ The Senate Legal and Constitutional Inquiry in May attracted 400 public submissions, more submissions than any other Inquiry the Committee had held.

"Shining Path" has the same name as an international network suspected to be engaged in terror activity, and the business could not complete bank transactions over the Christmas period 2001/2002.

- The Northern Territory's *Public Order and Antisocial Conduct Act* passed in July 2001 gives police enormous discretion to determine when "antisocial conduct" is taking place. Section 3(e) specifies such conduct to include behaviour, whether criminal or not, that interferes with other persons' reasonable enjoyment of a particular place. It allows police to use reasonable force to enter private residences at any time to exercise their powers.
- The draft *Peaceful Assemblies Bill* was introduced into the Victorian Parliament early in July 2001. This Bill proposes to extend the powers of police to use force to restrict protests, demonstrations and picket lines - or indeed any gathering of people including music, sporting or cultural events. The definition of "riotous assembly" is so broad as to allow most demonstrations and picket lines to fall within its ambit. The Bill has been delayed due to community opposition.

4. ECONOMIC RIGHTS

The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

- Article 11 of the International Covenant on Economic, Social and Cultural Rights (1976)

There were 22 reports about economic human rights, 17 of them negative, including 5 violations, and 5 positive reports.

Australia's obligations under the International Covenant on Economic, Social and Cultural Rights are to take steps "to the maximum of its available resources" to progressively realise economic and social rights. Accordingly Federal and State governments should allocate resources to the fullest extent possible and international

opinion is that this should be done as quickly as possible. However, Federal and State governments often recite a neo-liberal mantra about the need to maintain a budget surplus and refuse to use a surplus to fund areas of need such as public housing, mental health beds, intellectual disability services, or foster care. Despite this, fiscal rectitude has not been the order of the day with expenditure on detention of 1,440 refugees and asylum seekers in camps in Nauru and Papua New Guinea expected to cost the public purse \$1.5 billion over five years³⁸.

Over 13 percent of Australians live below the poverty line.³⁹ Although the official number of unemployed people decreased to 609,400 in October 2002 (a drop from 6.8% in August 2001 to 6.1% in October 2002),⁴⁰ some Australian communities suffer more than others. The number of unemployed people in Tasmania has increased from 199,800 in January 2001 to 202,300 in January 2002⁴¹. The unemployment rate for Australia in February 2001 was 23.0% for Indigenous people, compared with 7.4% for non-Indigenous people.⁴² There are now 383,000 Australians who have been on unemployment benefits for more than a year - more people than there were six years ago before the establishment of the Job Network.⁴³

The main reason for our failure to get long-term unemployed people back into jobs is the lack of investment by the government. Australia spends 43% less than the OECD average on help for unemployed people and yet has the eighth highest unemployment rate out of the 22 OECD countries reported. Australia spends just 0.39% of GDP on employment assistance, compared with 1.13% for France, 1.19% for Germany, and 1.54% for the Netherlands.⁴⁴

ISSUES OF CONCERN

- Over the past two years, Centrelink has substantially increased the rate of penalisation for individuals who “breach” administrative requirements such as

³⁸ Oxfam Community Aid Abroad, *Adrift in the Pacific*, February 2002.

³⁹ UNDP Human Development Report 2001. Also, the ACOSS reports that over 400,000 unemployed and students move further below the Henderson poverty-line. Students and unemployed Australians are surviving on social security payments between 20% and 39% below the poverty line. Mature age students, those over 25 years old, fare the worst with a social security payment that is 39% below the poverty line.³⁹

⁴⁰ Australian Bureau of Statistics 6202.0 Labour Force, Australia, 07/11/2002

⁴¹ Ibid

⁴² Australian Bureau of Statistics, *YearBook Australia 2002*, and Labour Special Article - Experimental Estimates: Labour force characteristics of Indigenous Australians.

⁴³ ACOSS Website.

