



Economic and Social Council

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Committee on Economic, Social and Cultural Rights Sixty-first session

Summary record of the 14th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 30 May 2017, at 3 p.m.

Chair: Mr. Kedzia (Vice-Chair)

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The meeting was called to order at 3 p.m.

Consideration of reports

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant

Fifth periodic report of Australia (E/C.12/AUS/5; E/C.12/AUS/Q/5 and Add.1)

1. *At the invitation of the Chair, the delegation of Australia took places at the Committee table.*

2. **Mr. Quinn** (Australia) said that Australia was a culturally diverse nation, embracing both the Aboriginal and Torres Strait Islander peoples, who embodied the oldest continuous living culture in the world, and the country's more recent migrants and refugees, from over 300 different nationalities of origin. It had a proud tradition of positive engagement with international human rights mechanisms, which was reflected in its open invitation to the special procedures of the Human Rights Council and its inaugural candidacy to the Council. Following the universal periodic review of Australia in 2015, the Government had established a standing national human rights mechanism to consider the recommendations that had been made. Responsibility for implementing the obligations enshrined in the human rights treaties to which Australia was a party was shared between the federal, state and territory governments.

3. While the majority of the country's citizens enjoyed a high standard of living, challenges remained in a number of areas, particularly with respect to indigenous Australians. Progress was being made towards the targets set under the Closing the Gap initiative, aimed at reducing disadvantage, but it was slow; efforts would continue in that regard. During the previous financial year, over half of federal expenditure had gone towards social security, health and welfare programmes and the federal, state and territory governments had provided 43 billion Australian dollars (\$) in funding for schools. The education system was based on a common national curriculum that met the needs of all students, irrespective of their background, situation or location.

4. The jobactive employment service, in place since 2015, had provided 25,000 job placements for refugee jobseekers and more than 100,000 for jobseekers from culturally and linguistically diverse backgrounds. The Government also allocated \$A 800 million annually to the Disability Employment Service programme and had committed over \$A 854 million over four years to the Youth Employment Package. From July 2018, it would invest \$A 263 million in the national expansion of the ParentsNext programme to help parents with young children prepare for employment.

5. As part of the Government's long-standing commitment to gender equality, it had withdrawn one of its reservations to the Convention on the Elimination of All Forms of Discrimination against Women and had lifted gender restrictions from all roles in the Australian Defence Force. Women now occupied 41 per cent of positions on Government boards. It also promoted gender equality around the world and aimed to ensure that 80 per cent of its overseas aid investments effectively addressed gender equality, irrespective of their principal objective. It had increased its humanitarian funding by 18 per cent to \$A 400 million for areas including disaster preparedness and humanitarian relief. The Government was grateful for the participation of civil society and the Australian Human Rights Commission in the preparation for the interactive dialogue with the Committee.

6. **Ms. Bras Gomes** (Country Rapporteur) said that she was heartened by the State party's successes and its recognition of the obstacles that it faced. However, the Committee remained concerned that the protection and justiciability of economic, social and cultural rights were not fully incorporated into domestic legislation and that policymakers were not obligated to take into consideration the recommendations of the Parliamentary Joint Committee on Human Rights before legislation was passed. She wished to know whether the Government still took the position that its institutional set-up provided adequate protection for the rights enshrined in the Covenant. The Committee would appreciate the delegation's comments on the obstacles to expanding the mandate of the Australian Human Rights Commission to include the Covenant.

7. While the Committee welcomed the Government's candid assessment of the Closing the Gap initiative, it was unclear whether the targets that had been set were unrealistic or whether the slow progress was due to a lack of political will or to a shortfall in financial or material resources. It would be helpful to learn whether an impact evaluation of the National Disability Strategy 2010-2020 had been conducted. While the substantial investment in the National Disability Insurance Scheme was encouraging, details of the amounts invested in the other five areas of the Strategy would be welcome.

