AUSTRALIA

CCPR A/38/40 (1983)

135. The Committee considered the initial report of Australia (CCPR/C/14/Add.1) at its 401st, 402nd, 403rd, 407th and 408th meetings, held on 25 and 26 October and on 2 November 1982 (CCPR/C/SR.401, 402, 403, 407 and 408).

136. The report was introduced by the representative of the State party who informed the Committee that since the submission of Australia's initial report there had been a number of developments, the most significant of which had been the establishment of the Australian Human Rights Commission, which had commenced operation in December 1981 and which was a unique blend of conciliatory machinery and of research, educational, promotional and advisory functions. He also reported that Aboriginals currently had the means of exercising real influence in matters affecting them, since they had a greater awareness of the political process and were now involved in decision-making, and that his Government had recently announced that it was to draft a law to protect its employees from discrimination on the grounds of sex and marital status. He also pointed out that although many Australians had only a vague conception of the rights embodied in the Covenant, there was a widespread awareness that the United Nations had established protective machinery and that in codifying human rights principles, the United Nations was helping to bring about changes in community attitudes.

137. Members of the Committee commended the excellence of the Australian report, its exhaustive character and frankness and the fact that it had been drafted on the basis of the Committee's guidelines and noted with appreciation the size and quality of the delegation, which attested to the Australian Government's intention to co-operate with the Committee in ensuring compliance with the provisions of the Covenant in Australia. In this connection, it was asked how much publicity had been given to the Covenant in Australia, whether it had been translated into languages other than English, particularly languages spoken by the Aboriginals. Questions were also asked concerning the principal factors and difficulties which had affected the implementation of the Covenant.

138. Referring to the many reservations entered by Australia upon ratification of the Covenant, several members wondered whether some of those reservations were compatible with Australia's commitments under the Covenant. They were particularly concerned with regard to the reservations relating to articles 2 and 50 of the Covenant. Noting that article 2 (2) required each State party to implement the Covenant "in accordance with its constitutional processes", that article 51, paragraphs XXIX and XXXIX, of the Australian Constitution conferred on Parliament the necessary power in that respect and that, according to the Vienna Convention on the Law of Treaties, a State could not formulate a reservation if it was incompatible with the object and purpose of the treaty nor could it invoke the provisions of its internal law as justification for its failure to perform a treaty, members wondered what exactly were the nature and effect of these reservations, whether they purported to divest the Commonwealth Government of responsibility for implementing the Covenant in so far as it impinged on matters within the competence of the constituent states of the Federation and, if not, whether the courts in Australia would be bound by an official statement made by the

representative of the Australian Government before the Human Rights Committee. They asked further, how the Commonwealth Government could ensure that the constituent states discharged the international commitments undertaken by Australia, particularly in respect of the Covenant and whether there was any procedure under which control could be exercised by the Federal Government.

139. As regards article 1 of the Covenant, mention was made of a statement in the report to the effect that the people of Australia had exercised their right to self-discrimination by uniting as one people in a Federal Commonwealth and information was requested on the manner in which the Aboriginals "who were already present when the first European settlers arrived in 1788" had participated in that exercise. Noting, according to the report, that Australia had traditionally been a strong supporter of the right to self-discrimination, it was asked whether that included recognition of the right to self-determination of the Palestinian people and the peoples of southern Africa and whether Australia had taken legislative and administrative action to prevent Australian corporations, companies and banks from assisting the apartheid regime in South Africa. In this connection, it was asked whether the Government's policy of self-management for the Australian Territories was considered a first stage on the road to self-determination.

140. In relation to article 2 of the Covenant, it was pointed out that, in countries such as Australia, in which the Covenant was not embodied in internal legislation, which did not have a comparable bill of rights and in which the legal system was based on the concept of the rule of law, where "the rights of individuals are guaranteed by ordinary legal remedies without the need for formal constitutional guarantees", as mentioned in the report, it was more difficult to prove that the Covenant was effectively implemented and that particular importance should, therefore, be attached to the commitment undertaken in this article not only to "respect" but also to "ensure" the rights recognized in the Covenant. Noting also that the rules derived from decisions of courts formed part of the law of the land, members asked how the Covenant was made accessible to judges, what arrangements had been made to ensure that judges would act in accordance with the obligations which Australia had assumed under international law and whether Australia was considering the incorporation of the provisions of the Covenant in domestic law or, failing that, the adoption of a Federal Bill of Rights or a Bill of Rights for each of the constituent states.

141. Noting the existence in Australia of many bodies and authorities competent to deal with human rights and referring to the various writs mentioned in the report, members wondered whether a common law system, such as that of Australia, provided any genuine or effective remedies to ensure the enjoyment of all the rights enunciated in the Covenant and suggested than an unwritten presumption of freedom was not sufficient. More information was needed, particularly on whether the Australian Human Rights Commission was competent to receive complaints from individuals whose rights had allegedly been violated and, if so, how many complaints it had received and what the nature of its arbitration function was; what recommendations had been made by that Commission with a view to the amendment of Commonwealth legislation and practices thereunder; whether there was any organ with competence to decide whether laws and administrative acts or decisions were consistent with the Covenant, whether any executive infringements of human rights had been brought to the attention of Parliament by the Meeting of Ministers of Human Rights; and what types of complaints had been investigated by the Commonwealth Ombudsmen and how effective their reports were.

142. Noting that article 3 of the Covenant provided for the equal right of men and women to the enjoyment of all civil and political rights set forth in the Covenant and that, in the report, it was admitted that certain problems were being experienced in securing equality between the sexes, members sought more factual information on those problems and on the effect of the measures taken to implement this article, and requested some statistics in this respect.

143. With regard to article 6 of the Covenant, reference was made to the fact that the life expectancy of the aboriginal population was 20 years less than that of the white population and that their infant mortality rate was three times higher, and it was asked how that situation could be reconciled with the principle of equal enjoyment of the right to life and what action was being taken to remedy it. A question was posed on the legislative provisions relating to abortion and on the severity of penalties inflicted in case of abortion. Noting that since use of firearms could result in violations of the right to life, one member asked in what circumstances the police and the armed forces were permitted to use their weapons. One member was surprised to read in the report that the states did not have the legislative capacity to abolish certain statutes providing for the death penalty, which remained within the sole jurisdiction of the Parliament at Westminster, and it was asked whether it was possible to review that situation and what the prospects were for capital punishment to be abolished in all federal states. Noting that in those states that had abolished the death penalty it had, theoretically, still been retained for the capital offences of burglary or arson in the Queen's dockyards, one member asked whether the gravity of the punishment matched the crime and whether the repeal of the laws that perpetuated that abnormal state of affairs was being blocked by obstacles of a political or a constitutional kind. In this connection, it was pointed out that the possible imposition of the death sentence in respect of persons under 18 years of age, as indicated in the report, was contrary to the provisions of the Covenant and that domestic law should therefore be brought into line with its provisions.

144. Commenting on article 7 of the Covenant, members noted that it was still possible to resort to whipping in Australia . They considered that to be an inappropriate form of punishment and wondered how this inhuman practice could be reconciled with the Covenant. They also noted that there were no special penal law provisions against torture and that only common law remedies were available in the event of a complaint against the police, and it was asked whether any cases of alleged ill-treatment or brutality on the part of a police officer ever resulted in charges being brought so as to be able to determine the effectiveness of such remedies.

145. In this connection with article 8 of the Covenant, it was noted that, under the legislation in some states, the authorities in the reserves seemed to have the power to order Aboriginals to carry out particular tasks, which was incompatible with the Covenant. It was asked whether account was taken, in imposing a sentence of hard labour, of age, physical ability and education and whether the fact that only adult males were affected by such a sentence was not contrary to the principle of equality between men and women embodied in the Covenant. In this respect, one member thought that, if the law could take account of physical differences between men and women, it could also make provision for different types of hard labour for the two sexes.

146. With reference to article 9 of the Covenant, it was noted that, a court was required to decide "without delay" on the lawfulness of a detention and not "as soon as practicable" or "as soon as convenient", as stated in the report. Information was requested about the authority of certain

designated medical officers to detain addicted persons; on whether a detention order could be made otherwise than in judicial proceedings; and how effective the remedy was in the event of unlawful arrest. In this connection, it was pointed out that the Covenant permitted the initiation of legal action not against an official who might have abused his powers but against the State itself, which was held responsible if the victim had been unjustifiably arrested or detained.

147. As regards article 12 of the Covenant, more information was requested on control of residence, entry into and departure from Aboriginal reserves; on control of entry at the residents' insistence to the Cocos (Keeling) Islands and Norfolk Islands; on the restrictions concerning the issue of passports and on the authorities competent to decide that a person could not leave the country. Referring also to article 27 of the Covenant, one member expressed his doubts as to whether, despite the amendments that had been made in recent years to the legislation of the State of Queensland, which provided for the possible expulsion of an Aboriginal from a reserve, which was an extremely severe penalty because it might entail the loss of his language and culture, was compatible with the Covenant.

148. Commenting on article 14 of the Covenant, members requested more information on the conditions for appointment of judges; whether costly training was needed for admission to the legal profession; what the percentage was of women and Aboriginals in the higher echelons of the judiciary; whether any magistrate had ever been dismissed by the Governor-General or Governor for bad behaviour and about the status and competence of juries in Australian courts and their role in the country's judicial life. In this connection, reference was made to the decision of the European Court of Human Rights in the Sunday Times case and it was asked how a conflict involving the delicate relationship between freedom of expression and the need to ensure the independence of the judiciary would be resolved in Australia. With regard to a possible shift under statutory provisions in the burden of proof, referred to in the report, some examples were requested of cases in which the accused had managed to establish his innocence. It was pointed out that it was for the State, and not for the accused, as implied in the report, to make the necessary arrangements for the services of an interpreter if he had difficulties with the English language and it was asked how language difficulties could present a barrier to commencement of proceedings in the more remote and sparsely populated areas of Australia, as indicated in the report, and whether it would not be possible to provide itinerant interpreters to accompany the courts. Questions were asked as to what circumstances the right of an accused to communicate with counsel while in custody would be regarded as creating "unreasonable delay" or hindering "the processes of the investigation or the administration of justice" and whether the police were not thereby given a wide measure of discretion which they might be tempted to abuse; whether it had happened that persons held in custody had been released because they had not been brought to trial within a certain time; and whether evidence obtained under duress was admissible and, if so whether it was possible to speak of effective remedies and whether there were any cases in point. Noting that in Australia, criminal law existed side by side with Aboriginal customary law, members asked whether this situation was compatible with the principle of equality before the law and without discrimination to the equal protection of the law; whether it could happen that a person was brought before both state and aboriginal courts and hence tried twice and, if so, how that could be justified in the light of article 14 (7) of the Covenant.