⁴⁴ ACOSS Media Release 23 September 2002

attending meetings and Work for the Dole.⁴⁵ This has caused unnecessary hardship and exacerbated social exclusion. Australia is failing to respect Article 9 of the International Covenant on Economic, Social and Cultural Rights (Ratified in 1975), which recognises the human right to social security. According to figures obtained by ACOSS under Freedom of Information, there were 260,000 penalties at an average of \$800 each imposed by Centrelink in the 12 months to 30 June, 2002. The first “Activity Test” penalty for a breach of Centrelink requirements pushes unemployed adults 34% below the poverty line. The third breach of the rules results in the entire withdraw of social security payment for eight weeks.

- The report of Independent Review of Breaches and Penalties in the Social Security System, commissioned by a range of NGOs, found that there were many occasions where the social security system was “arbitrary, unfair or excessively harsh”. It found that it “diminishes people’s capacity and opportunity to continue seeking work and become less dependent on social security”. Moreover, penalties for the breaches are often too severe, thereby causing unnecessary and unjustifiable hardship.⁴⁶
- Hanover Welfare conducted research showing that almost a third of homeless clients had their income reduced or withdrawn because they could not comply with Centrelink’s mutual obligation requirements. Of the families profiled in the Hanover report, most were single parent families, who spent more than half their income on rent, leaving them with less than \$20 per day to live on. The average period of unemployment was four years; 12 per cent had never worked.
- The Federal government’s changes to the Workplace Relations Act in 1996 have led to a big distinction between the conditions of workers employed under individualised Australian Workplace Agreements (AWAs), and conditions for workers employed under Collective Enterprise Bargaining Agreements. A study by the Australian Centre for Industrial Relations, Research and Training, entitled

⁴⁵ For a comprehensive investigation into this issue, see Australian Council of Social Services and National Welfare Rights Network report, “Breaching the Safety Net,” 2002.

⁴⁶ The Report of the Independent Review of Breaches and Penalties in the Social Security System, 11 March 2002. The Review was established by the following organisations: Australian Council of Social Service, Brotherhood of St Laurence, Community and Public Sector Union, Jobs Australia, Job Futures Limited, Mission Australia, National Welfare Rights Network, The Salvation Army, Australia Eastern Territory, and The Smith Family.

"Changing the Structure of Wages", states that 80 percent of Union certified agreements and 63 percent of non-union certified agreements guarantee pay rises, while only 25 percent of AWAs guarantee pay rises.

- Outworkers make up to 80 percent of all clothing produced in Australia. There are an estimated 144,000 outworkers producing clothing in Victoria, usually migrant women between the ages of 25 and 35 who have young children. They work between 12 to 19 hours per day for amounts ranging from \$3.60 to \$9.50 per hour. The Fair Wear Campaign is lobbying for an Outworkers Code of Practice, whereby clothes would carry the No Sweat Shop label. In October 2001, the Liberal and National parties in the Victorian upper house opposed legislative attempts to protect outworkers under Federal awards.

5. GLOBALISATION

A new category in 2002 was 'Globalisation' which covers economic rights relating to the processes of the changing world economy and the role of Australians in this, as well as the effects of changes on Australian and overseas communities. There were three entries and the issue is flagged further in the Introduction. It is not only governments who have obligations to protect the economic rights of individuals. Under international human rights agreements, corporations must also respect these rights.⁴⁷ However corporations sometimes can have little respect for the human rights of people.

- The closure of Nestle's Maryborough (Vic) plant in 2001, and the move of its regional headquarters to Auckland, New Zealand entailed the loss of 140 jobs and \$7 million in wages. The move coincided with a Nestle's recorded profit of \$3.4 billion in the first six months of 2001.

⁴⁷ For example, Article 18 of the UN Declaration on the Rights and Responsibilities of Individuals to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms states, "Individuals, groups, institutions and non-government organisations also have an important role and a responsibility to contributing, as appropriate, to the promotion of the rights of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realised."

