



## Economic and Social Council

Distr.: General  
6 January 2010  
English  
Original: French

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### Committee on Economic, Social and Cultural Rights Forty-second session

#### Summary record of the first part (public)\* of the 5th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 6 March 2009, at 10 a.m.

*Chairperson:* Mr. Marchán Romero

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#### Consideration of reports:

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

*Fourth periodic report of Australia* (continued)

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\* No summary record was prepared for the second part (closed) of the meeting.

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*The meeting was called to order at 10.10 a.m.*

**Consideration of reports:**

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

*Fourth periodic report of Australia* (continued) (E/C.12/AUS/4); core document (HRI/CORE/AUS/2007); concluding observations of the Committee on the third periodic report of Australia (E/C.12/1/Add.50); list of issues (E/C.12/AUS/Q/4); written replies by the Government of Australia to the list of issues (E/C.12/AUS/Q/4/Add.1)

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

*Articles 10 to 15 of the Covenant* (continued)

2. **Ms. Brown** (Australia), replying to questions from the previous meeting, said that the Government of Australia took the need for sustainable management of the country's limited water resources very seriously and was implementing a range of strategies to ensure the fair and equitable management of water in a manner that was respectful of the rights of indigenous peoples and included them in the planning process. On the right to water, the Government was financing projects to provide access to drinking water for those populations lacking it, particularly in remote areas.

3. As to the situation in the Murray-Darling Basin, government officials would need to assess the basic human needs for water. In accordance with the Water Act of 2007, the Murray-Darling Basin Authority and the Ministry of Water Resources must take into account matters of general interest in policies relating to the basin. An advisory body, which included at least one expert in indigenous matters, had also been established to provide guidance to the Authority on the conducting of its mandate.

4. There were also a number of provisions guaranteeing indigenous peoples' access to water, as in New South Wales, where indigenous peoples could obtain community development licences to use water for ecological or cultural purposes.

5. The Government of Australia believed that climate change was a major issue, with potential implications for the exercise of human rights. In that regard, its strategy was to focus principally on measures to reduce the country's carbon dioxide emissions, within a framework adopted by the Council of Australian Governments for adapting to climate change, and to contribute to the search for regional and global solutions. Australia contributed very actively to the United Nations Framework Convention on Climate Change (UNFCCC) negotiations. The Department of Climate Change was currently financing a study to identify the risks and opportunities linked to climate change for indigenous peoples in northern Australia and to facilitate their adaptation. Through its Carbon Pollution Reduction Scheme, the Government was launching various initiatives to facilitate indigenous peoples' participation in the carbon market, mainly through the Department of the Environment, Water, Heritage and the Arts and the Department of Climate Change.

6. **Mr. O'Brien** (Australia), referring to Australian companies' waste disposal practices abroad, said that since 1996 Australia's legal framework included a law governing the import and export of hazardous waste, in accordance with which companies must obtain a permit before exporting waste to a foreign country. As a prerequisite for obtaining such a permit, the destination country must agree to receive the waste and indicate how it intended to process hazardous waste on the spot. Moreover, Australia was a signatory to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter and the Protocol Thereto, which it had incorporated into domestic law by a 1991 act.

7. Mining companies in Australia were subject to a strict legal and environmental framework. Moreover, the Australian Government expected Australian companies conducting activities in other countries to respect the latter's laws and observe the same standards as those applied in Australia. The Australian association of mining industries had developed a voluntary framework for sustainable development which applied to signatory companies regardless of where they operated. The Australian Government was also supporting several regional initiatives on the sustainable use of resources.

8. **Ms. Millar** (Australia), replying to a question on whether there was any connection between the abrogation of the Work Choices Act and the changes made to the funding of the Human Rights Commission, said that in February 2008, the Government had cancelled the additional funds allotted by the previous Administration to the Commission in anticipation of an increase in the number of complaints expected following the entry into force of that Act. No changes had been made to the Commission's core funding.

9. **Ms. Innis** (Australia) said that one reason Australia did not set a poverty threshold was that assessing poverty on the basis of income only gave a partial view of a population's level of poverty or economic well-being. The Government nevertheless strove to ensure an adequate income support system. It also paid close attention to its ranking among other comparable countries according to the Organization for Economic Cooperation and Development (OECD) studies. According to OECD estimates for the period 1995–2005, in Australia, poverty had dropped by 40 per cent and income distribution had improved. The income of the richest 10 per cent of Australians was seven times that of the poorest 10 per cent, compared to 8.9 times on average across OECD countries. Moreover, Australia had the highest level of redistribution among OECD countries.

10. According to the 2006 census, there were more than 100,000 homeless people, of whom more than 16,000 lived in improvised dwellings, nearly 49,000 were staying temporarily with friends or relatives, nearly 20,000 stayed in accommodation provided by the State or charitable organizations, and about 20,000 stayed in boarding houses. The Government felt that those figures were too high and was mobilizing significant resources through its national strategy which aimed to halve the number of homeless persons by 2020.

11. Replying to a question on the risk of eviction in connection with housing legislation, the Government was currently reviewing the impact of the legislation. In the State of Victoria, a programme to support persons at risk of eviction, which addressed indigenous persons in particular, had benefited 526 persons in 2008.

