

**Submission to
House of Representatives Standing Committee
on
Primary Industries and Regional Services**

**Inquiry into Infrastructure and the
Development of Australia's
Regional Areas**

**by the
Human Rights and Equal Opportunity
Commission**

April 1999

Introduction

The Human Rights and Equal Opportunity Commission

The Human Rights and Equal Opportunity Commission (HREOC) is an independent statutory authority established by the Commonwealth.

HREOC is charged with

- receipt, investigation and conciliation of complaints of race, sex and disability discrimination, employment discrimination on these and other grounds and human rights violations by or on behalf of the Commonwealth
- public education on discrimination and human rights
- advising the Parliament on measures needed for compliance with human rights undertakings.

Infrastructure and human rights

HREOC adopts a broad conception of ‘infrastructure’ to include the physical buildings and plant, technological networks, financial and personnel arrangements essential for the effective functioning of organisations and the provision of services.

Adequate, purpose-designed infrastructure is essential to equity in the enjoyment of many human rights which require affirmative action on the part of government. These include

- the right to education
- the right to the highest attainable standard of health
- the right to an adequate standard of living
- the right to take part in cultural life
- the right to enjoy the benefits of scientific progress
- freedom from arbitrary arrest and detention
- the right to humane treatment in detention
- the right to access to employment opportunities.

HREOC’s findings on rural and remote area infrastructure

The objective of this submission is to draw the Committee’s attention to those sources published by the Commission which document and analyse regional infrastructure shortfalls with negative implications for the enjoyment of human rights in regional Australia. Copies of each document referred to (and publically available) can be provided on request.

Education

Sources of this right

The right to education is set out in the *International Covenant on Economic, Social and Cultural Rights* (ICESCR, 1966) and the *Convention on the Rights of the Child* (1989).

ICESCR article 13

1. *The States Parties to the present Covenant recognize the right of everyone to education ...*
2. *The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:*
 - (a) *Primary education shall be compulsory and available free to all;*
 - (b) *Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;*
 - (c) *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;*
 - (d) *Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;*
 - (e) *The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.*

...

CROC article 28

1. *States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:*
 - (a) *Make primary education compulsory and available free to all;*
 - (b) *Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;*
 - (c) *Make higher education accessible to all on the basis of capacity by every appropriate means;*
 - (d) *Make educational and vocational information and guidance available and accessible to all children;*
 - (e) *Take measures to encourage regular attendance at schools and the reduction of drop-out rates.*

...

The right to education, like all the rights discussed herein, must be ensured to all without discrimination of any kind whether based on race, colour, sex, language,

religion, political or other opinion, national or social origin, property, birth or other status (ICESCR article 2.2; CROC article 2).

Bush Talks

In the course of the Commission's *Bush Talks* consultations on human rights in regional, rural and remote Australia, many participants sounded concerns about the lack of equity in education provision. The records of public *Bush Talks* meetings can be consulted on the Commission's website at www.hreoc.gov.au/news_info/bushtalks/

Comments relating to infrastructure as broadly defined include the following.

Re equity in rural schooling:

The distance factor is also a significant impediment to rural children's access to educational and cultural opportunities. For example, in Broome there is a project under which the Education Department supports a group of children to travel to Perth once a year for a major sporting or cultural event. In 1995 it cost \$25,000 to sponsor 25 children. This is a stark example of the heavy cost associated with overcoming the distance factor (Albany WA, August 1998).

Insufficient choice of subjects is a problem for many children in rural and remote communities. Utilisation of information technology to provide distance education is a key strategy for addressing this problem and should be developed further (Narrogin WA, August 1998).

Concern was raised about the fact that there are no secondary schooling opportunities outside the major cities. The Commonwealth Aboriginal Education Program is at the moment addressing some of the problems with educational inequality but some concern was expressed that it is not working as intended. "The fact is that the illiteracy in the bush is enormous and solving any problems has to start here. The bottom line is that everybody is entitled to free compulsory public education. Most Aboriginal children in the Northern Territory are not accessing this." (Alice Springs NT, October 1998).

There is a primary school in Papunya, but throughout the whole of Papunya region there are no secondary education facilities. Students who have completed primary school therefore have to move to Alice Springs to further their education.

This lack of accessible secondary education facilities is reflected in the fact that only 1% of Indigenous people in the region aged 15 years and over participate in secondary education. There is a strong wish for a regional high school in Papunya but this proposal has not been well received at a government level so far (Papunya NT, October 1998).

"There are a number of young people who are falling through the cracks. This is partly caused by under-resourcing in our education system. Resources are not being put into paying special attention to early intervention with young people who are at risk so that they can stay in the education system." (Ballarat Victoria, November 1998).

Re access to school:

Concern was expressed about bus services for school children. For example, the children of a family which lives 48km from Scone travel large distances. They leave home at 7.15am, are transported 13 km to the bus stop, then catch the bus

to school. They don't get home until 5.10pm. This is a very long day for pre-primary school children, so children are kept back from school until they are six.

"Buses seem to take very long routes that make the days longer for kids. We need more buses to reduce times. Buses are overfilled, which is very dangerous if children are not restrained. School is out at 3pm, but the buses don't leave until 4pm or soon after." (Scone NSW, November 1998).