8. It was unclear whether the national action plan on business and human rights had been adopted and whether it addressed potential human rights violations outside the State party, including within the supply chain. The Committee would be grateful for the delegation's comments on the regulatory role of the State with regard to the activities of private companies at home and abroad. In the area of gender mainstreaming, it would be useful to hear the Government's assessment of the remaining obstacles and the measures that would be used to tackle them.

9. With regard to migrants, refugees and asylum seekers, there were a number of concerns, including the punitive approach adopted towards unauthorized maritime arrivals and the living conditions at the regional processing centres in Nauru and Papua New Guinea. She wished to know whether the State party had had the opportunity to consider the Committee's statement on the duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights (E/C.12/2017/1). It would also be interesting to learn whether the State party intended to ratify the Optional Protocol to the Covenant.

10. **Mr. Uprimny** (Task Force Member) said that he wished to know whether the State party intended to reinforce the legal and political status of indigenous Australians and to increase funding to the National Congress of Australia's First Peoples. The Committee would appreciate the delegation's comments on the Government's position in connection with two normative issues, namely whether there were plans to implement the United Nations Declaration on the Rights of Indigenous Peoples, including the right to free, prior and informed consent, and why the State party did not intend to ratify the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169). He wished to know whether the Government planned to reform the Native Title Act 1993 (Cth), and, if so, whether indigenous Australians would be consulted during the process. Details would be welcome on the measures in place to ensure that meaningful consultation with indigenous communities took place in connection with the development agenda for Northern Australia, so as to avoid negative effects on their land.

11. **Mr. Walter** (Australia) said that, in Australia, the rights enshrined in the Covenant were given effect through a range of means, including legislation and policy, an approach that his Government was satisfied was appropriate. Individuals had access to a number of options to ensure their rights were realized, including administrative and judicial reviews, depending on their reason for believing that they had been denied their rights. The Australian Human Rights Commission did consider the rights enshrined in the Covenant if they arose within its statutory jurisdiction. While Australia had played a constructive role in the drafting of the Optional Protocol to the Covenant and was monitoring developments in its implementation, it had no plans to ratify it. The Parliamentary Joint Committee on Human Rights had a regular reporting cycle and had handed down 70 scrutiny reports since its inception in 2011. In cases where legislation was passed before the Joint Committee had concluded its work, it nevertheless reported its findings to Parliament.

12. The Council of Australian Governments had commissioned an inquiry into the Native Title Act and a number of reforms had been tabled but had not been enacted. In April 2017, the Attorney General and the Minister for Indigenous Affairs had met with native title representative bodies and the National Native Title Council and agreed to consult on an appropriate process through which to give effect to a selection of the reforms later in 2017. The Government had engaged with indigenous Australians in the preparation of its white paper on developing Northern Australia through the Prime Minister's Indigenous Advisory Council. Projects could be considered for funding from the Northern Australia Infrastructure Facility only if they incorporated an indigenous engagement strategy. The Government had made available \$A 17 million to support township leasing

reforms so that traditional owners were able to use their land for economic and commercial benefit.

13. **Ms. Roberts** (Australia) said that the Prime Minister's Indigenous Advisory Council would guide the Government in its efforts to refresh the Closing the Gap agenda. A range of factors, including the interrelationship between some of the targets and the long-term nature of certain progress indicators, had made meeting the agenda's previous targets challenging. The refresh was intended to define a solid methodology to improve the likelihood of achieving the targets.

14. On the issue of constitutional recognition of indigenous peoples, the Referendum Council had undertaken comprehensive consultations, designed and led by representatives of indigenous peoples, during 2016 and would issue its final report by the end of June 2017. The National Indigenous Constitutional Convention, held in Uluru in May 2017, had issued a statement on the matter. The National Congress of Australia's First Peoples would receive government funding of \$A 3 million over the next three years. The Government was committed to the United Nations Declaration on the Rights of Indigenous Peoples and was working with the Department of Foreign Affairs and Trade to assess activity and progress in line with the principles of the Declaration.