149. In relation to article 15 of the Covenant, it was asked whether there had been retrospective criminal legislation and, if so, whether there was any authoritative decision as to the constitutional

validity of such legislation; whether, where a penalty was reduced, the lighter penalty was to apply to an offence committed before the reduction but not to an offender who had already been convicted for that offence.

150. In this connection with article 18 of the Covenant, more information was requested on existing guarantees for the right of everyone, not only every citizen, to freedom of thought, conscience and religion and on existing restrictions of this freedom; whether atheists has the right to make known their point of view; on whether a person could claim the status of conscientious objector on purely political grounds and, if so, whether applicants had to appear before a tribunal or administrative board.

151. As regards article 19 of the Covenant, more information was requested about the de facto and de jure freedom of the media, the laws restricting the freedom of expression and the sphere of competence of the Australian Broadcasting Tribunal referred to in the report; whether there were any legislative provisions or regulations to prevent the establishment of monopolies and what guarantees there were to ensure that the Australian Broadcasting Commission, appointed by the Governor-General, would not simply be an instrument in the hands of the majority in power.

152. Noting that the prohibition of propaganda for war and advocacy of racial hatred was mandatory under article 20 of the Covenant and that such prohibition might be necessary for the protection of the rights enunciated in articles 19, 21 and 22, some members wondered why no such prohibition was made, whereas different kinds of prohibitions had been deemed necessary to ensure respect for those other articles; how that requirement was complied with in Australian case law and how sedition was interpreted in Australia in terms of the immediacy of the advocacy and the promotion of "ill will and hostility between different classes of Her Majesty's subjects".

153. Commenting on articles 21 and 22 of the Covenant, members asked what criterion applied in deciding whether or not to grant permits for assemblies or processions on public roads and which authority was competent to take such decisions; whether Australia had ever applied the provisions of the Crimes Act relating to associations that could be declared unlawful and membership of which generally constituted a criminal offence and, if so, against which association and whether there was at the Commonwealth level a general prohibition of discrimination of any kind in respect of registered clubs. In this connection, one member pointed out that the closed shop system, referred to in the report, resulting in the compulsory affiliation of workers to a particular union not of their own choosing was prejudicial to their rights and asked further information concerning that system at the justification therefor.

154. As regards article 25 of the Covenant, it was asked whether it was correctly concluded from the report that Aboriginals had no vote unless they left their reserves or otherwise became enfranchised and that the enrolment of Aboriginals on electoral lists was not yet compulsory. It was maintained that while the authorities might regard that as a privilege granted to Aboriginals, such a privilege could also constitute a possible source of discrimination. Had legislation been adopted to make enrolment for Commonwealth elections compulsory for all Aboriginals, as mentioned in the report? What was the situation with regard to the enrolment of Aboriginals for state elections? Was there a significant difference in any of the states between the number of Aboriginals enrolled for Commonwealth elections and those enrolled for state elections? If so, how could those

differences be explained? Noting that, according to the report, British subjects were entitled to enrol for Commonwealth and state elections and to have access to public service employment in Australia, one member sought more information on the matter that seemed to indicate a preference in regard to British subjects which might be considered to be a contravention of articles 2 (1) and 25 of the Covenant. Another member contested this view and maintained that the Covenant merely prohibited discrimination and stipulated the minimum rules to be observed by States but in no way prohibited such preferential treatment to certain aliens. More information was requested about the categories of citizens who were disqualified from voting in federal elections, and it was asked whether the functions of a municipal councillor were compatible with the office of member of the House of Representatives or senator and what real opportunities were provided for Aboriginals to have access to public service.

155. With reference to the statement lodged with Australia's instrument of ratification indicating its interpretation of article 26 of the Covenant, it was pointed out that if it was designed simply to ensure and protect "affirmative action" programmes, as mentioned in the report, then there was no need for it and that acceptance by Australia of article 26 "on the basis that the object of the provision is to confirm the right of each person to equal treatment in the application of the law" did not seem to be consistent with that article which provided not only for equality of all before the law, but also for equal protection of all by the law against any discrimination and which also stipulated that the law must not institutionalize discrimination. One member could not agree with that interpretation and maintained that Australia's statement was in accord with the meaning that the authors of the Covenant had thought to give to that article, that article 26 did not require that States should combat all types of discrimination, at that the Covenant was concerned only with the civil and political rights that States must guarantee. It was also noted that insufficient precautions were being taken against discriminatory practices by individuals, firms or organizations; that the annual report of the Commission on Community Relations showed that Aboriginals had been discriminated against and it was asked what was being done to remedy that situation and, in general, to widen the range of prohibited discriminatory practices.

156. Commenting on article 27 of the Covenant, many members noted that the report contained little information about the Aboriginals and, therefore, requested detailed information about their status and their rights in law as well as in practice. Noting that the Aboriginals were the first inhabitants of the country and that the Australian Government seemed to draw a distinction between them and other Australians, members asked whether the Government considered them to be a group coming under the protection of article 27 of the Covenant or a people coming under the protection of article 1; what percentage of Australia's total population they presented; whether an assimilation policy was applied; whether autonomy was anticipated for their areas or whether the matter of integration was left entirely in the hands of the Aboriginals themselves and, if so, what their political aspirations were and whether they had the means to freely express them; whether Aboriginals wishing to preserve their ethnic characteristics were free to do so; and why it was that the Australian Constitution appeared to contain no provision relating specifically to Aboriginals. Noting also that, in his introductory statement, the representative of Australia had indicated that his Government was displaying great concern for the Aboriginal population but that much remained to be done, members asked why little was being done to improve their lot two centuries after the arrival of the first settlers; how could a declaration by the Government of Queensland turning an area into a national park overrule an earlier decision of the High Court concerning the transfer of that area for the benefit

of the Aboriginals; what was the division of responsibility between the Commonwealth and the constituent states in respect of the treatment of Aboriginals and immigrants; what measures were being taken to protect the rights of linguistic, ethnic and religious minorities and to enable them to enjoy their own cultures and what machinery the federal and state Governments had established in that respect.

157. Some members raised questions concerning the Australian policy towards immigration and refugees. Was Australia still pursuing a policy of white immigration? What progress had been made in that respect and what criteria were now being applied in the selection of immigrants? What problems might Vietnamese refugees have faced in the exercise of their human rights within the Australian community? Could such refugees acquire Australian citizenship and, if so, how?

158. Replying to questions raised by members of the Committee, the Representative of the State party pointed out that the provisions of the Covenant had been the subject of extensive parliamentary debate during the passage of the Human Rights Commission Act; that one of the functions of the Commission was to promote understanding and public discussion of the rights and freedoms recognized in the Covenant; that it had already published a pamphlet explaining its work and outlining important rights in the Covenant and that he would pass on to the Commission the suggestions that this pamphlet be translated into Aboriginal languages, but that it would not be easy to carry out because there were so many Aboriginal languages and the majority of them were exclusively oral. The Commission was currently engaged in developing projects for the teaching of human rights in schools and had recently begun issuing bi-monthly newsletters.

159. He stated that Australia's declarations and reservations, which accompanied its ratification of the Covenant, were made after a thorough and careful analysis of the laws and practices in all the country's jurisdictions; that certain statements had been prompted by caution when the Government had been in doubt, but that all articles on the subject of which no reservation had been entered were considered fully compatible with Australia's domestic legislation. As regards the reservation made with regard to articles 2 and 50 of the Covenant, he pointed out that careful reading of the reservation would indicate that Australia intended to apply certain parts of the Covenant consistently with other parts which seemed unexceptionable; that although international obligations to implement the Covenant naturally rested with the Australia Government, the Government had deemed it desirable to draw international attention to its domestic co-operative arrangements to ensure the implementation of the Covenant; that Australia was not seeking justification for its failure to fulfil its obligations and did not consider its statement in respect of those two articles to be in any way contrary to the object of the Covenant, nor did it accept that the statement was in breach of the Vienna Convention on the Law of Treaties.

160. In connection with article 1 of the Covenant, the representative stated that his country supported the right of the Palestinians to a homeland; that it had worked consistently towards securing for the Namibian People the full exercise of their right to self-determination and that it had condemned human rights violations in southern Africa and was committed to the eradication of apartheid.

161. Responding to comments made under article 2 of the Covenant, he stated that the adoption of federal legislation was not necessary for Australia to carry out its obligations under international

treaties and that the Australian authorities had virtually always pursued a policy consulting the various states on the implementation of treaties in areas within their traditional responsibilities. His Government decided against the adoption of a "bill of rights" in legislative or constitutional from because that would have meant the incorporation in the legislation of a broad statement of human rights and that it would have been left to the courts to try to interpret those rights, which was not the procedure Australia normally adopted in the drafting of legislation. Australia had eventually decided in favour of federal legislative texts on specific issues (e.g., racial discrimination). He pointed out that some countries without a bill of rights incorporated in their legislation, nevertheless consistently observed a certain code of conduct which was based on the good conscience of their people. He maintained that the co-operative arrangements between the Commonwealth and State Governments for ensuring implementation of the Covenant were designed to ensure that the problem of inconsistency between a federal and a state law did not arise and were predicated on the fact that, in any federation, the central and provincial Governments had to co-exist. The fact that all the Governments of Australian federation had reached an agreement on the terms of Australia's ratification of the Covenant gave the Federal Government the confidence that all the international obligations it had undertaken could and would be fulfilled.

