

AUSTRALIA

CCPR

RESERVATIONS AND DECLARATIONS

(Unless otherwise indicated, the reservations and declarations were made upon ratification, accession or succession)

Reservations:

Article 10

"In relation to paragraph 2 (a) the principle of segregation is accepted as an objective to be achieved progressively. In relation to paragraph 2 (b) and 3 (second sentence) the obligation to segregate is accepted only to the extent that such segregation is considered by the responsible authorities to be beneficial to the juveniles or adults concerned".

Article 14

"Australia makes the reservation that the provision of compensation for miscarriage of justice in the circumstances contemplated in paragraph 6 of article 14 may be by administrative procedures rather than pursuant to specific legal provision."

Article 20

"Australia interprets the rights provided for by articles 19, 21 and 22 as consistent with article 20; accordingly, the Commonwealth and the constituent States, having legislated with respect to the subject matter of the article in matters of practical concern in the interest of public order (ordre public), the right is reserved not to introduce any further legislative provision on these matters."

Declaration:

"Australia has a federal constitutional system in which legislative, executive and judicial powers are shared or distributed between the Commonwealth and the constituent States. The implementation of the treaty throughout Australia will be effected by the Commonwealth, State and Territory authorities having regard to their respective constitutional powers and arrangements concerning their exercise."

Note

By a communication received on 6 November 1984, the Government of Australia notified the Secretary-General of its decision to withdraw the reservations and declarations made upon ratification with regard to articles 2 and 50, 10, 14, 17, 19, 20, 25. For the text of the reservations and declarations, see United Nations, Treaty Series, vol. 1197, p. 411.

[Ed. note: as follows:

Article 2 and 50

"Australia advises that, the people having united as one people in a Federal Commonwealth under the Crown, it has a federal constitutional system. It accepts that the provisions of the Covenant extended to all parts of Australia as a federal State without any limitations or exceptions. It enters a general reservation that article 2, paragraphs 2 and 3, and article 50 shall be given effect consistently with and subject to the provisions in article 2, paragraph 2.

"Under article 2, paragraph 2, steps to adopt measures necessary to give effect to the rights recognized in the Covenant are to be taken in accordance with each State Party's Constitutional processes which, in the case of Australia, are the processes of a federation in which legislative, executive and judicial powers to give effect to the rights recognised in the Covenant are distributed among the federal (Commonwealth) authorities and the authorities of the constituent States.

"In particular, in relation to the Australian States the implementation of those provisions of the Covenant over whose subject matter the federal authorities exercise legislative, executive and judicial jurisdiction will be a matter for those authorities; and the implementation of those provisions of the Covenant over whose subject matter the authorities of the constituent States exercise legislative, executive and judicial jurisdiction will be a matter for those authorities; and where a provision has both federal and State aspects, its implementation will accordingly be a matter for the respective constitutionally appropriate authorities (for the purpose of implementation, the Northern Territory will be regarded as a constituent State).

"To this end, the Australian Government has been in consultation with the responsible State and Territory Ministers with the object of developing co-operative arrangements to co-ordinate and facilitate the implementation of the Covenant".

Article 10

"Australia accepts the principle stated in paragraph 1 of article 10 and the general principles of the other paragraphs of that article, but makes the reservation that these and other provisions of the Covenant are without prejudice to laws and lawful arrangements, of the type now in force in Australia, for the preservation of custodial discipline in penal establishments. In relation to paragraph 2 (a) the principle of segregation is accepted as an objective to be achieved progressively. In relation to paragraphs 2 (b) and 3 (second sentence) the obligation to segregate is accepted only to the extent that such segregation is considered by the responsible authorities to be beneficial to the juveniles or adults concerned".

Article 14

"Australia accepts paragraph 3 (b) on the understanding that the reference to adequate facilities does not require provision to prisoners of all the facilities available to a prisoner's legal representative.

"Australia accepts the requirement in paragraph 3 (d) that everyone is entitled to be tried in his presence, but reserves the right to exclude an accused person where his conduct makes it impossible for the trial to proceed.

"Australia interprets paragraph 3 (d) of article 14 as consistent with the operation of schemes of legal assistance in which the person assisted is required to make a contribution towards the cost of the defence related to his capacity to pay and determined according to law, or in which assistance is granted in respect of other than indictable offences only after having regard to all relevant matters.

"Australia makes the reservation that the provision of compensation for miscarriage of justice in the circumstances contemplated in paragraph 6 of article 14 may be by administrative procedures rather than pursuant to specific legal provision".