"There is a problem with the condition of our roads. This affects our access to services, for example, health and education. The federal funding for country roads is drying up and Councils are unable to pay more. The roads are deteriorating and becoming unsafe, and need not only maintenance, but reconstruction. There are forty-three bridges in our shire. If the tonnage is increased to forty-five tonnes on roads, as is being pushed nationally, forty-one of the forty-three bridges will have to be replaced. Roads are critical to social wellbeing in this country." (Scone NSW, November 1998).

Re Distance Education:

The SA Government used to have a rural technology fund for geographically isolated Distance Education Students in Years 5 to 7 but it has been axed. Around 45% of remote and isolated Distance Education students were assisted in computer access by the fund. It only provided \$70,000 a year but now even that has been withdrawn. Yet \$15million has been found for computers in schools that will be of no assistance whatsoever to rural and isolated students.

Access to secondary education is the real problem. Face to face secondary education is important for children - both for their education and for their socialisation. Most families, however, cannot afford to send their children to boarding schools. In 1993 the Commonwealth cut its capital grants program for school term hostels, which provided an economical alternative to boarding schools. School term hostels now cost as much as boarding schools, their fees doubling in the last few years. A station hand is lucky to average \$20 000 income a year, well below average weekly earnings.

The Assistance for Isolated Children (AIC) Program provides funding for students. Basic AIC is without a means test. It can be very complicated to obtain where there are different bureaucratic interpretations of the distance criterion. The form does not reflect policy changes that restrict eligibility and so misleads people. Additional allowances are subject to means and assets tests.

Austudy forms too are daunting to complete, making it impossible for many to apply for it. Someone took two and a half years between seeking and receiving Austudy. People of intelligence and experience are having to seek professional assistance just to complete the application form. One family had to pay an accountant \$1,500 for this.

Distance education is available to Year 12 but subject choices are very limited and there is no interaction between students. Children need social contact and social education beyond the formal education curricula. They also need sport, music and social activity. Because of the difficulties children in remote areas have only 52% retention to Year 12, with boys less than 50%. It is heartbreaking for parents not to have enough money to ensure the proper education of their children (Port Augusta South Australia, June 1998).

For children learning at home there are definite inequalities. Supervising mothers are not remunerated for spending whole days in the home schoolroom and preparing lessons after school hours (Peterborough South Australia, September 1998).

Technology fails to support the School of the Air. The technology budget for remote education has been slashed from \$70,000 in 1997-98 to zero in 1998-99. Email, internet and video conferencing are all affected (Peterborough South Australia, September 1998).

Re schools and support services for students with disabilities:

There are not enough special schools in rural areas. Often you have no choice in picking a school for your children (Wagga Wagga NSW, April 1998).

Citizen worried about the downgrading of educational services for the disabled. Her daughter is blind and doing a TAFE course in travel agency management. A lot of the supports she used to receive are being withdrawn (Orange NSW, July 1998).

An officer from the Education Department advised that the Department tries to ensure access for children with disabilities (some 3-400 in 50 schools in this District). But there are serious deficiencies in services for children with emotional disorders (estimated at between 50 and 60 children). The Department provides some remedial help but is not able to address the more fundamental problems which require family therapy. Families have to travel to Sydney for that. It is not unusual for families to travel to Sydney at considerable cost, get assessed and then turned down. There is an urgent need for proper clinical services for emotionally disturbed children and their families in the area (Orange NSW, July 1998).

A special needs class was set up at the beginning of 1998 at the primary school. One of the participating students will move on to the high school in 1999 dropping the numbers in this class below the minimum level for eligibility for a full-time teacher. The school will lose two days of one teacher each week. But the class is there five days a week. "Funding is based on the number of students rather than the needs of the students. The formula needs to be re-written." (Peterborough South Australia, September 1998).

There is only one speech therapist. No school age children are prioritised to receive speech therapy. Funding is a problem for this position. The health department initially provided enough funding for half a position which wasn't enough to attract a qualified professional person to take it up. Eventually the education department agreed to provide additional funding as they decided that therapy in education was a priority (Biloela Queensland, August 1998).

"There is such a reluctance from the education system to take children with special needs into schools. When we pursued it for our son, there was an enormous amount of reluctance because they would have to adjust and modify their schools and their classrooms. It always came down to the money."

Another participant, however, commented, "I feel that there has been quite a shift towards acceptance of children with disabilities within the mainstream education system. There is much more of a community feeling that we should have all students in the one education system." (Ballarat Victoria, November 1998).

Re Indigenous education:

Need for an Aboriginal Education Assistant at the Primary School. One woman was employed for 12 months; then 12 months without one. "Other schools get more and more but Wauchope can't get one." Now funding has been approved but they're not sure who will get the job. The High School has been without an AEA for years (Wauchope NSW, May 1998).

The Aboriginal education worker present has noted a worsening literacy and numeracy among Aboriginal people. An inappropriate approach to teaching Aboriginal people has been adopted (Orange NSW, July 1998).