162. Commenting on a suggestion made in the Committee that the common law system offered only narrow remedies, he stated that this problem had been largely overcome by the reforms, both parliamentary and judicial, of the past 100 years. He also explained that the Australian Human Rights Commission could receive complaints from members of the public and was required to try to settle the matter and, failing that, to submit a report to the Attorney-General who was required to take that report before both Houses of the Federal Parliament. Referring to a question on the large number of bodies working in the human rights field in Australia, he pointed out that each of those bodies had specialist functions requiring different powers and procedures but that all of them contributed, each in its own way, to the protection of human rights.

163. As regards article 3 of the Covenant, the representative stated that exceptions to state legislation prescribing discrimination on the grounds of sex resulted from the fact that it was often impossible to apply such legislation to small businesses because they did not employ a sufficiently large number of persons; that it was usually felt in Australia that legislation should not intrude too far into private affairs except in cases closely related to the use of public funds and that legislation against discrimination normally left matters in the field of industrial relations to be worked out in accordance with specific industrial relations law. He also provided some statistics illustrating improvements in the status of women in the areas of political participation, education, employment and community activities.

164. In connection with questions raised under article 6 of the Covenant, he pointed out that although the infant mortality rate among Aboriginals was higher than that of the Australian community generally, it should be noted that there had been a steady improvement over recent years, to the extent that in the Northern Territory, where there was a high concentration of Aboriginals, the mortality rate had dropped from 142 per thousand in 1971 to 30 per thousand in 1981; that the Government had given financial support to independent Aboriginal medical services and assigned special allocations to health and environmental health programmes for Aboriginal communities. As to questions relating to capital punishment, he informed the Committee that the last instance of the implementation of the death penalty in Australia had been in 1967, just six years before its

abolishment in all areas of Commonwealth jurisdiction, including Northern Territory; that although there was still a theoretical possibility of its being imposed in some states for some crimes, which was a survival of the colonial regime, the possibility was purely theoretical and that legislation was now to be prepared to provide for the severing of most Australia's remaining links with its colonial past.

165. Replying to questions raised under article 7 of the Covenant, the representative referred to the emphasis placed in the report on community attitudes in connection with corporal punishment but pointed out that the abolition of the punishment of whipping was currently under consideration in one of the two jurisdictions in Australia where it remained theoretically possible. He also indicated that there were ample instances of action being taken against police officers for misuse of authority.

166. In relation to article 8 of the Covenant, he stated that hard labour was subject in principle to the parliamentary and ministerial control exercised over any public servant, such as the Controller-General of Prisons and his staff. As to the possible imposition of the sentence of hard labour to convicted males only, he could not regard that as conflicting with article 3 of the Covenant, since it could hardly be argued that the ability of a State party to impose a sentence of that kind, was a civil or political right to be enjoyed equally by men and women in accordance with the Covenant.

167. As regards article 9 of the Covenant, the representative pointed out that in the case of undue delay in deciding on the lawfulness of the detention, the possibility was always there for obtaining a writ of habeas corpus. He reiterated the information in the report concerning the different approaches of the different Australian jurisdictions to the question of confinement of mentally-ill persons. All jurisdictions had, however, instituted stringent review mechanisms in order to ensure that only those genuinely suffering from mental illness were detained.

168. Replying to questions raised under article 12 of the Covenant, he stated that the persons at present entitled to reside on reserves were Aboriginals permitted to do so by the Director of Aboriginal and Islander Advancement and the Community Council who decided whether that was in the best interest of the applicant and was not detrimental to the best interests of other inhabitants or the reserve itself, and persons whose presence was required for the fulfilment of certain duties. Permits to visit a reserve were issued by the relevant community council. He also stated that all Australian jurisdictions recognized that the relationship between Aboriginals and the land was communal and not individual and, accordingly, if an individual breached the communal norm, the community had the right to expel him in accordance with existing legal procedures. Consultations were taking place between the Queensland Government and the Aboriginal and Islander communities on new legislation under which Aboriginal Community Councils would have enhanced rights to exercise control over freedom of movement to and from reserves and, in particular, over community members who offended community standards. He also informed the Committee that restrictions on entry to the Cocos and Norfolk Islands were necessary in order to protect the rights of small and isolated communities in accordance with paragraph 3 of article 12 of the Covenant.

169. With regard to article 14 of the Covenant, the representative stated that there had not been any case of the removal of a judge in the present century; that the function of juries was to be judges of fact in all criminal trials in superior courts; that they were composed of laymen selected from the general community and that they played a fundamental role in the Australian judicial system. On

the question of reversal of the onus of proof, he stated that, given the fact that the whole of Australian political and legal tradition was against it, a government would seek to introduce legislation in that sense only in very exceptional cases and that, nevertheless, he would draw the attention of the Ministerial Meeting on Human Rights to the Committee's concern about the matter. As to the question of interpretation, he explained that it was a potential problem only at the time of arrest since the diversity of languages spoken in Australia, the size of the country and the sparseness of the population in remote areas meant that the availability of an interpreter at the time of arrest could not be guaranteed; that interpreters travelled on circuit with a court when necessary, but the matter was not a simple one because material often had to be relayed through several interpreters before an accused person or a witness could be properly understood but that he would, however, bring the Committee's comments to the attention of his Government. Replying to other questions, he pointed out that, in most Australian jurisdictions, if a trial was not initiated, at least by the presentation of an indictment before the court to which the person had been committed for trial, the accused could apply for the striking out of the committal or for the entry of a verdict of not guilty; that in common law, evidence obtained by unlawful means could be admissible in a court but that what mattered was the weight attached to such evidence, which was entirely dependent on the exercise of judicial discretion. He also stated that penalties applicable under Aboriginal customary law, which themselves constituted criminal offences, were clearly unlawful, that there were not two criminal law systems but that other types of tribal punishment which formed part of Aboriginal customary law could be applied and it was those punishments which were usually at issue in questions of double jeopardy and that this was a matter of balancing conflicting interpretations of individual rights.

170. In relation to article 15 of the Covenant, the representative indicated that, to his knowledge, there was no retrospective legislation in Australia which could properly be labelled criminal, that if a penalty were reduced after conviction and sentence, the sentence imposed was expected to stand.

171. Replying to questions raised under article 18 of the Covenant, he stated that, throughout Australia, the right of a person to adopt and practise a religion of his choice or to adopt no religion was respected; that no restriction was imposed on the propagation or practice of atheistic or agnostic views and that exemption from military duties of all kinds could be granted to a person who had conscientious beliefs which did not allow him to engage in such services.

172. As regards article 19 of the Covenant, the representative explained that the Australian Broadcasting Tribunal had the functions of granting licenses to commercial broadcasting and television stations and of determining standards to be observed and the conditions on which advertising might be shown and that before granting a licence, the Tribunal had to hold a public inquiry into the grant; that the Broadcasting and Television Act contained stringent provisions with regard to the ownership of the information media and that the number of radio and television stations in which a person or company might have an interest was strictly limited, but that there were no equivalent laws with regard to the press; that appointments to the membership of the Australian Broadcasting Commission were closely scrutinized by interested members of the public and that there would be widespread and vocal criticism of appointments thought to be politically motivated.

173. Replying to questions raised under articles 20, 21 and 22 of the Covenant, the representative indicated that he had noted the comments of some members of the Committee on Australia's

reservation to article 20 and would draw those comments to the attention of relevant authorities. He stated that the criteria used in granting or refusing permission to hold public assemblies varied from jurisdiction to jurisdiction. He gave information on the relevant applicable provisions in some states as well as on the competent authorities to decide on the matter and stated that Commonwealth legislation did not deal with meetings in public places. He explained that "registered" clubs were accessible to all and that the word "registered" related to clubs which provided extensive entertainment and other facilities based on legalized gambling, which was subject to state registration and control; that Commonwealth and State Ministers in the Meeting on Human Rights were giving active consideration to questions of discrimination against women in relation to club membership. He had noted the views of Committee members on the questions of the "closed shop" in industry and would draw those views to the attention of authorities in Australia.

174. Commenting on questions raised under article 25 of the Covenant, the representative stated that it had not so far been compulsory for Aboriginals to enrol under the Commonwealth Electoral Act, under the Western Australian electoral laws or in South Australia where it was not compulsory for any person to enrol for state elections; that once enrolled, every person was required to vote at the Commonwealth and state elections; that an Aboriginal advisory body had recommended that the law should be changed to make enrolment compulsory; that the Commonwealth Government had committed itself to removing the optional enrolment provisions for Aboriginals, thus making it compulsory for Aboriginals to vote in Federal elections. He also informed the Committee that the Commonwealth and State Governments had agreed that Australian citizenship should in future be the appropriate nationality requirement for the franchise and that uniform legislation to give effect to that decision should be enacted by the Commonwealth and the states, but that no person currently enrolled as an elector should be disenfranchised . He indicated that the reason for the rule that civil servants should resign their offices if they wished to stand for election to the Commonwealth Parliament was the strict separation of the legislative and executive functions in the Australian system. He informed the Committee that the participation of Aboriginals in public life was facilitated by the National Aboriginal Conference; that the Aboriginal Development Commission was controlled solely by Aboriginals and that there were Aboriginal members of the various legislative bodies at the Commonwealth and state levels and that they were also represented on a variety of public bodies in Australia.

175. In connection with article 26 of the Covenant, the representative stated that while recognizing the force of alternative view expressed in the Committee, Australia believed that its interpretation of the second sentence of the article was more in keeping with the original intention of the framers of that provision. He also pointed out that Aboriginal Australians enjoyed the same civil and political rights as all other Australian citizens and, like them, Aboriginals could invoke the Commonwealth's Racial Discrimination Act if they considered themselves the victims of discriminatory treatment and that, in fact, they took advantage of the machinery for investigation and recourse provided by the Act.