Article 17

"Australia accepts the principles stated in article 17 without prejudice to the right to enact and administer laws which, insofar as they authorise action which impinges on a person's privacy, family, home or correspondence, are necessary in a democratic society in the interests of national security, public safety, the economic well-being of the country, the protection of public health or morals or the protection of the rights and freedoms of others".

Article 19

"Australia interprets paragraph 2 of article 19 as being compatible with the regulation of radio and television broadcasting in the public interest with the object of providing the best possible broadcasting services to the Australian people".

Article 20

"Australia interprets the rights provided for by articles 19, 21 and 22 as consistent with article 20; accordingly, the Commonwealth and the constituent States, having legislated with respect to the subject matter of the article in matters of practical concern in the interests of public order (ordre public), the right is reserved not to introduce any further legislative provision on these matters."

Article 25

"The reference in paragraph (b) of article 25 to "universal and equal suffrage" is accepted without prejudice to law which provide that factors such as regional interests may be taken into account in defining electoral divisions, or which establish franchises for municipal and other local government elections related to the sources of revenue and the functions of such government".

Convicted Persons

"Australia declares that laws now in force in Australia relating to the rights of persons who have been convicted of serious criminal offences are generally consistent with the requirements of articles 14, 18, 19, 25 and 26 and reserves the right not to seek amendment of such laws".

Discrimination and Distinction

"The provisions of articles 2 (1) and 24 (1), 25 and 26 relating to discrimination and distinction between persons shall be without prejudice to laws designed to achieve for the members of some class or classes of persons equal enjoyment of the rights defined in the Covenant. Australia accepts 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".]

(Note 14, Chapter IV.4, Multilateral Treaties Deposited with the Secretary-General)

OBJECTIONS MADE TO STATE PARTY'S RESERVATIONS AND DECLARATIONS

Netherlands, 17 September 1981

"I. Reservation by Australia regarding articles 2 and 50

The reservation that article 2, paragraphs 2 and 3, and article 50 shall be given effect consistently with and subject to the provisions in article 2, paragraph 2, is acceptable to the Kingdom on the understanding that it will in no way impair Australia's basic obligation under international law, as laid down in article 2, paragraph 1, to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the International Covenant on Civil and Political Rights.

II. Reservation by Australia regarding article 10

The Kingdom is not able to evaluate the implications of the first part of the reservation regarding article 10 on its merits, since Australia has given no further explanation on the laws and lawful arrangements, as referred to in the text of the reservation. In expectation of further clarification by Australia, the Kingdom for the present reserves the right to raise objection to the reservation

at a later stage.

III. Reservation by Australia regarding 'Convicted Persons'

The Kingdom finds it difficult, for the same reasons as mentioned in its commentary on the reservation regarding article 10, to accept the declaration by Australia that it reserves the right not to seek amendment of laws now in force in Australia relating to the rights of persons who have been convicted of serious criminal offences. The Kingdom expresses the hope it will be possible to gain a more detailed insight in the laws now in force in Australia, in order to facilitate a definitive opinion on the extent of this reservation."

OBJECTIONS MADE TO OTHER STATES PARTIES RESERVATIONS AND DECLARATIONS

(Ed. Note: for the text targeted by the following objections, see the Reservations and Declarations of the State which is the subject of the objection)

18 September 2007

With regard to the reservation made by Maldives upon accession :

"The Government of Australia considers that the reservation with respect to article 18 of the Covenant is a reservation incompatible with the object and purpose of the Covenant.

The Government of the Australia recalls that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty is not permitted.

It is in the common interest of States that treaties to which they have chosen to become party are respected, as to their object and purpose, by all parties and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

Furthermore, the Government of Australia considers that the Republic of Maldives, through this reservation, is purporting to make the application of the International Covenant on Civil and Political Rights subject to the provisions of constitutional law in force in the Republic of Maldives. As a result, it is unclear to what extent the Republic of Maldives considers itself bound by the obligations of the Covenant and therefore raises concerns as to the commitment of the Republic of Maldives to the object and purpose of the Covenant.

The Government of Australia considers that the reservation with respect to article 18 of the Covenant is subject to the general principle of treaty interpretation, pursuant to Article 27 of the Vienna Convention on the Law of Treaties, according to which a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.

Further, the Government of Australia recalls that according to article 4 (2) of the Covenant, no derogation of article 18 is permitted.

For the above reasons, the Government of Australia objects to the aforesaid reservation made by the Republic of Maldives to the International Covenant on Civil and Political Rights and expresses the hope that the Republic of Maldives will soon be able to withdraw its reservation in light of the ongoing process of a revision of the Maldivian Constitution.