There are a few positions for counsellors in schools. Indigenous students are suspended at four times the rate of others. Indigenous girls are suspended at six times the rate of other girls. "From going around to the schools we have found that there are very few students who survive to year twelve and who want to go on. We have a system and tell these people you have to fit into this system but it is not a system that they feel comfortable in at all. And we expect that they won't do well because they are Aboriginal and when they don't do well we blame them and say well there you are you see. And nobody looks at the system and says well maybe we have to change the system." (Rockhampton Queensland, August 1998)

In *Bush Talks* the Commission noted:

In 1992 the Aboriginal community of Papunya NT presented a proposal to the Education Minister for schooling in both Aboriginal and non-Aboriginal knowledge. The aim is to address the community's findings that "the education system at present is failing us on both sides" and "only 30% of Aboriginal children in Central Australia are involved within this education system". The proposal suggests that Aboriginal teachers should be appointed to full-time permanent positions and that the Papunya Community Council should participate fully in teacher recruitment. The proposal has yet to receive a response from the Minister (page 13).

Re tertiary education:

Tertiary education is almost exclusively available only in the capital cities. Living in Adelaide is relatively costly (\$175 per week board in a residential college) and many country people are not eligible for Austudy because the means test is based on assets not just income. Scholarships have dried up: "they're used now to poach the very brightest into the elite institutions". Country tertiary students having to leave home and reside in sometimes unhappy boarding situations can withdraw, fail their courses, suffer depression. "Dollars don't overcome those problems." (Peterborough South Australia, September 1998).

Lack of affordable accommodation also makes attendance at university difficult. One teacher cited a couple of students from low-income backgrounds who, even though they received scholarships for tertiary study, were unable to pay for accommodation. Things have got worse since university funding cuts. There is greater pressure on student services. There have been threats to halve some of the student supplements for pensioners. These supplements seem small to policy makers but can mean the difference between attending education or not (Cairns Queensland, November 1998).

The region has few opportunities for education outside the normal school system. Many young people slip through or out of the school system. There are few alternative educational options outside Brisbane, only TAFE and that's not suitable for everyone. TAFE only has up-front fees, instead of HECS-like provisions, and some young people cannot afford to pay the up-front fees. There are also costs associated with books and transport. The Youth Allowance system can provide a single \$500 loan but that is repaid by deductions from payments that are already inadequate. All this will become "a real problem" in 1999 when the "mutual obligation" requirement commences (Cairns Queensland, November 1998).

Re financial support:

To qualify for Youth Allowance an under-18-year-old has to be in education. What happens if a student is excluded from high school – the only place he or she can be ‘in education’ in a country town? To get into Open Access or TAFE, the student must pay fees (Peterborough South Australia, September 1998).

Young people who go to Perth to study also face financial problems. To be eligible for government assistance their parents' income must not exceed \$35,000 (approximately). Many families with incomes above this amount cannot afford to support their children living away from home (Albany WA, August 1998).

It is expensive to live in Cairns. Austudy and Abstudy are not enough to live on. Young people cannot afford to attend higher education and there are lots of dropouts from university and TAFE (Cairns Queensland, November 1998).

Positive initiatives:

SAO Program: This program has been going for a number of years and is aimed at young people with behavioural problems who have been ousted from mainstream schooling. The program works to reintegrate young people back into the mainstream school system (Mackay Queensland, August 1998).

One program for alternate education exists in Cairns. The program is called Alternate Campus and exists as a registered classroom of Cairns. It targets non-attending children and provides alternative activities to the mainstream school. Almost all the students are Indigenous. The concern was raised that the provision of 'special schools' or alternative education depends greatly on resources (Cairns Queensland, November 1998).

National Inquiry into Rural and Remote Education

In response to the concerns expressed by *Bush Talks* participants the Commission has initiated a National Inquiry into Rural and Remote Education.

Terms of reference:

The Human Rights and Equal Opportunity Commission will inquire into the provision of education for children in rural and remote Australia with reference to

- the availability and accessibility of both primary and secondary schooling
- the quality of educational services, including technological support services and
- whether the education available to children with disabilities, Indigenous children and children from diverse cultural, religious and linguistic backgrounds complies with their human rights.

Methodologies:

The Commission is conducting public hearings, student focus groups and public discussions in all capital cities (Darwin on 10 May, Perth on 24 May, Adelaide on 9 August, others to be confirmed) and in the following regional centres.

- Bourke NSW, 1 March 1999

- Brewarrina NSW, 2 March 1999
- Walgett NSW, 3 March 1999
- Moree NSW, 4-5 March 1999
- Bathurst Island NT, 11 May 1999
- Yirrkala and Nhulunbuy NT, 12 May 1999
- Kalkaringi NT, 13 May 1999
- Billiluna WA, 14 May 1999
- Kununurra WA, 17 May 1999
- Halls Creek WA, 18 May 1999
- Fitzroy Crossing WA, 19 May 1999
- Broome WA, 20 May 1999
- South Hedland WA, 21 May 1999
- Port Lincoln SA, 10 August 1999
- Wudinna SA, 11 August 1999
- Queensland centres yet to be confirmed.

The Commission has also called for written submissions and will survey education providers and consumers (students and parents) on topics related to the terms of reference.

As hearings and meeting records are transcribed they will be posted on the Commission's website. The Commission expects to report in May 2000.

Health

Sources of the right

The right to the highest attainable standard of health is set out in both the ICESCR and the CROC.