15. **Mr. Reddel** (Australia) said that an intermediate report published at the end of 2016 had given a positive evaluation of the trial period of the National Disability Insurance Scheme. The final report was due to be published at the end of 2017 and would provide a comprehensive quantitative and qualitative assessment. The National Disability Strategy 2010-2020 was subject to a progressive evaluation cycle, with the second progress report due later in 2017 and a final evaluation report scheduled to be issued at the end of the 10-year implementation period.

16. **Mr. Johnson** (Australia) said that, following the inception of Operation Sovereign Borders, Australia had seen a significant drop in people-smuggling activities and had not registered any deaths at sea since December 2013. The country was a global leader in the provision of safe, regular and orderly programmes for migrants and planned to increase the number of places on its refugee resettlement scheme to 18,750 per year from 2018. The regional processing centres in Nauru and Papua New Guinea were governed by domestic law in those locations and were not under the effective control of the Australian authorities. The centres were open and no individuals were detained within them. There were no children at the centre in Papua New Guinea and all the children at the centre in Nauru were enrolled in local schools and provided with uniforms and transportation to and from school. Individuals who were granted refugee status had a number of options, including resettlement to the United States of America, Papua New Guinea or Cambodia or a 20-year residency visa for Nauru.

17. **Ms. Wilde** (Australia) said that the three key challenges in the area of gender equality were strengthening women's economic security, including workforce participation, supporting more women into leadership positions and ensuring that women and children were safe from violence. The Government had established a multi-stakeholder reference group, which had met for the first time in May 2017, to consider the next steps for the implementation of the Guiding Principles on Business and Human Rights, which would likely take the form of a national action plan.

18. **Mr. Sadi**, noting the delegation's assurance that the Covenant rights were being realized progressively in the State party, said that certain rights needed to be made available immediately. With regard to those that could be fulfilled progressively, the State party must demonstrate that it had started a chain of action that would lead to the ultimate enjoyment of the right concerned by the population.

19. **Ms. Bras Gomes** said that, with regard to the migration policies of the State party and its punitive approach to unauthorized maritime arrivals, the report of the United Nations Special Rapporteur on the human rights of migrants had highlighted the fundamental principle of humanitarian law that one individual should not be punished for the purpose of deterring another.

20. **Mr. Uprimny** said that he would like to know whether the right of indigenous persons to prior, free and informed consent in relation to projects affecting them was enshrined in law. If so, he wondered whether the State party would consider ratifying the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169).

21. **Mr. Abdel-Moneim** said that the common core document (HRI/CORE/AUS/2007) was an excellent source of information but ought to be updated as it was 10 years old. Figures were needed on national expenditure as a percentage of gross domestic product (GDP) for each of the rights contained in articles 6 to 15 of the Covenant during the most recent reporting period to enable the Committee to assess the progressive fulfilment by the State party of its obligations under the Covenant. He would also like to hear why poverty remained a persistent problem in Australia given the country's strong economic position.

22. **Ms. Wilde** (Australia) said that the State party had explained in its public response to the report produced by the United Nations Special Rapporteur on the human rights of migrants how it intended to take action on the recommendations made therein. It was committed to external scrutiny of its national policies, as attested to by the fact that five United Nations Special Rapporteurs had visited the country since October 2016.

23. **Mr. Walter** (Australia) said that the State party did not intend to ratify ILO Convention No. 169, as the rights of indigenous and tribal peoples were protected under other treaties to which Australia was a party, as well as under domestic law. The Government would give consideration to updating the common core document.

24. **Mr. Reddel** (Australia) said that, in addressing poverty, successive Australian Governments had decided on policy interventions on the basis of data on the population's living standards, rather than any particular measure, and used a "safety net" rather than an insurance-based approach to social support. Hence the benefits provided were not directly comparable to those paid by other countries of the Organization of Economic Cooperation and Development. The current Government was tackling poverty through a combination of direct payments, such as pensions, allowances for the unemployed and for students and family payments for people with dependent children. The federal Government cooperated with state and territory governments on issues such as homelessness, disability services and children's welfare, and funded NGOs to deliver community services to those most in need. It acknowledged that poverty was more widespread among particular communities, such as indigenous peoples, but there were also pockets of disadvantage throughout the country. Efforts were being made to implement location-specific strategies in order to better target the geographical areas most in need.