The protection of human rights and the practice of ecological sustainability are largely viewed as voluntary.⁴⁸ This is despite efforts of non-government organisations at the 2002 Earth Summit (World Summit for Sustainable Development) to introduce an internationally binding treaty for corporate responsibility.⁴⁹

- Oxfam Community Aid Abroad's Mining Ombudsman launched a report in June 2001, arguing that the Federal government should impose Australian standards on overseas operations given the industry's continued failure to address the social, environmental and economic impacts of its offshore activities. In an investigation of seven cases in Indonesia, Papua New Guinea and Peru, the Mining Ombudsman found that subsistence communities were deprived of their land and livelihood without proper compensation and under duress. In six of these cases, communities complained that mine waste was polluting the rivers used for water, fishing and transportation. Air pollution from dust on unsealed mining roads was another complaint.
- In 2001, the Democrats introduced the Corporate Code of Conduct Bill, seeking to address issues of corporate accountability. This Bill was not passed.

This voluntary approach to protecting human rights and the environment is at odds with the enforceable requirements of the international trading system. The World Trade Organisation's dispute settlement mechanism can impose sanctions on Australia (and has done so) and potentially can override laws and policies for the protection of human rights and the environment, if such laws are found to constitute "barriers to trade". In the emerging world trading system, trading rights are being privileged over human rights.

6. PRISONERS' RIGHTS

⁴⁸ For information on voluntary activities of Australian corporations, see the annual Reputation 100 Report authored by Australian Conservation Foundation, the Environmental Protection Authority, Amnesty International, National Farmers Federation, ACTU, and the Ethnic Communities Council of Australia. <http://old.smh.com.au/news/specials/natl/reputation/> For an international framework for voluntary corporate responsibility see the Global Compact.

⁴⁹ Although the UN body ECOSOC are drafting such a framework, the outcomes of the 2002 Earth Summit will not provide for such a treaty to be negotiated.

There were 20 entries about the rights of prisoners, 19 of them were negative including 15 violations, and 4 were positive.

Pressures on the prison system continuously affect prisoners' Rights. Overcrowding continues to be a key issue and prison superintendents are constantly moving prisoners amongst cells and facilities in an attempt to find sufficient bed space. Prisons are a costly alternative to more effective diversionary programs for a range of offences particularly non-violent ones. In total there were 24 entries in this category, 23 of which were negative developments, including:

- Seven people have died in custody in Western Australia in 2002.
- In Victoria an unknown number of prisoners have had DNA samples taken from them allegedly with the use of force including being stood over by police with riot gear, capsicum spray, tear gas and guard dogs, according to the Public Interest Law Clearing House.⁵⁰
- A prisoner at the Melbourne Custody Centre was paralysed and received permanent brain damage after being bashed by another prisoner who was mentally ill, when held in a windowless holding cell crowded with ten other inmates, according to a investigation into the incident which occurred on 29 April 2000.⁵¹

7. PEOPLE WITH DISABILITIES

There were 19 entries about people with disabilities, all of them negative, although one situation reported had improved and was also counted as a positive.

In 2002, the Australian Council of Social Services criticised proposed changes to the Disability Support Pension (DSP) which would lead to a tightening of DSP eligibility conditions and would cut the weekly income of large numbers of people with a disability by \$26 per week. These changes would also make the transition to work for people on DSP both more difficult and less attractive by capping eligibility where a person is assessed as being capable of work for just 15 hours a week. These proposed changes threaten to expose large numbers of people to the harsh and unfair breach penalties applied to unemployed people. Other violations include:

⁵⁰ PILCH report to CCJDP on 5/10/01

- A Coroner's Inquest found that people in an acute psychotic state have died while under restraint by police. The Coroner's finding led the Victorian Police to review the protocol and methods of restraining mentally ill persons.
- It was reported that between July 1998 and February 2001, two female disabled children and six male disabled children, all with multiple physical and intellectual disabilities, died in a New South Wales home. Since then a further three children have died at the centre, and six of the children were suffering from malnutrition when they died.⁵²
- The Australian Institute of Health and Welfare reported that a woman had to sleep in her wheelchair with her head resting against a table because in-home support was not available to help her in and out of bed.
- A couple in country Victoria waited nearly four years for long-term accommodation for their intellectually disabled son, who was sometimes violent towards them.
- It was reported that a hospital in South Australia was placing mentally disabled patients in shackles to restrain them. This is said to have occurred in some instances for up to 24 hours, and was against state law.⁵³ The number of mentally ill people housed in medical or surgical wards awaiting transfer to psychiatric facilities has doubled at the Royal Adelaide Hospital to more than 30 a month. At least two-thirds are detained and require a bed-watch.