ICESCR article 12

1. *The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*
2. *The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this rights shall include those necessary for:*
 - (a) *The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;*
 - (b) *The improvement of all aspects of environmental and industrial hygiene;*
 - (c) *The prevention, treatment and control of epidemic, endemic, occupational and other diseases;*
 - (d) *The creation of conditions which would assure to all medical service and medical attention in the event of sickness.*

CROC article 24

1. *States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.*

...

Bush Talks

The inadequacy of health service provision in regional areas was the primary concern raised by *Bush Talks* participants. Although the health status of rural Australians and, in particular, of Indigenous Australians, is well below that of urban and non-Indigenous Australians, health services are less accessible, less reliable and frequently more costly.

The range of issues raised is summarised in the Commission's recent publication ***Bush Talks*** (enclosed).

Comments not included in that publication include the following.

Re service gaps:

"There is no detoxification unit in Bendigo. There is only homebased support. We hear about the drug and alcohol problem combined with the mental illness. It boils back to funding doesn't it? Drug and alcohol services need more funds to establish such a place." (Bendigo Victoria, November 1998).

"There is a huge gap in community health services, in the broad depth of community health services which should be available to communities such as

this. Particularly in the areas of sexual assault, child abuse, crisis management, and intervention. These services are all very hard to access here. If we need to refer people to these services, it is very difficult to find them. We don't even have access to a social worker." (Euroa Victoria, November 1998).

"The other problem for young people who have intellectual disabilities and mental health issues is in accessing services after the age of 17. The difficulty we are having is in finding support mechanisms for those young people. Young people can be in precarious housing situations and need day to day care but those services are not available. The likelihood of the situation of these young people deteriorating is of great concern. This is more and more of a problem in rural areas." (Bendigo Victoria, November 1998).

"There is also a general reluctance within the Koori community to approach or engage with mental health services at all. There needs to be a lot more work done in developing linkages between Koori communities and mainstream mental health services." (Bendigo Victoria, November 1998).

"I don't think that at any level has there been a real appreciation of the additional cost involved in providing these services to rural areas. There is a funding formula that looks at social demographic issues, and the explanation is that there is some rurality component in that but it's nowhere near addressing significant issues, for example the capacity to recruit qualified staff in rural areas. Of particular concern is the capacity to attract psychiatrists. The funding falls way short of being able to do that to a reasonable level. We feel here that we are under resourced, but we are probably one of the better resourced rural services in terms of the number of psychiatrists that we have. Our problem is more difficult around the region. It's not good in Bendigo but it is worse when you move away from Bendigo. It is compounded by the reality that in those smaller towns there is an absence of other services as well." (Bendigo Victoria, November 1998).

"There is a lack of specialist medical services in the upper Hunter. The population is aging and needs better medical care. People can't face a five-hour round trip for treatment. We cannot get experienced GPs either." (Scone NSW, November 1998).

Re access for elderly people:

"Transport for people in country areas once they can no longer drive is a major issue. Public transport is almost non-existent in country areas. The government does have some transport schemes in place but if you have an elderly person or a person with a disability who needs to come in for a doctor's appointment, they may have 70km to come and no transport to get here." (Ballarat Victoria, November 1998).

"We in aged care are in real lack of culturally appropriate tools, because every single strategy and every single approach taken to aged care issues is developed by Europeans, and is virtually useless in this particular region." (Alice Springs NT, October 1998).

Re Indigenous health:

There is in the community substantial interest in health worker training but the Northern Territory government argues that such training should take place in Alice Springs. Potential participants in such a training program, however, have no interest in leaving their community. As a result of the unwillingness of the Northern Territory government to supply sufficient funds for a health worker

training program in Papunya, there are no Indigenous health workers at the clinic (Papunya NT, October 1998).

"People in need of kidney dialysis have to go and live in Alice Springs to receive proper treatment. Some sixteen people have already moved, which leads to overcrowding and a bad social environment. This is a very unsatisfactory situation." Some people choose to die rather than leave their families to go to live in Alice Springs.

One participant stated that the doctors feel that the number of people requiring kidney dialysis will double every three years. There is no indication of these numbers reducing. The Council expects to have two dialysis machines placed in Tennant Creek within six months but people in need of more than basic haemodialysis will still have to go to Alice Springs for treatment. There is a problem in finding a place for the machine as the hospital has indicated it is not interested in accommodating it. Anyinginyi Congress has agreed to accommodate the machine under the condition that it is fully funded so it does not drain resources dedicated to other services. To operate a dialysis machine a qualified nurse and specially trained health workers are needed.

"If it goes as the doctors predict, in Tennant Creek we will have close to 40 people in need of renal dialysis. Is it not a good time to regionalise these services now?" (Tennant Creek NT, October 1998).

Junior doctors on three-month rotations are often the consulting doctors attending remote clinics. These doctors are often the least experienced and can lack cultural awareness. Health treatment has to be culturally appropriate. Therefore adjustments to conventional treatment methods need to be made when health professionals work with Indigenous communities.