176. As regards questions raised under article 27 of the Covenant, particularly those relating to the aboriginals, the representative referred to his replies under various articles of the Covenant and pointed out, from the outset, that his Government had taken a very active part in international fora dealing with the question of indigenous populations. He stated that the Australian Government realized that there were still a number of problems to be overcome and it acknowledged the

generally disadvantaged position of Aboriginal Australians and that it had, therefore, embarked on a series of special programmes designed to remedy particular disadvantages. Those programmes were formulated and put into effect only after consultations with Aboriginals, whose participation in the life of the country had significantly increased in recent years. Over the last decade, Aboriginals had been given the means of exercising real power in all matters affecting their lives. The programmes designed for Aboriginals were based on a number of key principles: Aboriginals must, for example, have the means of preserving their traditions, languages and customs, inter alia, through bi-cultural education, but were free, if they so wished, to integrate themselves into Australian society or to adopt whatever aspects of a western life style they pleased. The Australian Government recognized the Aboriginals' fundamental affinity with their land and consequently guaranteed them enjoyment of their rights to traditional lands, control of all mineral prospecting and development in a manner which protected sacred sites and encouraged states to make land available to Aboriginals, the essential principle of all plans in respect of Aboriginals being that of self-management. He than gave detailed information about the above-mentioned programmes as well as on the application of the key principles on which those programmes were based explaining the role and competence, inter alia, of the National Aboriginal Conference, the Aboriginal Development Commission and the National Aboriginal Education Committee, all of which were composed of Aboriginals, in promoting the needs and wishes of Aboriginals and in expressing Aboriginals opinions or deciding on appropriate policies to satisfy those needs and wishes. Referring to the special affinity which Aboriginals had with the land, which was an important factor underlying the Governments' land rights policies, he stated that whilst rights recognized in that connection differed from state to state the result was that Aboriginals, representing a little over 1 per cent of the total Australian population, now had various forms of legal title to some 10 per cent of the land mass of Australia. In his detailed account on the land rights of Aboriginals and the Governments' developing policy in that respect, he stated that after a prolonged period of consultation with various Aboriginal and Islander groups, the Queensland Government has decided to amend the Queensland Land Act and to establish what was known asa "deed of grant-in-trust", under which the land currently comprising Aboriginal and Islander reserves would henceforth be placed under the control of the elected Aboriginal and Islander Councils and that those Councils would have to be consulted before any mining right could be granted by the Queensland Government. Replying, finally, on the rights of minorities in general, he stressed the question of multi-culturalism and the policy adopted by the Australian Government over the past decade in encouraging ethnic communities to participate fully in the mainstream of Australian life. In this respect, he explained the role of the Institute of Multi-Cultural Affairs and the facilities made available to the various ethnic groups to preserve their cultural heritage and in developing, in the Australian community, an appreciation of the contributions of various cultures to the enrichment of the community and in promoting tolerance and understanding between different cultural groups and ethnic communities.

177. Responding to comments made with regard to Australia's criteria for selection of migrants and admission of refugees, he stated that the "white Australia policy" has died a natural death many years earlier; that Australia's current policy for migrant selection placed emphasis on criteria of two kinds: family migration and skills in demand in Australia and that applicants were not excluded on discriminatory grounds such as religion, colour, race or nationality. The admission of refugees on the other hand was based on a different set of criteria and depended principally on an application of the definition of "refugee" contained in the 1951 Convention relating to the Status of Refugees, as well as on other specific criteria, especially that of family reunion. He also informed the

Committee that special programmes were in operation in Australia to ensure that migrants and refugees were encouraged and had the means to participate fully in the mainstream of Australian life.

413. The Committee considered the second periodic report of Australia (CCPR/C/42/Add.2) at its 806th to 809th meetings, held on 5 and 6 April 1988 (CCPR/C/SR.806-809).

414. The report was introduced by the representative of the State party who reaffirmed his Government's support for the Committee's work and noted that the scrutiny of reports by the Committee and its dialogue with States parties had resulted in increased understanding by all parties of their obligations under the Covenant. The representative recalled that the implementation of the Covenant in Australia was significantly affected by the division of political and legal responsibilities between the Federal Government and the governments of the various Australian States and Territories, as provided by the Constitution, and that the implementation of a given article of the Covenant depended on the jurisdiction that had the constitutional power to enforce it. A small number of civil and political rights were protected by the Constitution while others were embodied in general legislation and common law. Legislation protecting certain specific human rights has been added at the federal level, such as the Racial Discrimination Act of 1975 and the Sex Discrimination Act of 1984, and four of the six states had adopted similar laws.

415. Reviewing developments since the consideration of Australia's initial report in October 1982, the representative pointed out that the former Human Rights Commission had been replaced, in December 1986, by the Human Rights and Equal Opportunity Commission, of which the International Covenant on Civil and Political Rights formed the basic charter, and that Australia had ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1983 and had enacted the Affirmative Action (Equal Opportunity for Women) Act in 1986. Legislation had also been introduced recently to allow ratification by Australia of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Australia also remained committed to the adoption of a second Optional Protocol to the Covenant outlawing capital punishment. Other relevant developments included the elaboration of guidelines based on the United Nations Standard Minimum Rules for the Treatment of Prisoners, the establishment of a constitutional commission to recommend desirable changes in the Constitution in the area of individual and democratic rights, initiatives to establish a data protection agency and to enact a Privacy Bill, and a variety of initiatives and proposals relating to the improvement of the status and condition of Aboriginals and Torres Strait Islanders, including, in particular, improving the position of Aboriginals in the criminal justice system. Efforts were also under way to ensure the continued improvement of the status of women through programmes that enabled them to exercise a real choice in their careers and life-styles, and to make access to government programmes broader and more equitable.

<u>Constitutional and legal framework within which the Covenant is implemented</u>

416. With reference to that issue, members of the Committee wished to receive information concerning the effectiveness of the ombudsman's powers in providing remedies or necessary legislative changes, the relationship between the Federal Court and the High Court, the circumstances under which appeals were permitted against the decisions of non-judicial persons and authorities, the status of the new Human Rights and Equal Opportunity Commission and its ability

to monitor compliance with the Covenant and to receive complaints from individuals, and the efforts under way to make the entire population aware of the rights guaranteed under the Covenant. Members also asked about the meaning of the statement in paragraph 53 of the report that, "prior to or without legislative implementation, some of the requirements of the Covenant may be implemented at an administrative level" and wondered whether all the rights guaranteed under the Covenant were available under State and federal law, notwithstanding the absence of legislation incorporating the Covenant or a bill of rights.

417. Further, members wished to know whether the fact that the Covenant had been annexed to the Human Rights and Equal Opportunity Commission Act meant that it had actually been incorporated into national law, whether that Commission was empowered to intervene in court proceedings, whether it had taken concrete measures to familiarize the judiciary with the guarantees provided under the Covenant, what typical complaints were received by the Commission and how it had dealt with them. They also asked on what grounds, other than lack of jurisdiction, the ombudsman could decline to investigate a complaint, whether the High Court could suspend the application of a law and had competence to interpret all parts of the Constitution, what type of instruction was provided to prison officials and police officers with regard to the rights contained in the Covenant and what steps had been taken by the federal Government to ensure the implementation of the Covenant in the Northern Territory. It was also asked whether the Constitutional Commission had responsibility for bringing State constitutions into line with the provisions of the Covenant, why a bill had been introduced to incorporate the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment into national law, when no attempt had been made to incorporate article 7 of the Covenant, why it was considered necessary, since Australia had withdrawn most of its reservations to the Covenant, to maintain the reservation to article 20 and why the advocacy of national or racial hatred was not punishable under the Racial Discrimination Act, and whether human rights information was provided in all Australian schools and as part of Aboriginal education programmes.

418. Members also observed that informing the media of the fact that Australia's report was before the Committee would have been a useful way to alert public opinion to the Committee's concern that the Covenant did not have the force of law in Australia. They recalled, in addition, that article 50 of the Covenant stipulated that its provisions extended to all parts of federal States without any limitations or exceptions.

419. Responding to questions raised by members of the Committee, the representative of the State party explained that the phrase relating to administrative implementation used in paragraph 53 of the report was intended only to convey that not all the rights in the Covenant needed to be implemented through legislation, since some of the requirements of the Covenant could be met in whole or in part through administrative measures, such as instructions issued by police authorities. Not all rights guaranteed by the Covenant were necessarily available through specific State or federal legislation but they were nevertheless fully protected. For example, freedom of expression was not specifically guaranteed by law but the only limitations on that right were those provided by law. The Government and its officials had no powers independent of the law by which they could act to affect adversely the interests of Australians. Prior to ratification of the Covenant, there had been extensive consultations between the Federal Government and State governments with a view to identifying any provisions in the law which were inconsistent with the Covenant, and action

which might be needed to ensure compliance with the Covenant. Where inconsistencies or obstacles had been perceived, laws or administrative practices had been changed or an appropriate reservation had been formulated.

420. Regarding the effectiveness of the ombudsman, the representative stated that the ombudsman's powers were recommendatory and his recommendations were not always followed. During the 1986/87 reporting year, the ombudsman had dealt with 3,708 written complaints and 12,107 oral complaints. About 25 per cent of the written complaints and 39 per cent of the oral complaints had been resolved substantially or partially in favour of the complainant. The decision of the ombudsman not to investigate a particular case could be based on the grounds that the complaint was frivolous or that the complainant had not had recourse to the appropriate remedies. Where a complaint could not otherwise be resolved, the ombudsman was empowered to submit a report to the Prime Minister and, ultimately, to Parliament. Also the ombudsman was an ex officio member of the Administrative Review Council, which was a high-level body established to advise the Attorney-General on administrative law issues.

421. The Federal Court was subordinate to the High Court, which had been set up under the Constitution and was at the apex of the Australian judicial system. Many of the decisions taken by non-judicial persons and authorities under Commonwealth law were subject to review by the Administrative Appeals Tribunal, which had broad powers in most cases. The Federal Court had jurisdiction to hear appeals on questions of law concerning any decision by the Tribunal. The High Court's role in respect of the Administrative Appeals Tribunal was limited to the determination of appeals from the Federal Court.