25. **The Chair** said that, given the many different human rights protection mechanisms available, persons seeking protection of their Covenant rights might be unsure of which institution they should apply to. For instance, an individual might address a case of discrimination to the Australian Human Rights Commission (AHRC) but would have to go to the courts if the issue was procedural in nature.

26. **Mr. Windfuhr** (Task Force Member) said that he would be interested to know why unemployment rates among certain groups, such as indigenous peoples, persons with disabilities and young persons, were considerably higher than the national average. He welcomed the introduction of the Fair Work Act 2009 and the related establishment of the Fair Work Ombudsman, but noted the persistence of a number of labour-related issues, such as the gender pay gap, the exploitation of migrant workers and arbitrary dismissals, and asked how the State party intended to strengthen its labour protection system. He asked whether the Building and Construction Industry (Improving Productivity) Act 2016 had weakened trade union rights, such as freedom of association and collective bargaining, as had been suggested by the Australian Council of Trade Unions in its recent complaint to ILO. He would also welcome a comment on reports that migrant workers, particularly those with bridging visas, experienced difficulties in joining trade unions.

27. He was concerned that the investment-based approach to social security favoured by the State party went against the Covenant obligation to provide social assistance. Furthermore, compulsory income management, as imposed in the Northern Territory, limited the right to social assistance and freedom of choice. He wondered whether it would be possible to promote optional income management as an alternative approach. Noting that

a high percentage of the financial sanctions imposed upon jobseekers who failed to comply with mutual obligation requirements were ultimately waived, he questioned the effectiveness of such measures.

The meeting was suspended at 4.50 p.m. and resumed at 5.05 p.m.

28. **Ms. Kidd** (Australia) said that efforts were being made to improve the labour market performance of vulnerable groups by providing wage subsidies and mentoring schemes, in particular for young people and members of indigenous communities. Programmes such as the Transition to Work service had been initiated to improve the foundational and employability skills of young people. The investment-based approach to social security sought to calculate the long-term cost of income support and to better identify where and how to invest in the population. The Fair Work Act 2009 stipulated equal remuneration for men and women, but the gender pay gap was also influenced by other factors, such as the difference in the number of hours worked by men and women and gender segregation by occupation and by industry.

29. **Mr. Johnson** (Australia) said that migrant workers enjoyed the same basic protection under law as Australian citizens. Domestic laws had been passed recently to better protect sponsored temporary overseas workers, enabling inspectors to monitor workplaces in order to ensure that employers complied with national legislation. Under a policy initiated in May 2016 to protect vulnerable workers in line with the Fair Work Act, a migrant workers' task force had been set up and increased funding had been allocated to the Fair Work Ombudsman.

30. **Mr. Reddel** (Australia) said that government spending as a percentage of GDP on areas including health, care for older persons and pensions was set to increase, according to the findings of the 2015 Intergenerational Report. In response to the McClure Review, Australia had adopted an investment-based approach to welfare which applied actuarial analysis of social security data to identify population groups at high risk of long-term social welfare dependency. The Government had recently produced its first baseline evaluation report, which had indicated that young parents, carers and students were most in need of social assistance. The Try, Test and Learn Fund would be co-designed by the beneficiaries of the initiative, and the results of the trials would be used to reform the welfare payment and service delivery system.

31. The income management card ensured that welfare payments were used for essentials, such as food, clothing and health care rather than alcohol, tobacco and other harmful substances. The scheme was non-discriminatory with respect to race, gender and culture, and recipients could volunteer to join it. Evaluations conducted had indicated that the scheme had a positive impact on those who volunteered, enabling them to save more money and reduce alcohol and tobacco consumption, among other benefits. The financial sanctions imposed on jobseekers were often waived because of extenuating circumstances, for example, if an individual agreed to undertake a compliance assessment or would experience severe financial hardship as a result of the penalty.