Interpreters are employed at the hospital to meet the communication needs of patients. However, due to the fact that the hospital is not resourced to employ interpreters around the clock, family members or other patients often have to meet interpretation needs. Consequently, there is no guarantee of a full and satisfactory interpretation. One doctor stated that one of the hazardous consequences of not having sufficient resources to meet the communication needs of non-English speaking people is not knowing whether the patient has given consent for treatment.

The culturally appropriate dispensing of medication is also an issue. One participant noted, "Giving a prescription for a tablet to be taken 4 times a day, on a piece of paper the patient can't read, is completely inappropriate." (Alice Springs NT, October 1998).

Positive comments:

"Victoria is well in front in terms of the resourcing of mental health" (Bendigo Victoria, November 1998).

HREOC project

The Commission's project work on rural health will be determined in consultation with experts in rural and remote area health. It will focus on innovative community initiatives to respond to country health needs. It will aim

1. to locate the delivery of health services within a human rights framework
2. to identify successful rural and remote community initiatives and the factors contributing to their success
3. to publicise the initiatives so that others are informed and inspired.

Key areas of need are remote health services; young people, substance abuse and emotional well-being; aged care; flexible but adequate services in country towns; mental health services. Two models are under consideration: (1) a seminar series and booklet and (2) a television series and complementary training kit, including a booklet. The choice of models is dependent upon funding and sponsorship.

Non-English speaking background women

In her 1993 *State of the Nation* report (pages 88-91), the Race Discrimination Commissioner noted, with respect to domestic violence services, that

... Government institutions have a critical role to play in ensuring uniform and timely service delivery which will recognise and provide effective responses to cultural and linguistic differences of NESB women ... Language services are essential to ensuring that women are able to participate and take greater control throughout the process of gaining protection.

An analysis of government funded sexual assault/rape crisis centres, refuges, other domestic violence services and police managed services

... indicated considerable disparity in access provided to specialist sexual assault services, particularly for women in rural areas. About three quarters of the 73 centres were located in NSW or Victoria, with the great majority of all centres being located on the Australian coastline. Centres in the Australian Capital Territory, Northern Territory and South Australia were almost solely metropolitan based ...

The survey also indicated that access to services was more limited among rural Australians, and NESB women living in rural areas or isolated from their family or community face even greater difficulties in dealing with domestic violence. Locating services and supports, finding adequate information, organising alternative accommodation and guaranteeing adequate protection if she stays in the same town are critical issues for women living in small, geographically isolated towns.

The point was repeated in the 1995 *State of the Nation* report (pages 237-239): "... the problems specifically facing women of non-English speaking background are also magnified in cases where they are living in rural and isolated areas".

These areas were acknowledged as particularly poorly serviced in the Australian Law Reform Commission's 1994 report *Equality before the Law: Justice for Women* (page 117). The ALRC noted that violence against women of non-English speaking background was a particular problem in isolated areas such as far north Queensland, north west Tasmania and North western Australian. A similar point was noted in a Queensland study in which it was found that some of the most isolated and long suffering victims of domestic violence were women of non-English speaking background (Queensland Domestic Violence Task Force 1988, page 269).

The ALRC's 1992 report *Multiculturalism and the Law* (page 25) noted that "special attention should be paid to providing legal information and education to people of non-English speaking background in rural and remote areas".

Other essential services

Sources of relevant rights

Both ICESCR and CROC set out rights to access essential services which must be ensured by governments without discrimination of any kind. These essential services are also necessary if civil and political rights are to be exercised in full equality.

ICESCR article 11

1. *The States Parties to the present Covenant recognize 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 ...*

ICESCR article 15

1. *The States Parties to the present Covenant recognize the right of everyone:*
 - (a) *To take part in cultural life;*
 - (b) *To enjoy the benefits of scientific progress and its applications; ...*

CROC article 27

1. *States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development ...*

Bush Talks

Bush Talks participants revealed a range of ways in which the living standards of rural Australians are below national standards. Health and education service inadequacies have been detailed above. Affecting equity of access to health and education services are infrastructure deficiencies such as inadequate postal and telecommunications services, poor roads, high fuel prices, non-existent public transport and the absence of wheelchair-accessible public transport.

"From an access point of view, most of the youth health programs are based in Shepparton. Transport is inadequate for young people to make it to Shepparton to access not just youth health but also Centrelink or any welfare or community health type programs. You might be able to get one bus but the young person might need to stay in the regional centre all day for a fifteen minute appointment."

"We have about 200 people in our little community. We are a town of quite a few retirees. Retirees now rely on their next door neighbour having a licence to drive them into the doctor or the hospital. We find transport services lacking badly in our town."

"The access to mobile phone coverage is an issue. There is a lack of ability to use your mobile phone in some areas. Using a fax machine in some areas is restricted. Some areas cannot get access to SBS." (Euroa Victoria, November 1998).

"There is a huge problem with the lack of mobile phone service in the bush."

"The power supply is very unreliable. It often goes out. It will be even more uncertain if electricity is privatised and becomes profit driven." (Scone NSW, November 1998).

Other fundamental services which some Australian communities still lack are a safe and reliable water supply, safe and affordable housing and affordable nutritious food.