422. The Human Rights and Equal Opportunity Commission was a permanent, independent body established by federal law with broad statutory powers to investigate matters relating to human rights on its own initiative, a the request of the Attorney-General or on the basis of a complaint from an individual. The President of the Commission was a judge in the Federal Court. The other three members of the Commission - The Human Rights Commissioner, the Race Discrimination Commissioner and the Sex Discrimination Commissioner - were qualified lawyers and had broad experience in human rights and public administration. The Human Rights Commissioner generally dealt with the Federal and State governments at a very senior level and had the same rank as the secretary of a federal department. The Commission could inquire into any act or practice that might be inconsistent with or contrary to human rights. Its jurisdiction with respect to individual complaints covered seven international instruments, including the Covenant. There was not limit to the intervention of the Commission in court cases except that it had to have the consent of the judges involved. The Commission conducted education programmes in schools in conjunction with State education authorities as well as information programmes outside formal education structures that focussed on groups of particular concern, such as homeless children and migrant women, and programmes with other organizations on subjects such as racism in the place of work. Among its information activities, the Commission issued newsletters, published papers and reports and distributed posters and other materials. An intensive public education programme was carried out during Human Rights Week in Australia. Lastly, the Commission conducted conferences and seminars on subjects of particular concern where the law was deficient and the Covenant was especially important. For example, common law had a little to say regarding the rights of such minorities as the disabled, the mentally ill or children, and the Commission had tried to compensate

for the absence of a bill of rights by focussing on them

423. As to questions concerning the incorporation of the Covenant into Australian law, the representative pointed out that a whole range of remedies were utilized to implement the Covenant within the limits of the Australian system of government, to which the common-law background was fundamental. It was important not to approach reports from an over-theoretical standpoint. The Australian system, complex as it was, worked reasonably well, and respect for human rights in Australia was on a par with that in any other country. Australia had inherited a cultural difficulty with principles that were enshrined in lofty declaratory constitutions that might ultimately serve to restrict rights. The vitality of the constitutional debate in Australia had produced a dynamic system bringing minorities at the State and federal levels into close consultation and fostering great familiarity with the Covenant.

424. Responding to other questions, the representative noted that courts had the power to declare a law invalid and to grant specific remedies where appropriate. The primary forum for ensuring that the States agreed to proposed federal action, and took action themselves, was the Standing Committee of the Attorney-General, which held regular discussions concerning human rights. The exception relating to the judicial interpretation of laws, mentioned in paragraph 55 of the report, applied not only to the Northern Territory but to all States, the Northern Territory being treated as a State by the Federal Government. The Constitutional Commission was to report by 30 June 1988 on proposed amendments to the Constitution. The scope of its review did not extend to each State Constitution, but such constitutions were subject to the Federal Constitution. Furthermore, the Individual and Democratic Rights of the Committee had recommended that all existing constitutional guarantees should be made to apply to the States. That Committee had also recommended that certain rights, such as the right to vote and to due process of law, should be enshrined in the Constitution and that a referendum should be held to that end. The President of the Human Rights and Equal Opportunity Commission had given the education of judges the highest priority and had established a high-level committee whose sole function was to conduct courses and seminars for judges. The complaints lodge with the Commission covered the entire spectrum of the articles of the Covenant, with about one third relating to discrimination on grounds of sex or race. The reason for introducing legislation in relation to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, with which Australia already complied fully, was to give effect to the requirement of universal jurisdiction.

425. Finally, regarding Australia's reservation to article 20 of the Covenant, the Government had not decided to take action to remove it because Australia had difficulty with any restriction on freedom of speech. There were a number of areas, however, such as under the Human Rights and Equal Opportunity Act in 1986, where the Government could and did take legal action to proscribe incitement to racial or religious hatred.

Self-determination

426. In connection with that issue, members of the Committee wished to know Australia's position with regard to self-determination in general, and specifically with regard to the struggle for self-determination of the South African, Namibian and Palestinian people. They also asked what Australia's views and actions had been regard to the situation in New Caledonia. It was also asked

whether it would be possible to allow the Torres Strait Islanders, some of whom were apparently pressing for independence according to news reports, to express their views on self-determination in a referendum, as the people of the Cocos (Keeling) Islands had done.

427. In his reply, the representative of the State party said that his Government had actively advocated and voted for decolonization and for the right of Non-Self-Governing Territories to self-determination. Australia had been the administering Power for Papua New Guinea, Nauru and the Cocos (Keeling) Islands, and each of those Territories, in close co-operation with the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, of which Australia was a member, had been able to exercise the right to self-determination. Most recently, in 1984, the Cocos (Keeling) Islanders had opted for integration with Australia in an act of self-determination under United Nations supervision. Australia had also given vigorous support to Security Council resolution 435 (1978) on Namibian independence. Australia unequivocally rejected apartheid and had taken a number of specific steps, including various restrictions on contacts with South Africa and support for the imposition of mandatory sanctions, to bring pressure to bear on the South African authorities to dismantle that system. With regard to the Middle East, Australia believed that the security of all States in the region should be protected and that a resolution of the conflict in the territories occupied by Israel required recognition of the right of the Palestinians to self-determination, including their right to choose independence if they so desired.

428. Australia considered that the right of self-determination was not fully exercised by simply gaining independence after a colonial era. It interpreted self-determination as the matrix of civil, political and other rights required for the meaningful participation of citizens in the kind of decision-making that enabled them to have a say in their future. Self-determination included participation in free, fair and regular elections and the ability to occupy public office and enjoy freedom of speech and association. The Torres Strait Islands, unlike the Cocos (Keeling) Islands, which had been administered under a United Nations Trusteeship Agreement, had always formed part of Australia. The concerns of some Torres Strait Islanders relating to self-management and autonomy had already received attention and an inter-departmental committee had been set up by the Prime Minister to study whether those concerns could be addressed more appropriately. Australia's position with regard to New Caledonia was that the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples should play a role in the exercise of self-determination by all Non-Self-Governing Territories, and Australia had therefore supported the inclusion of New Caledonia in the list of such territories.

Non-discrimination and equality of the sexes

429. With reference to that issue, members of the Committee wished to receive information concerning the implications of the constitutional inability of the Federal Government to enact national legislation on all aspects on non-discrimination against women, the area in which such discrimination still existed in law and in practice, any plans to extend the Federal Affirmative Action (Equal Employment Opportunity for Women) Act 1986 to Aboriginal peoples and restrictions on the right of aliens as compared with those of citizens. It was also asked whether the 550 Aboriginal civil servants in Queensland were employed under conditions equal to those offered to non-

Aboriginals.

430. In his response, the representative of the State party said that the Federal Parliament had the power to give effect to international conventions and the implications of constitutional limitations on the powers of the Federal Parliament had not yet proved significant. The Federal Sex Discrimination Act allowed for some temporary exemptions from full compliance with its provisions in such areas as restricting the employment of women in the processing and handling of lead or in mining, but such exemptions were kept under regular review. There were also some exemptions of indefinite duration which related to differential entitlements to certain benefits, principally benefits available to widows but not widowers and benefits made available at an earlier age to women.

431. There were no plans to extend the Federal Affirmative Action Act of 1986 to Aboriginals, but each federal department and statutory authority was required under the Public Service Act, to produce an equal employment opportunity programme for women, immigrants, Aboriginals, islanders and the disabled. Aliens had no right to vote in elections to the Australian Federal and State parliaments or to stand for election, could not become members of the federal public service or the Defence Force, were not entitled to passports or to protection by Australian diplomatic representatives while overseas, had to have a resident return visa in order to re-enter the country and had no right to register any child born overseas as an Australian citizen by descent. Access by aliens to social security or federal medical benefits depended to some extent on residency requirements. In general, Aboriginals and islanders employed in the public service were entitled to the same benefits as other public servants.

Right to life

432. With regard to that issue, members of the Committee wished to receive information concerning article 6 of the Covenant, pursuant to the Committee's general comments Nos. 6 (16) and 14 (23), regulations on police use of firearms and complaints, if any, of violations of such regulations and infant mortality rates and life-expectancy rates for Aboriginals as compared with the rest of the Australian population. Members also wished to receive clarification of the apparent overlapping between Australian criminal law and Aboriginal customary law and the consequent exposure of Aboriginals to double jeopardy and asked about the outcome of the inquiry into the deaths in prison of 17 Aboriginals since 1980 by the Royal Commission on Aboriginal Deaths.

433. In his reply, the representative of the State party said that Australia regarded the nuclear non-proliferation regime as central to the preservation of international peace and security and was also committed to a comprehensive nuclear test ban as well as to comprehensive nuclear disarmament. His Government considered the world overarmed and supported the reduction of nuclear and conventional arsenals to levels consistent with legitimate defence needs. Australia's own military force structure were defensive in nature. As a member of the South Pacific Forum, the government had in 1985 joined in declaring the South Pacific a nuclear free zone and had signed and ratified the Treaty of Rarotonga.

434. Police officers were entitled to use reasonable force when making an arrest and, under the Australian Federal Police Act, might be justified in using a firearm in specific circumstances, such as self-defence, the defence of other persons threatened with serious violence and the apprehension

of fugitives. Any police officer who discharged a firearm was required to furnish a report and improper use of such arms was investigated and sanctioned under criminal law. Infant mortality rates for Aboriginals, while declining, were still nearly three times as high as for the non-Aboriginal population and life expectancy was 20 years less than for Australians. Maternal and infant health were important parts of the activities of the Department of Aboriginal Affairs. The Government's approach was based on improving the environmental conditions in which Aboriginals lived. Work had started on the preparation of a comprehensive Aboriginal and Torres Strait Islander health policy with the establishment of a working party, scheduled to report in early 1989.