8. DISCRIMINATION

There were 11 reports received about discrimination, 9 of them from the community sector. 11 were negative with 8 violations.

- An 18-year-old African youth was celebrating his birthday with a white youth. The youth is a strict Muslim and does not drink alcohol, and transit police fined the African youth \$200 for drinking but fined the white youth \$50. There was no

⁵¹ The Age, 27/10/01.

⁵² The Australian, 13/2/02

⁵³ Rob Barret, Professor of Psychiatry in Adelaide University, cited in The Australian, 16/11/01.

evidence the client had been drinking, according to the Flemington Community Legal Centre.

- An inquiry by the Anti-Discrimination Board of New South Wales found that people with hepatitis C are being denied medical treatment, are subjected to workplace harassment, loss of employment and are being refused insurance or dissuaded from applying.⁵⁴
- A Muslim computer assembler was threatened with being sacked from his job, because he took time off to pray during work hours. He received two warnings for taking unauthorised breaks when he was praying. The Company removed access to a prayer room and changed the times of lunchtime breaks so that the worker couldn't attend lunchtime prayers. The situation was resolved by publicity on the company and negotiation.⁵⁵

9. HOUSING RIGHTS

There were 21 reports received about housing rights, 19 of them negative and two positive reports.

Issues to do with homelessness are often about systemic failures by Government in its provision of social welfare. For example, many people who are homeless have a mental illness, may have been breached for failing Centrelink's mutual obligation standards, and may have difficulty being in control of their lives. For this reason, it is difficult to deal with the problem of homelessness without dealing with other issues regarding an individual's economic, social and cultural rights.

- The number of people using homeless services has risen between 1997 and 2001. In Victoria, this figure rose by 3,600 people to 27,300 in 2000-1; in Queensland, there has been an increase of 3,000 to 17,900; in South Australia there was an increase of 500 to 7000; in Tasmania there has been an increase of

⁵⁴ The Age, 16/11/01.

⁵⁵ The Age, 10/10/02

300 to 3,500; and in the Northern Territory an increase of 600 to 2,500. There were decreases in the ACT, NSW and Western Australia.

- The Supported Accommodation Assistance Program's annual report states that almost one in every 90 people between the age of 15 and 24 has sought crisis accommodation Australia wide. Almost 200 people are being turned away from crisis accommodation every day.

10. EDUCATION

There were 11 entries on the right to education, all negative. The quality and availability of free tertiary education is being undermined by various costs cutting measures and the introduction of fee paying courses.

- The Federal government's review of higher education, the Nelson Review, recommends cuts to the Higher Education Contribution Scheme (HECS) and an increase of private, fee-paying students. The current provisions contained in Australia's GATS agreement (General Agreement on Trade and Services, will lead to a further corporate influence on higher education, as public universities are converted to 'enterprise universities.'
- The Centre for Research in International Education revealed that the proportion of GDP spent on education in Australia (5.46 per cent) is less than the USA (6.43 per cent) and Korea (7.17 per cent). Between 1995 and 1999, the rate of tertiary enrolment rose by only 6 per cent in Australia compared to an average 23 per cent in the OECD.

11. WOMEN'S RIGHTS

There were five entries received about women's rights, all negative. The Federal government is refusing to ratify the First Optional Protocol to the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). This means that Australian women who are unsatisfied with the outcome of discrimination cases before Australian courts cannot make a complaint to the United Nations for an alleged violation of the CEDAW treaty.

- A positive landmark industrial ruling in the *Parental Leave Test Case* brought by the ACTU, has given Australia's two million casual workers access to parental leave without pay, if they have been employed continuously for more than twelve months. This will enable more than one million women to return to work after having a family.
- Asian women are being illegally imported by brothel owners in Australia to make money. Brothel owners networking in Asia procure women to take on an unrecorded contract, requiring them to perform \$35,000 of sexual services. In 1999, the Federal government introduced laws to ban sexual slavery and servitude. However, no prosecution has been launched and no police resources are devoted to it.⁵⁶

⁵⁶ The Age, 5/6/01

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