Chronic ear disease, due to unsatisfactory hygiene and malnutrition, can result in poor hearing and sometimes deafness. This is a big problem, especially for young Aboriginal people throughout the Northern Territory. "The fact is when you can't hear at school, it is incredibly boring so you stop going, and when you don't go to school, you have all day in front of you and you've got to do something! That's when you get into trouble, sniff petrol, start stealing things and with the mandatory sentencing you end up going to jail. All this is because of the insufficient access to clean water and proper food." (Alice Springs NT, October 1998).

It was reported that Mt Margaret's (community south of Laverton) water is piped through asbestos pipes and that people there are getting kidney problems. At Coonana the people are using dam water that is not being properly treated before use and has never been assayed. At Wiluna there is a fear of radioactivity in the water since high ground radiation levels have been found. At Cosmo Newbury during the summer "the water level goes down and the salt comes up". (Kalgoorlie WA, August 1998).

The lack of sufficient housing in Alice Springs is a source of great concern. The permanent population of the town camps is approximately 1,200-1,800 people residing in only 183 houses and 70 tin sheds. The fact that 40% of the population is 15 years and under makes the shortage of housing even more acute.

Tangentyere Council has a considerable waiting list for houses. Those waiting include expanding families and people who come from remote areas to the hospital in Alice Springs for treatment. The Council houses 54% of all kidney dialysis patients in Alice Springs. The houses lack furniture, kitchen facilities and air-conditioning. Families sleep on quilts on the floor and have to cook outside (Alice Springs NT, October 1998).

Food is very expensive in Tennant Creek, especially fresh vegetables and fruit because everything is brought down by truck from Katherine or Darwin. Many people cannot afford to maintain a balanced diet. In Tennant Creek, especially within the Aboriginal population, there is a high rate of malnutrition and disease. Several people expressed worries that this will be an even bigger problem with the proposed GST (Tennant Creek NT, October 1998).

"People here live in houses that would be considered as grossly inadequate by people from other sections of Australia. We must put in place processes for change for the next generation. We live as second class citizens." (Papunya NT, October 1998).

Water

In 1994 the Commission reported on the delivery of water to Indigenous communities. At that time

- 154,000 Australians living in 1,200 communities of between 30 and 1,000 people each were without a reticulated water supply (HREOC, *Water*, 1994, page 12)

- about 21,000 of those people were Aboriginal and 90% of them were living in WA and NT (page 18)
- another 19,000 Aboriginal people were served by water supply schemes having insufficient capacity to meet the reasonable water demands of their communities and about 75% of them were living in Queensland and NT (page 18)
- about 14,500 Aboriginal people relied on water not complying with National Health & Medical Research Council guidelines on water quality (page 19).

In response to concerns raised in *Bush Talks* that the problems have not all been remedied, the Race Discrimination Commissioner will review aspects of the arrangements for the supply of water to Indigenous communities.

Toomelah, Cooktown and Mornington Island Case Studies

In response to complaints of race discrimination, the Commission conducted detailed case studies and evaluations of the provision of a range of essential services in the Aboriginal communities of Toomelah, Cooktown and Mornington Island.

The *Toomelah Report: report on the problems and needs of Aborigines living on the NSW-Queensland border* was published in June 1988. It documents a litany of service failures due primarily to the refusal of every level of government to accept responsibility for the community because its members were Aboriginal and also to the inability of service-providers to communicate with each other. The Commission is unhappily confident that, although much has improved at Toomelah, many other Indigenous communities in Australia continue to endure the same experience more than 10 years later.

The Commission's report *Provision of Health and Medical Services for Aboriginal communities of Cooktown, Hopevale and Wujal Wujal* was published in September 1991. This report, while focused more narrowly on health service provision, again revealed failures in the arrangements between the Commonwealth and the State, Queensland, which left these communities inadequately provided for. Those failures were due in large part to the fact that the members of those communities were Indigenous.

Mornington was published in 1993 and progress was reviewed in a second report dated April 1995. Sparked by complaints about policing, the report also considered many other aspects of service provision on the Island including health, postal, banking, housing and education services.

Humane detention

Sources of this right

The right to humane detention and to freedom from cruel, inhuman or degrading treatment and punishment in detention is set out in the *International Covenant on Civil and Political Rights* (ICCPR) and CROC.

ICCPR article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment ...

ICCPR article 10.1

1. *All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.*

CROC article 37

States Parties shall ensure that:

- (a) *No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment ...*
- (b) *No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;*
- (c) *Every child deprived of liberty shall be treated with humanity and respect of the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age ...*

CROC article 40

1. *States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.*

Bush Talks

Once again, *Bush Talks* participants alerted the Commission to inequities in the treatment of, in particular, country juvenile offenders which may mean that their rights to freedom from arbitrary detention and to humane conditions of detention are being breached. There is some evidence that country courts may sentence offenders more harshly. Two reasons present themselves for further investigation. One is the predominance of Indigenous juveniles among the offending group, raising the possibility of systemic race discrimination in sentencing. (Indigenous young people are detained in juvenile justice centres at 21 times the rate of non-Indigenous young people.) The other is the lack of alternatives to detention in the form of community service or work orders and probation supervision in country areas and on remote

Indigenous communities (*Seen and heard: priority for children in the legal process*, HREOC 1997, para 19.21).

Detention ordered for either of these reasons is 'arbitrary' and not a measure of last resort.