This objection shall not preclude the entry into force of the Covenant between Australia and the Republic of Maldives.”

28 June 2011

With regard to the reservations made by Pakistan upon ratification:

“The Government of Australia has examined the reservation made by The Islamic Republic of Pakistan to the International Covenant on Civil and Political Rights and now hereby objects to the same for and on behalf of Australia:

The Government of Australia considers that the reservations by the Islamic Republic of Pakistan are incompatible with the object and purpose of the International Covenant on Civil and Political Rights (Covenant).

The Government of Australia recalls that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty is not permitted.

It is in the common interest of States that treaties to which they have chosen to become party are respected, as to their object and purpose, by all parties and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

Furthermore, the Government of Australia considers that The Islamic Republic of Pakistan, through its reservations, is purporting to make the application of the Covenant subject to the provisions of general domestic law in force in The Islamic Republic of Pakistan. As a result, it is unclear to what extent The Islamic Republic of Pakistan considers itself bound by the obligations of the Covenant and therefore raises concerns as to the commitment of The Islamic Republic of Pakistan to the object and purpose of the Covenant.

The Government of Australia considers that the reservations to the Covenant are subject to the general principle of treaty interpretation, pursuant to Article 27 of the Vienna Convention of the Law of Treaties, according to which a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.

Further, the Government of Australia recalls that according to article 4 (2) of the Covenant, no derogation of article 18 is permitted.

For the above reasons, the Government of Australia objects to the aforesaid reservations made by The Islamic Republic of Pakistan to the Covenant and expresses the hope that the Islamic Republic of Pakistan will withdraw its reservations.

This objection shall not preclude the entry into force of the Covenant between Australia and The Islamic Republic of Pakistan.”

Note

The reservation was lodged with the Secretary-General on 4 December 2006 by Bahrain, following its accession to the Covenant on 20 September 2006.

In keeping with the depositary practice followed in similar cases, the Secretary-General proposed to receive the reservation in question for deposit in the absence of any objection on the part of any of the Contracting States, either to the deposit itself or to the procedure envisaged, within a period of 12 months from the date of the present depositary notification. In the absence of any such objection, the above reservation would be accepted in deposit upon the expiration of the above-stipulated 12 month period, that is on 28 December 2007.

In view of the below objections, the Secretary-General did not accept the reservation made by Bahrain in deposit. The Secretary-General received the following objections on the dates indicated hereinafter:

...

Australia (18 September 2007):

"The Government of Australia has examined the reservation made by the Kingdom of Bahrain to the International Covenant on Civil and Political Rights. As the reservations were made after the accession of the Kingdom of Bahrain to the Covenant, the Government of Australia considers that the reservations were late and therefore inconsistent with article 19 of the Vienna Convention on the Law of Treaties.

The Government of Australia considers that the reservation with respect to articles 3, 18 and 23 of the Covenant is a reservation incompatible with the object and purpose of the Covenant. The Government of Australia recalls that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty is not permitted.

It is in the common interest of States that treaties to which they have chosen to become party are respected, as to their object and purpose, by all parties and that States are prepared to undertake

any legislative changes necessary to comply with their obligations under the treaties.

The Government of Australia considers that the Kingdom of Bahrain is, through this reservation, purporting to make the application of the International Covenant on Civil and Political Rights subject to Islamic Shariah law. As a result, it is unclear to what extent the Kingdom of Bahrain considers itself bound by the obligations of the Covenant and therefore raises concerns as to the commitment of the Kingdom of Bahrain to the object and purpose of the Covenant.

The Government of Australia recalls the general principle of treaty interpretation, codified in the Vienna Convention on the Law of Treaties, according to which a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.

Further, as regards the reservation with respect to article 18, the Government of Australia recalls that according to article 4 (2) of the Covenant, no derogation of article 18 is permitted.

The Government of Australia objects to all of the reservations made by the Kingdom of Bahrain as they were made after accession, and specifically objects to the content of the reservation on article 3, 18 and 23 made by the Kingdom of Bahrain to the International Covenant on Civil and Political Rights.

This objection shall not preclude the entry into force of the Covenant between Australia and the Kingdom of Bahrain."

...

(Note 15, Chapter IV.4, Multilateral Treaties Deposited with the Secretary-General)

DECLARATION RE: ARTICLE 41

28 January 1993

"The Government of Australia declares that it recognizes, for and on behalf of Australia, the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the aforesaid Convention.