435. Regarding the role of Aboriginal law, the representative said that it would be difficult to reconcile the two systems of law. For example, tribal law did not accord equal rights to women, whereas the promotion of women's rights was required by the Australian legal system and the international human rights instruments to which Australia was a party. The issue of customary law had originally been approached from the standpoint of the English common-law system, but an effort was now being made to devise a new approach, perhaps based on the "family law" model, which provided an alternative to standard adversarial proceedings. The question of double jeopardy did not arise as such, since Aboriginal customary law was not formally recognized. Australian courts sometimes imposed lesser sentences in cases where the offender had already been the object of tribal punishment, but they would not do so in the case of a serious crime such as murder. The Royal (Muirhead) Commission had been established in August 1987 to investigate Aboriginal deaths in prison and was scheduled to complete its work in December 1988. The Minister for Aboriginal Affairs and the Minister of Justice drew up a code of conduct, in September 1987, to protect Aboriginals in prison.

Liberty and security of person

436. With regard to that issue, members of the Committee wished to know what the maximum period of pre-trial detention was and how soon after arrest the person involved could contact his lawyer or have his family informed, under what circumstances solitary confinement was permitted, whether corporal punishment was permitted in private schools and within the family, whether the use of corporal punishment in schools had given rise to litigations or complaints and, if so, how such matters had been handled, whether a person detained against his will in a psychiatric institution could apply to an independent body to challenge his detention and whether there had been any legislative follow-up to the report of the Australian Law Reform Commission (No. 31) in respect of the interaction of Aboriginal laws and the general law. Members also asked the representative to comment on the retention of whipping in the criminal codes of certain States and Territories, in the light of the Committee's general comment No. 7 (16), and inquired whether a convicted person's sentence was automatically suspended upon appeal until it had been reconfirmed.

437. In his reply, the representative of the State party said that, generally, there was no statutory limit to pre-trial detention. Persons in police custody had to be presented before a magistrate as soon as was practicable - in the State of Victoria, the period of doing so was specified as six hours. It was up to the court to decide whether or not a person was to be kept in custody until his trial, but a person could apply for bail - and reapply if necessary - until he was convicted. Some jurisdictions also allowed the accused to apply for presentation of an indictment to permit an immediate trial. The sentence imposed by a court took effect as of the date of conviction. A relative, friend or lawyer

could normally be contacted immediately after arrest and a person could contact a lawyer as soon as practicable after being brought to a police station. Solitary confinement was permitted only in Queensland and Western Australia, where such confinement could be ordered for a maximum period of 72 hours by prison superintendents and up to 30 days by the Director of Prisons. Prisoners could be held in protective custody when at risk from other prisoners in all jurisdictions. Draft guidelines, based on the United Nations Standard Minimum Rules for the Treatment of Offenders, were currently under consideration. They would prohibit all cruel and inhuman or degrading punishment, including prolonged solitary confinement. Whipping, which had not been resorted to in practice since 1943, had now been dropped from Western Australian law - the last State where that form of punishment had still been on the books.

438. Australian legislation took conscious and deliberate account of the rights of the children as laid down in the Declaration of the Rights of the Child (General Assembly resolution 1386 (XIV) of 20 November 1959), as well as those provided for in the Covenant. Among those rights were the right to "special protection" and to protection from cruelty and abuse. Corporal punishment had been abolished in government schools in New South Wales, Victoria and the Australian Capital Territory and was being phased out in South Australia. Where parents specifically objected to it, corporal punishment could not be administered and excessive use of it could lead to disciplinary proceedings against the teacher involved or to actions in tort by the parents. However, the use of corporal punishment in schools had given rise to very little litigation, with most cases being resolved by negotiation. A national inquiry being conducted on the situation of homeless children indicated that various forms of abuse in the home were involved in the majority of cases. Corporal punishment both at school and in the home was matter of great concern and the cause of problems in society with which the country was not coping very well.

439. Persons forcibly detained in mental institutions could generally apply to the magistrate's court for release. All States provided for the right of appeal to an administrative body comprising mental health specialists, lawyers and lay persons, which a further right of appeal to a court on questions of law. Report No. 31 of the Law Reform Commission contained 38 recommendations, relating mainly to sensitive and complex administrative questions currently falling within the exclusive jurisdiction of State and Northern Territory governments. Federal State discussions were under way on the implications of each of the recommendations and it was generally agreed that no federal legislation should be enacted until those implications had been fully examined and the desire of the Aboriginal and Torres Strait Island communities for federal legislation - and their need for it - had been clearly established. In general, the Law Reform Commission had concluded that special measures for the recognition of Aboriginal customary laws would not be racially discriminatory and would not involved denial of equality before the law, provided such measures were reasonable responses to the special needs of the Aboriginal people, were generally accepted by them and did not deprive them of basic human rights. Particular rights were conferred only on Aboriginal persons who suffered the disadvantages or problems which justified such action and were not conferred on the Aboriginal people as a whole. An Aboriginal accused of committing a serious offence could be punished only under the law of the State of Territory in which he resided. However, for less serious offences, the recent practice of the courts had been to recognize customary law and to mitigate the sentence or impose no sentence in cases where an offender had earlier been tried under customary law.

Right to a fair trial and equality before the law

440. With reference to that issue, members of the Committee requested additional information on article 14 of the Covenant, pursuant to the Committee's general comment No. 13 (21). They also wished to know whether Parliament had ever adopted retrospective criminal legislation, whether administrative procedures were adequate to guarantee full compensation for miscarriages of justice and what limitations on the capacity of married women to deal with property were still in effect following enactment of the Married Person's Property Ordinance of 1986 in the Australian Capital Territory. Members also requested further information concerning Tasmanian statutory provisions relating to the presumption of innocence, the reasons for maintaining Australia's reservation to article 14 of the Covenant, the legal disabilities of children born out of wedlock, the absence of legislation guaranteeing the right to legal aid in the Territories of Christmas Island and the Cocos (Keeling) Islands, the controversy relating to the removal judges, the circumstances under which the burden of proof in a criminal trial might be shifted to the accused and the limitations on the rule against double jeopardy. They also asked whether any progress had been made with regard to the statutory right of an accused person to the assistance of an interpreter during trial, to what extent resort was had to imprisonment for inability to fulfil a contractual obligation and whether any affirmative action had been taken to ensure that judges were not drawn exclusively from the privileged section of society.

441. In his reply, the representative of the State party said that retrospective criminal law had never been enacted in any Australian jurisdiction and that administrative procedures fully guaranteed the provision of compensation for a miscarriage of justice. In New South Wales, a person convicted of an offence who considered that there had been a miscarriage of justice could apply under the Crimes Act either to the Governor or to the Supreme Court for an inquiry subsequent to conviction, which could result in the quashing of the conviction. While there was no explicit provisions as to compensation, in practice a petition for an ex gratia payment would be made. In Tasmania, the provision of compensation for a miscarriage of justice was guaranteed under the Costs in Criminal Cases Act 1976 and remedied might also be available for false imprisonment. There were no limitations on the capacity of married women to deal with property, either in the Australian Capital Territory or in the States, apart from restrictions contained in instruments executed before the current legislation came into force.

442. The presumption of innocence was a fundamental precept of the Australian system of justice and the prosecution in criminal trials had the traditional burden of proving guilt "beyond a reasonable doubt". The evidentiary burden of proof was shifted to the accused only under certain limited circumstances, for example, to establish the defence of provocation. It was the general rule that, if the accused produced sufficient evidence to raise the issue, the judge in a jury trial was required to put to the jury the question of whether a defence existed. The Tasmanian Law Reform Commission had suggested a number of procedural improvements in that regard in its report of July 1987. There was currently a vigorous debate in Parliamentary concerning legislation which sought either to reverse the presumption of innocence or to establish a different standard. All States except Western Australia and the Northen Territory had enacted equality of status legislation, under which all distinctions between children born in or out of wedlock had been eliminated. In Western Australia, various statutes had been amended to abolish existing disabilities that had affected children born our of wedlock. The provisions relating to children in the Family Law Act, as

amended by the Federal Parliament in 1987, concerning maintenance, custody, guardianship and access, applied to all children and to their parents, whether or not they were married, in New South Wales, Victoria, South Australia, Tasmania, the Australian Capital Territory, the Northern Territory and Norfolk Island. Elsewhere, the provisions applied only to children born of a marriage and to parties to a marriage. Judicial office was held in high respect in Australia and was open only to suitably qualified and experienced lawyers. The Australian political system drew a sharp line between the executive and the judiciary and the standards expected of judges were different from those expected of politicians. While there had been considerable controversy over the trial of the High Court Judge who had been convicted of acting improperly in relation to a social acquaintance, the removal of a judge was a very rare occurrence. The reason for maintaining Australia's reservation to article 14 of the Covenant was the requirement in paragraph 6 of that article for statutory compensation in cases of miscarriage of justice, whereas in Australia the procedures for granting compensation did not necessarily have a statutory basis. The compensation procedure for miscarriage of Justice related to situations where there had been judicial error, not to errors that might have been committed by a jury. Remedies available under State Debt Acts allowed for seizure of property for non-fulfilment of contractual obligations but not imprisonment. Where required, interpreters were made available in court in accordance with national guidelines. In the period covered by the report, there had been more appointments of women and minority ethnic groups, not only to superior courts but also to courts of summary jurisdiction. Recently, an Aboriginal woman had been appointed as a magistrate in Sydney.

Freedom of movement and expulsion of aliens

443. With reference to that issue, members of the Committee wished to receive information on the position of aliens in Australia, pursuant to the Committee's general comment No. 15 (27), and on the application of the conditions for refusal of a passport, including the number of such refusals. Members also wished to know whether appeals against deportation orders had suspensive effect and whether, in deporting an alien couple who had stayed beyond the authorized time-limit for their visit and who had had a child in Australia, the Government was not, in effect, requiring an Australian citizen - the child - to leave the country of his nationality.