The lack of juvenile detention facilities in most country areas means that young country offenders serve their terms far from the support of family and friends. It also means that country juveniles face a far higher risk of spending periods, sometimes prolonged periods, in police and watchhouse cells in the company of adults.

Detention under these conditions may be inhumane, inconsistent with the promotion of the child's sense of dignity and worth and contrary to the needs of a person of the child's age.

There is a problem with access to parole for Aboriginal prisoners from small towns. Because on release they will return home and because their victim will usually continue to reside in that town, parole may not be granted for that reason (Kalgoorlie WA, August 1998).

There is no juvenile prison in Alice Springs, the nearest being 1,500km away in Darwin. Just recently a holding facility for juvenile offenders has opened in Alice Springs but it can only hold juveniles for 3 days. At the detention centre there is no access to outdoor areas (Alice Springs NT, October 1998).

Mandatory detention for certain categories of offenders has been adopted in both WA and the Northern Territory. Mandatory detention legislation contravenes CROC by denying the child's right to an individualised sentence which is proportionate to his or her circumstances as well as the circumstances of the offence and by denying the child's right to be imprisoned only as a measure of last resort. It has the potential to impact disproportionately on Indigenous young people from rural areas.

Mandatory sentencing and zero tolerance policing have had an impact on the numbers of Aboriginal prisoners. While the average numbers of people imprisoned in the Northern Territory on any one day in 1996 was 482 it increased to 602 in the first quarter of 1998. In March 1998, 75.1 % of adult prisoners in the Northern Territory were Indigenous, the highest level in Australia. "The choice of the Northern Territory Government to use repressive measures of crime control will do nothing to prevent crimes of violence in the Indigenous community." (Alice Springs NT, October 1998).

The new mandatory sentencing and zero tolerance policing policies are having a disproportionate effect on young Indigenous people. "Mandatory sentencing for property offences in the Northern Territory precludes courts from examining the individual circumstances of a matter, and even petty offences can lead to the imprisonment of children. Locking up and containing young people does nothing to reduce crime and does nothing to rehabilitate young people." (Alice Springs NT, October 1998).

Seen and heard

The report *Seen and heard: priority for children in the legal process* was published jointly by HREOC and the Australian Law Reform Commission in November 1997. It

confirms that access to appropriate and timely legal services is very difficult for many rural and remote young people.

For young people in rural and remote communities, numerous factors make their...situation more difficult: limited access to services, inflexible program requirements and a general lack of understanding by bureaucracies [of] the unique needs of rural communities. Young people in rural and remote communities are disadvantaged by their lack of access to subsidised services such as transport, health care, charity organisations and public housing which are available to young people in larger metropolitan areas. In financial crisis, rural young people rarely have access to a social worker or local financial support like their urban counterparts (C Croce 'Towards a national rural youth policy' (1994) *Transitions* 26, quoted in *Seen and heard: priority for children in the legal process*, 106).

The report identifies withdrawal of Family Court services as an issue of major concern for young people and families in rural and remote Australia. The Family Court provides some counselling services on a circuit basis but accessing them in a timely manner can be problematic. The ability of people living in remote areas to obtain access to the Family Court is an issue of particular concern to Indigenous communities. The report recommends that closure of Family Court registries should be treated as a least favoured option for dealing with funding constraints in the Family Court. It emphasises the importance of maintaining circuits of the counselling service to rural and remote areas. Strategies proposed to enhance access for rural and remote Australians include expanding toll-free telephone access to the court and making greater use of its ability to take evidence by video link or telephone (page 416, recommendation 157).

The report considers the situation of young rural and remote people involved in the criminal justice system. Chapter 18 deals with children's involvement in criminal justice processes prior to the sentencing and detention stages. It notes that children living in rural and remote areas who are refused bail are often remanded to a detention centre hundreds of kilometres from their home, disrupting their schooling and family relations. If they are remanded locally it is usually in the general police holding cells or at an adult goal. These problems affect Indigenous children in particular as they are the most likely to live in remote communities.

Chapter 19 deals with sentencing and considers, among other things, the issue of mandatory detention (pages 552-557). It describes a number of cases involving the application of the WA mandatory detention laws. The cases illustrate the unjust and inappropriate outcomes of a sentencing regime that does not allow the circumstances of the offence and the offender to be taken into consideration. In one case, involving a 17 year old who was sentenced to 12 months detention as required by the laws, the court expressed concern that the young offender could well spend more time in custody than an adult who had committed a similar offence. All of the cases described involved Indigenous children, highlighting the disproportionate impact this kind of legislation may have on Indigenous communities. The report recommends that the Attorney-General should encourage WA and NT to repeal their legislation providing for mandatory detention of juvenile offenders and in the event that this is not successful, to consider federal legislation to override the WA and NT provisions (page 557, recommendation 242).