32. **Ms. Kidd** (Australia) said that the Australian Building and Construction Commission had been accorded a strong inspection-based mandate to regulate the industry. The new Building and Construction Industry (Improving Productivity) Act 2016 supported the right to freedom of association and industrial action, provided that certain requirements were met, and was fully consistent with the State party's international obligations.

33. **Ms. Liebenberg** said that she would appreciate clarification as to why the State party had decided to freeze indexation on family tax benefits. She was concerned that the decision would lead to cuts for single-parent families and would have a negative impact on efforts to reduce child poverty.

34. **Ms. Shin** said that she would be interested to hear how the State party guaranteed equal pay for work of equal value, given that there was no system in place to compare work of equal value. In light of the fact that women were primarily responsible for carrying out unpaid, underpaid and undervalued labour with respect to childcare and care of older persons, she would like to know what steps were being taken to ensure that they were better

paid or valued for such work, and whether genuine efforts were being made to encourage a fair division of work between men and women in households.

35. **Mr. Windfuhr** said that he would welcome further comments on the benefits of the wage subsidies offered by the Government, and on whether the new budget for income management would retain its compliance framework assessment to ensure that a jobseeker would be entitled to a penalty waiver if he or she could demonstrate that it would cause financial hardship. He would also appreciate a response to reports from trade unions that the Building and Construction Industry (Improving Productivity) Act had not been useful in addressing unlawful conduct and corruption in the industry.

36. **Mr. De Schutter** said that he would like to know more about the status of same-sex couples with respect to labour rights. For example, was an individual in a same-sex couple entitled to receive a widow or widower's pension, to enjoy time off work to care for a sick partner and to access social security spousal benefits and to what extent was legislation on civil unions harmonized across all territories of Australia?

37. **Ms. Bras Gomes** said that she would appreciate clarification as to whether the positive evaluations of income management mentioned by the delegation related to the compulsory or the voluntary part of the scheme. The Committee had received reports that compulsory income management was not successful. She was also concerned that the proposal to extend income management to three new trial areas where the majority of the population was indigenous might lead to discrimination. Lastly, she asked why jobseekers would have to undergo random drug testing when qualifying criteria were already in place to assess their eligibility.

38. **Mr. Chen** (Task Force Member) said that he would like more information on efforts to stop violence and abuse against persons with disabilities. He asked whether the Council of Australian Governments Disability Reform Council had established an independent, national complaints and serious incidents system and a Code of Conduct, as promised in 2016. The United Nations Special Rapporteur on violence against women, its causes and consequences had reported that domestic violence against women and girls was a persistent and underreported problem in Australia, particularly in indigenous communities. How was the Government addressing the issue, were offenders punished and was domestic violence against women criminalized in law?

39. Noting that there was a lack of data and research on child trafficking and slavery, he invited the State party to consider implementing compensation schemes for victims of such abuse. It was regrettable that, despite recommendations made by the Committee in its two previous concluding observations, the State party had made no progress in acquiring data on poverty in the country. He enquired about the Government's approach to tackling poverty, what practical measures were being taken to address homelessness, and whether homelessness could be criminalized under law.

40. **Mr. De Schutter** said that he welcomed the commitments made by the State party to reduce its greenhouse gas emissions prior to the United Nations Climate Change Conference in Paris in 2015, but noted that its carbon emissions were increasing and that it supported the operation of new coal mines. When South Australia had proposed to close its last coal-fuelled power station, the federal Government had opposed the move. Australia had also repeatedly expressed its lack of faith in renewable energy as a viable alternative to fossil fuels. He asked whether the State party intended to revise its climate change policies, to facilitate a transition to clean energy and to ensure that a review of climate change policies would take into consideration the rights of indigenous peoples, including their right to prior, free and informed consent in relation to all projects that would have an impact on their lives.

The meeting rose at 5.55 p.m.