444. In his reply, the representative of the State party explained that under Australian law any individual, whether or not he was a citizen, could bring an action in court to defend his legal interests. Similarly, an alien charged with an offence was in the same position as a citizen. The fact that a conviction might lead to deportation was not considered to be discriminatory. Australian law allowed an alien, lawfully within Australia but subject to deportation, to challenge that deportation in the Federal Court and to appeal to the High Court if granted leave. Under the passports Act of 1938, the Minister could refuse a passport, but his decision was appealable. No record of refused passports was maintained, but refusals were extremely rare and probably there had been none within the past five years. The courts could and did issue interim injunctions to prevent deportation until the relevant appeal was heard. Regarding the deportation of an alien couple with an Australian-born child, the representative said that Australia's non-discriminatory immigration policy, based on skills, employment in Australia and family ties, was subject to abuse, since aliens who gave birth to a child in Australia could invoke the child's citizenship as grounds for remaining in the country. However, the Human Rights and Equal Opportunity Commission was continuing to pursue the examination of the issue with the Government.

Right to privacy

445. With regard to that issue, members of the Committee wished to know what the term "prescribed authority", mentioned in the report meant, whether licensed commercial and inquiry agents were authorized to monitor personal conversation by means of a listening device, whether there had been any developments in Parliament with respect to draft legislation relating to privacy and data protection and why the recent attempt to simplify and unify the defamation laws had failed. Members also wished to know whether the Privacy Bill that had recently been introduced in Parliament would provide for the general protection of privacy, including regulation of data collection by private individuals and businesses as well as by government agencies, what specific remedies were available in cases of violation of the right to privacy and how the Statement of Principles of the Australian Press Council and the Code of Ethics affected the audio-visual media.

446. In responding, the representative of the State party explained that the Attorney-General was the "prescribed authority" in cases involving national security and a judge of the State Supreme Court was the authority in matters involving narcotic offences. Under federal law, it was an offence for commercial and inquiry agents to intercept telecommunications by the use of listening devices. The use of listening or recording devices to monitor or record personal conversations was a matter regulated by State law, he stated, and legal provisions varied from State to State except that, in general, a conversation could be recorded or monitored only by a person who was party to it and with the consent of the other party or parties. The Privacy Bill and related legislation were reintroduced in the House of Representatives in September 1987 and a Senate committee was also currently considering proposals relating to a national identification system, privacy legislation and data protection. On 29 September 1987, the Prime Minister had announced that the Government would not be proceeding with the Australian Card legislation but would go ahead with privacy legislation and proposals to establish a Data Protection Agency. It was very difficult to achieve uniformity in the area of defamation and the situation remained unsatisfactory in that respect.

447. The Privacy Bill was limited to federal matters and was not designed to regulate the collection of personal information by individuals and businesses. The right to privacy being a new area of jurisdiction, the relevant federal and State legislation was still in the process of being sorted out. The principles of the Australian Press Council were non-legal in nature and purely voluntary. Visual media, on the other hand, were governed by legal standards established by the Australian Broadcasting Tribunal. General remedies protecting the right to privacy included the right of access to records held by federal agencies, as provided for under the Freedom of Information Act, and the right of access to data protection agencies, as set forth in the Human Rights and Equal Opportunity Commission Act and the Privacy Bill.

Freedom of expression, prohibition of war propaganda and of advocacy of national, racial or religious hatred

448. With reference to those issues, members of the Committee wished to know whether the Government had taken any decision to prohibit, through legislation, the dissemination of racist propaganda and, if so, what provisions such legislation contained. Members also wished to receive additional information on the status and composition of the Australian Press Council and the

procedure for the renewal of broadcasting licences. They also wished to know about the Australian Broadcasting Corporation's policy of neutrality and asked whether it could be challenged before the Australian Broadcasting Tribunal or the courts.

449. In his reply, the representative of the State party said that his Government had some difficulty with any proposals that would restrict freedom of speech and had, accordingly, maintained a reservation to article 19 of the Covenant. The whole issue of restricting freedom of expression had been examined by the former Human Rights Commission and was under active consideration at the federal level. Applications for the renewal of broadcasting licences were considered at a public inquiry by the Australian Broadcasting Tribunal, which inquired, in particular, into the applicant's record with respect to the fair presentation of public issues. The Australian Broadcasting Corporations's policy of neutrality, which consisted of presenting opposing points of view, was protected by legislation and bolstered by tradition. The Corporation did not come under the jurisdiction of the Tribunal. The Australian Press Council was a voluntary body composed of managers of the leading newspapers and its role was to consider complaints from the public and to guard against offensive reporting.

Freedom of assembly and association

450. With reference to that issue, members of the Committee requested clarification of the legal situation on peaceful assembly in Australia and asked whether it was consistent with the Government's obligations under the Covenant. They also asked for an elaboration of the circumstances which led to the deregistration of the Builders Labourers' Federation and inquired whether there was nay judicial remedy in cases where an industrial union was deregistered and what measures had been taken to prevent abuse of laws relating to freedom of association.

451. In his reply, the representative of the State party explained that under common law the rights of peaceful assembly and freedom of association could be exercised, subject only to restrictions based on public order and public safety. Statutory provisions required the organizers of public assemblies to notify the public authorities of proposed assemblies and processions and to enable those authorities to object to or prohibit such assemblies in the interest of public order. The scope for judicial, and administrative review of such decisions varied from State to State. In certain respects, the laws of the States could be amended to bring them more closely into line with the Covenant. Regarding the deregistration of the Builders Labourers' Federation, the Australian Conciliation and Arbitration Commission had found that the Federation had, on numerous occasions, committed fundamental breaches of industrial agreements and of undertakings given to the Industrial Registrar, employers, the Minister of Employment and Industrial Relations and the Commission itself. Deregistration did not restrict freedom of association at all, since the position of trade unions even outside the industrial system - outside the Australian conciliation and arbitration system - was fully guaranteed under law. Deregistration simply removed the privilege of taking part in the arbitration system. It was always possible for actions to be challenged in the courts and, in the case of the Builders Labourers' Federation, several such challenges had in fact been made, all of them unsuccessfully. The Commonwealth Crimes Act had never been used against trade unions, even in extreme circumstances, and had not led to any infringement of rights.

Right to participate in public affairs

452. With reference to that issue, members of the Committee requested clarification of the measures taken that had enabled Australia to withdraw its reservation to article 25 (b) of the Covenant, as well as of the factors responsible for the form of weighted voting that was in effect in Australia. Members also wished to know what progress has been made in implementing the equal employment opportunities programmes required by the Public Service Act and what the position was with respect to equal employment opportunity in the public service at the State level.

453. In his reply, the representative of the State party explained that no particular measure had been taken to make the withdrawal of the reservation possible and that its removal had followed a review of all the reservations and declarations made by Australia and consultations with the governments of the States and the Northern Territory. The Government had observed that the withdrawal of the interpretative declaration would not impose any additional international obligations on Australia and considered that its retention would have been undesirable, since it might have suggested that Australia did not give its unqualified support to the important principles embodied in article 25 (b). It was the policy of the Australian Government to favour the one-vote-one-value system and, despite continuing controversy over the issue, there was a clear move towards that standard throughout the electoral system. The Attorney-General was considering a referendum on the subject during the current year. The origin of the existing system, which also took various factors other than population into account in determining electoral roles, was probably geographical, reflecting the fact that Australia was an enormous country where some very large electoral districts were sparsely populated . All federal departments had affirmative action programmes to achieve equal employment opportunity and the greatest progress to date had been made with respect to the advancement of women, Aboriginals and Torres Strait Islanders. The States had not laid down similar requirements in respect of their own public services departments.

Rights of minorities

454. With regard to that issue, members of the Committee wished to receive additional information concerning affirmative action measures adopted in the economic and cultural spheres in favour of aboriginals living both inside and outside Aboriginal communities and concerning the reasons for the removal from section 51 (XXVI) of the Constitution of the clause referring to the Aboriginal race. Members also wished to know whether the Government had any plans to establish an electoral Aboriginal commission and to address the issue of Aboriginal land rights, what percentage of the total budget had been allocated to the Ministry of Aboriginal Affairs, whether Aboriginals had a language of their own and if any measures had been taken to promote its teaching and what kind of system had replaced the earlier arrangements for the care of Aboriginal children which had been characterized as “excessive intervention” by governments. One member, who was of the view that article 27 of the Covenant had never really been meant to cover indigenous peoples, but rather the religious and ethnic minorities of the kind found in European countries, wished to know Australia’s views concerning the need for a separate convention covering the rights of autochthonous peoples.

455. In his response, the representative of the State party said that successive federal governments had taken special measures to accelerate access to services for Aboriginals and Torres Strait Islanders and to provide the basis for further economic, social and legal advancement. The aim was to build a more secure future for those people and to provide not only a solid foundation for future achievement, but also choice of options not previously available. Significant improvements had been

made and increased assistance had been provided in such areas as health and legal services, education, employment and enterprise development, housing, land rights and the protection of cultural heritage. Despite such achievements, much remained to be done and many Aboriginal and Island people still lived in unsatisfactory conditions. Section 51 (XXVI) of the Constitution had provided, before it was amended in 1967, that Parliament could make laws with respect to the people of any race other than the Aboriginal race. Aboriginals and Islanders had been specifically excluded since they were considered to fall within the jurisdiction of the individual States. The 1967 amendment had removed that discriminatory provision and had enabled the Commonwealth Parliament to make special laws for those groups, including the establishment of a broad range of assistance programmes. The Federal Government's plans to establish an elected Aboriginal and Torres Strait Islander Commission, as well as it policy with respect to Aboriginal land rights, had been set out in a statement delivered to Parliament on 10 December 1987 by the Minister for Aboriginal Affairs. Initial consultations with the groups concerned indicated general support for the principle of establishing such a commission as well as a desire for additional information on key issues. A series of follow-up meetings were to be held as soon as possible with a view to receiving further feedback regarding those issues.