Chapter 19 also examines the adequacy of sentencing options for juvenile offenders. It is noted that sentencing may have particularly harsh effects on children from rural areas. Part of the reason for this is that many cases in these areas are heard by generalist magistrates who tend to impose relatively harsher sentences on juvenile offenders than specialised children's magistrates. In addition, children in rural areas do not always have access to non-custodial programs, making a custodial sentence the only option in some cases. In detention they are likely to be placed in a centre far from their family and community. They may suffer a greater degree of dislocation than children from urban areas. The report also confirms that non-custodial programs available in rural or remote communities tend to involve much less supervision and support than those in metropolitan areas. For example, in the country a departmental officer might make only monthly visits to a young person on a supervised order. One of the submissions to the inquiry proposed Commonwealth funding for non-government organisations in rural and remote areas to develop programs for juvenile offenders which magistrates could use as sentencing options. The report endorses this proposal.

Employment

Sources of this right

The right of access to employment opportunities is set out in *the International Covenant on Economic, Social and Cultural Rights* (ICESCR, 1966) and the *International Labour Organisation Discrimination (Employment and Occupation) Convention 111* (ILO 111, 1960).

ICESCR article 6

1. *The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.*
2. *The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.*

ICESCR article 7

The State Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- a. *Remuneration which provides all workers, as a minimum, with:*
 - (i) *Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;*
 - (ii) *A decent living for themselves and their families in accordance with the provisions of the present Covenant;*
- b. *Safe and healthy working conditions;*
- c. *Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;*
- d. *Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.*

ILO 111

... all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity...

Article 1

For the purpose of this Convention the term "discrimination" includes:

- (a) *Any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;*
- (b) *Such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with*

representative employers' and workers' organisations, where such exist, and with other appropriate bodies.

2. *Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.*
3. *For the purpose of this Convention the terms "employment" and "occupation" include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.*

Article 2

Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.

Women's Labour Market Participation in Regional Australia

In 1998 the then Acting Sex Discrimination Commissioner contracted the Employment Studies Centre of the University of Newcastle to conduct research into women's labour market participation in regional Australia. The research was completed in October 1998 but is yet to be published. The report itself is therefore not yet publicly available, but the following information has been drawn from it.

The research comprises a review of the literature and available statistics. It reveals a general lack of analysis of regional and rural labour markets. Although there has been much research on labour market participation (especially in relation to women) since the 1970s, the focus has been at a national level. Employment and training opportunities differ widely between capital and non-capital cities, towns and rural areas. The following are the major relevant conclusions of the research.

- At the broadest level a statistical analysis of trends across states and territories using ABS data¹ revealed notable differences between women by location, for example:
 - (a) the part-time employment ratio: from 50% in Tas to 36.6% in ACT;
 - (b) the unemployment rate: from 10.7% in Tas to 4.8% in NT & ACT;
 - (c) the proportion of the unemployed seeking part-time employment: from 39.6% in WA to 25.6% in NT;
 - (d) the labour force participation rate: from 65.1% in the ACT to 47.9% in Tas;
 - (e) average full-time weekly earnings: from \$699 in ACT to \$560 in WA.
- The research includes a comparison of statistics for major urban areas with those of states generally.² This indicates that within states, women in non-metropolitan areas have lower labour force participation rates, higher unemployment rates, higher part-time employment share and a higher proportion of the unemployed seeking part-time employment.

¹ Collated from ABS, The Labour Force, Cat 6203.0, 1997; ABS, Weekly Earnings of Employees, Cat 6310.0, 1997.

² ABS, Labour Force Cat 6203.0, 1997

- The research also analysed the 1995 Australian Workplace Industrial Relations Survey (AWIRS 95) including AWIRS 95 data which was specifically provided for the project. The results reveal differences in the metropolitan, regional and rural experience of work, for example:
 - (a) there is great diversity in the industries and occupations available in particular regions – the size of a labour market can vary considerably;
 - (b) a greater percentage of women in regional and rural areas, compared to women in metropolitan areas, were classified as labourers and sales and personal service workers (rural sector had highest percentage);
 - (c) women in rural areas were more likely to work in less skilled, probably low paid jobs;
 - (d) women outside metropolitan areas were more likely to be employed as casual rather than permanent workers with less secure employment, probably lower paid, less likely to be offered training or prospects for advancement;
 - (e) over 50% of women in regional and rural areas indicated they would take leave without pay to take care of a sick family member, compared to 39.6% of women in metropolitan areas, indicating a possible lack of employee benefits.³

The research reveals significant differences in employment opportunities for women between city and non-metropolitan areas. These differences may reflect that women in rural and regional areas have different needs for services and support. For example, Australia is characterised by regions centred on towns which form separate labour markets because the distances from one town to another can be too far for daily travel. There is some evidence that women are constrained in terms of job opportunities since they may not be able or prepared to travel as far as men to work due to family and child care commitments, lack of available childcare facilities, social attitudes or access to appropriate transport.

To date the national policy focus towards women in the Australian labour market has been generally based on the premise that policies such as EEO and equal pay will apply equally to all women regardless of location. This assumption is simplistic and naïve – policies need to address the significant differences that exist across the labour market and in particular the relatively limited employment opportunities available to women in non-metropolitan Australia.

In order to assist this process it is important that appropriate information is collected to inform future policy formulation and to address oversights in existing policy. The most striking conclusion of the research is that there is very limited empirical data available to assist in developing a clear picture of women's participation in rural and regional labour markets.

³ Given that the main AWIRS 95 research surveyed workplaces with over 20 employees, conclusions about some aspects of the workforce participation of women in rural and regional areas must be treated with caution.