456. The Ministry of Aboriginal Affairs had been allocated some $A 394 million in the 1987/88 budget, to be divided among a wide range of legal, social and cultural programmes. There were several hundred Aboriginal dialects, and the Australian Institute for Aboriginal Studies had programmes to preserve them and teach them in the schools. It was now acknowledged that the public policy regarding the care of Aboriginal children, particularly during the post-war period, had been a serious mistake. The practice of taking Aboriginal children away from their parents and placing them in foster homes or institutions had been extremely offensive to Aboriginal and Island communities. The erroneous and paternalistic view on which that practice had been based had been replaced by the recognition that Aboriginal people should be treated like anyone else.

457. Regarding the need for a separate convention applying to Aboriginals, the representative said that Australia had from the outset actively supported the Working Group on Indigenous Populations, which was drafting principles and minimum international standards applicable to indigenous populations. The Working Group was making a very useful contribution by focussing on those aspects that were distinctly applicable to indigenous populations and taking care not to undercut the existing framework. Australia had also been closely involved in the negotiations within the Sub-Commission on Prevention of Discrimination and Protection of Minorities relating to the drafting of a declaration on the rights of minorities. There could be no question, however, of the Covenant's central importance.

General observations

458. Members of the Committee expressed appreciation to the delegation of Australia, noting that the answers to the Committee's questions had been frank and complete and that the Committee's dialogue with the delegation has been satisfactory from every point of view. Several members expressed their great appreciation for the vigour with which the Human Rights and Equal Opportunity Commission was carrying out its mandate. The Committee felt that the creation of institutions such as the Commission could also prove invaluable to other countries in their efforts to promote equality of opportunity for disadvantaged and minority groups. The Committee noted

that the situation of the Aboriginal people in Australia continued to present a real problem and welcomed the fact that the Government had frankly acknowledged the persistence of many difficulties in that regard and was endeavouring to deal with them.

459. The representative of the State party said that his delegation has found the proceedings instructive, useful and fruitful and assured the Committee that its comments, which would provide a new element in an already lively debate in his country on how best to protect human rights, would be brought to the attention of the Australian authorities. Australia was aware that there was still room for improvement in its treatment of human rights, but the representative believed that his country's record was on a par with that of any other country in the world.

460. In concluding the consideration of the second periodic report of Australia, the Chairman once again thanked the delegation for engaging in an extremely constructive dialogue with the Committee. The ability and willingness of each member of the Australian delegation to respond to the many questions that had been raised was particularly appreciated.

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498. The Committee examined the third and fourth periodic reports of Australia (CCPR/C/AUS/98/3 and 4) at its 1955th, 1957th and 1958th meetings (CCPR/C/SR.1955, 1957 and 1958), held on 20 and 21 July 2000. At its 1967th meeting, on 28 July 2000, the Committee adopted the following concluding observations.

1. Introduction

499. The Committee appreciates the quality of the reports of Australia, which conformed to the Committee's guidelines for the preparation of States parties' reports and provided a comprehensive view of such measures as have been adopted by Australia to implement the Covenant in all parts of the country. The Committee also appreciated the extensive additional oral and written information provided by the State party delegation during the examination of the report. Furthermore, the Committee expresses appreciation for the answers to its oral and written questions and for the publication and wide dissemination of the report by the State party.

500. The Committee regrets the long delay in the submission of the third report, which was received by the Committee 10 years after the examination of the second periodic report of the State party.

501. The Committee expresses its appreciation for the contribution of non-governmental organizations and statutory agencies to its work.

2. Positive aspects

502. The Committee welcomes the accession of the State party to the Optional Protocol to the Covenant in 1991, thereby recognizing the competence of the Committee to consider communications from individuals within its territory and subject to its jurisdiction. It welcomes the action taken by the State party to implement the Views of the Committee in the case of communication No. 488/1992 (Toonen v. Australia) by enacting the necessary legislation at the federal level.

503. The Committee welcomes the enactment of anti-discrimination legislation in all jurisdictions of the State party, including legislation to assist disabled persons.

504. The Committee welcomes the establishment of the Aboriginal and Torres Strait Islander Social Justice Commissioner in 1993.

505. The Committee notes with satisfaction that the status of women in Australian society has improved considerably during the reporting period, particularly in public service, in the general workforce and in academic enrolment, although equality has yet to be achieved in many sectors. The Committee welcomes the initiatives to make available to women facilities to ensure their equal access to legal services, including in rural areas, and the strengthening of the Sex Discrimination Act, 1984.

3. Principal subjects of concern and recommendations

506. With respect to article 1 of the Covenant, the Committee takes note of the explanation given by the delegation that rather than the term "self-determination", the Government of the State party prefers terms such as "self-management" and "self-empowerment" to express domestically the principle of indigenous peoples' exercising meaningful control over their affairs. The Committee is concerned that sufficient action has not been taken in that regard.

507. The State party should take the necessary steps in order to secure for the indigenous inhabitants a stronger role in decision-making over their traditional lands and natural resources (art. 1, para. 2).

508. The Committee is concerned, despite positive developments towards recognizing the land rights of the Aboriginals and Torres Strait Islanders through judicial decisions (Mabo, 1992; Wik, 1996) and enactment of the Native Title Act of 1993, as well as actual demarcation of considerable areas of land, that in many areas native title rights and interests remain unresolved and that the Native Title Amendments of 1998 in some respects limit the rights of indigenous persons and communities, in particular in the field of effective participation in all matters affecting land ownership and use, and affects their interests in native title lands, particularly pastoral lands.

509. The Committee recommends that the State party take further steps in order to secure the rights of its indigenous population under article 27 of the Covenant. The high level of exclusion and poverty facing indigenous persons is indicative of the urgent nature of these concerns. In particular, the Committee recommends that the necessary steps be taken to restore and protect the titles and interests of indigenous persons in their native lands, including by considering amending anew the Native Title Act, taking into account these concerns.

510. The Committee expresses its concern that securing continuation and sustainability of traditional forms of economy of indigenous minorities (hunting, fishing and gathering), and protection of sites of religious or cultural significance for such minorities, which must be protected under article 27, are not always a major factor in determining land use.

511. The Committee recommends that in the finalization of the pending bill intended to replace the Aboriginal and Torres Strait Islander Heritage Protection Act (1984), the State party should give sufficient weight to the values described above.

512. While noting the efforts by the State party to address the tragedies resulting from the previous policy of removing indigenous children from their families, the Committee remains concerned about the continuing effects of this policy.

513. The Committee recommends that the State party intensify these efforts so that the victims themselves and their families will consider that they have been afforded a proper remedy (arts 2, 17 and 24).

514. The Committee is concerned that in the absence of a constitutional Bill of Rights, or a constitutional provision giving effect to the Covenant, there remain lacunae in the protection of

Covenant rights in the Australian legal system. There are still areas in which the domestic legal system does not provide an effective remedy to persons whose rights under the Covenant have been violated.

515. The State party should take measures to give effect to all Covenant rights and freedoms and to ensure that all persons whose Covenant rights and freedoms have been violated have an effective remedy (art. 2).

516. While noting the explanation by the delegation that political negotiations between the Commonwealth Government and the governments of states and territories take place in cases in which the latter have adopted legislation or policies that may involve a violation of Covenant rights, the Committee stresses that such negotiations cannot relieve the State party of its obligation to respect and ensure Covenant rights in all parts of its territory without any limitations or exceptions (art. 50).

517. The Committee considers that political arrangements between the Commonwealth Government and the governments of states or territories may not condone restrictions on Covenant rights that are not permitted under the Covenant.

518. The Committee is concerned by the government bill in which it would be stated, contrary to a judicial decision, that ratification of human rights treaties does not create legitimate expectations that government officials will use their discretion in a manner that is consistent with those treaties.

519. The Committee considers that enactment of such a bill would be incompatible with the State party's obligations under article 2 of the Covenant and it urges the Government to withdraw the bill.

520. The Committee is concerned over the approach of the State party to the Committee's Views in Communication No. 560/1993 (A. v. Australia). Rejecting the Committee's interpretation of the Covenant when it does not correspond with the interpretation presented by the State party in its submissions to the Committee undermines the State party's recognition of the Committee's competence under the Optional Protocol to consider communications.

521. The Committee recommends that the State party reconsider its interpretation with a view to achieving full implementation of the Committee's Views.

522. Legislation regarding mandatory imprisonment in Western Australia and the Northern Territory, which leads in many cases to imposition of punishments that are disproportionate to the seriousness of the crimes committed and would seem to be inconsistent with the strategies adopted by the State party to reduce the over-representation of indigenous persons in the criminal justice system, raises serious issues of compliance with various articles of the Covenant.

523. The State party is urged to reassess the legislation regarding mandatory imprisonment so as to ensure that all Covenant rights are respected.

524. The Committee notes the recent review within Parliament of the State party's refugee and humanitarian immigration policies and that the Minister for Immigration and Multicultural Affairs

has issued guidelines for referral to him of cases in which questions regarding the State party's compliance with the Covenant may arise.

525. The Committee is of the opinion that the duty to comply with Covenant obligations should be secured in domestic law. It recommends that persons who claim that their rights have been violated should have an effective remedy under that law.

526. The Committee considers that the mandatory detention under the Migration Act of "unlawful non-citizens", including asylum-seekers, raises questions of compliance with article 9, paragraph 1, of the Covenant, which provides that no person shall be subjected to arbitrary detention. The Committee is concerned at the State party's policy, in this context of mandatory detention, of not informing the detainees of their right to seek legal advice and of not allowing access of non-governmental human rights organizations to the detainees in order to inform them of this right.

527. The Committee urges the State party to reconsider its policy of mandatory detention of "unlawful non-citizens" with a view to instituting alternative mechanisms of maintaining an orderly immigration process. The Committee recommends that the State party inform all detainees of their legal rights, including their right to seek legal counsel.

4. Dissemination of information about the Covenant (art. 2)

528. The Committee requests the fifth periodic report to be submitted by 31 July 2005. It requests that the present concluding observations and the next periodic report be widely disseminated among the public, including civil society and non-governmental organizations operating in the State party.