12. **Ms. Millar** (Australia) said that the Government of Australia had taken a range of measures to eradicate the problem of trafficking in women and children, such as the organization of the first-ever national round table on trafficking in persons in June 2008. In October 2008, the Government had announced it would provide more than 1 million dollars to the main non-governmental organizations working in that field, and, in the same year, set up a pilot witness protection programme. The national strategy adopted in 2003 took into account all those involved in the trafficking cycle and addressed prevention, detection, legal proceedings and assistance to victims. To date, 35 persons had been charged with offences relating to trafficking in persons and 7 had been sentenced to imprisonment.

13. **Mr. Innis** (Australia), referring to child protection, said that there had been more than 55,000 known cases of child abuse and neglect during the period 2007–2008 throughout the States and Territories. The number of known cases had been on the rise for some time, but it was unclear whether that reflected a worsening situation, or improvements in case detection and assessment, since all States and Territories had strengthened their capacity in that area.

14. The National Framework for Protecting Australia's Children, adopted by the Council of Australian Governments on 30 April 2009, was intended to strengthen collaboration between the Commonwealth and State Governments better to combat child abuse and neglect. For the first time, the policies and tools developed at the federal level could be applied in areas commonly reserved for the competence of States.

15. **Mr. Commar** (Australia), replying to questions on mental health services, said that the Government was aware of its shortcomings in that area, and was attempting to address them through an increase in its budget allocations for the treatment of the most common disorders (depression, anxiety) as well as serious and persistent mental illness, which entailed complex needs. A vast array of Medicare-financed programmes (universal health insurance scheme) was in place; it covered the population at large, including Aboriginal peoples, and comprised a programme providing 750 million Australian dollars over a five-year period to improve access by all to mental health-care specialists and social workers. Other programmes, such as its Mental Health Services in Rural and Remote Areas programme, which favoured services provided by Aboriginal health workers, focused specifically on indigenous peoples.

16. The Government was engaged upon a vast national reform process to make good the current system's shortcomings and enhance the focus on prevention and prompt care. The services provided needed to be better incorporated into other non-medical services, and to be evaluated and made more transparent. In the context of that reform, a new mental health policy had been introduced in 2008 and funding for programmes had doubled from 411 million dollars in 2004 to 783 million dollars in 2008. Nearly one fourth of the budget allocation for the National Suicide Prevention Strategy targeted indigenous peoples of Australia, and Aboriginal children were one of the three main population groups targeted by a governmental programme for the mental health of children and youth. A telephone hotline had been set up to provide guidance to indigenous youths aged from 5 to 25 years.

17. Social and emotional well-being programmes had been set up, geared specifically towards the Aboriginal people. For the period 2008–2009, the Government had committed nearly 27 million dollars to reuniting families and improving the welfare of the Stolen Generations of the indigenous peoples of Australia. Counsellors visited indigenous households and tried to help re-establish ties. Centres had also been set up to provide services to members of those generations to address their specific needs. The Council of Australian Governments was also endeavouring to improve indigenous community health workers' capacity to detect mental illness and the associated drug use among Aboriginals, and to treat them accordingly.

18. The Government gave high priority to addressing HIV/AIDS and sexually transmitted infections (STIs) in the light of the recent upsurge in those illnesses, and had established a ministerial advisory committee to provide guidance to Government officials and review the framework for national strategies. The parliamentary liaison group on HIV/AIDS, viral hepatitis and STIs had recently convened an informal discussion and disseminated information on those diseases, and had also shared with officials the views and concerns of local organizations and other interested parties.

19. As regards prisons, the current National HIV/AIDS Strategy included provisions for ensuring that prisoners received AIDS-related services and appropriate treatment. The health ministers of the Australian Governments and the Federal Ministry of Health were monitoring the system. In Western Australia, for example, both adult and minor detainees received sexual health services through a mandatory sexual health programme in which they participated upon admission to the detention facility, during their detention and on their release. Preventive strategies for ensuring sexual health, including the distribution of condoms, had been tested in some Australian prisons, with mixed results.

20. **Mr. Matthews** (Australia), replying to questions on Australia's migrant detention centres, said that migrants were detained for purely administrative reasons, and the system had recently been changed: children could no longer be detained in the centres; the duration of detention was a last resort and was kept to a minimum; any detention in a centre was reviewed regularly; detainees were treated fairly and lawfully; and detention conditions guaranteed respect for the dignity of the person.

21. Although asylum-seekers and persons kept in migrant detention centres might feel distress and anxiety, officials ensured that their specific needs were identified, evaluated and met. Following a 2005 report, the Government had endeavoured to fill the gaps by adopting a range of measures to improve health in detention centres and by establishing the Detention Health Advisory Group, which included a sub-group dealing with mental health issues. That sub-group had undertaken an ambitious project and developed a new policy for identifying and helping survivors of acts of torture or traumatic incidents, and had adopted a policy to prevent self-inflicted injury. Moreover, on Christmas Island, medical staff had been reinforced considerably to help with the treatment of various disorders and vaccination.

22. **Mr. Commar** (Australia), providing further clarification on the accomplishments of the *Building a Healthy, Active Australia* programme, said that over a four-year period, 116 million dollars had been allocated to actions promoting a more active lifestyle; 150,000 students in 320,000 sites throughout the country had taken part in an extracurricular sports programme and an awareness campaign was being conducted to encourage families to adopt a healthy lifestyle and eat a balanced diet.

23. With regard to child obesity, in response to a national survey conducted in 2007 which had revealed that 17 per cent of Australian children were overweight and 6 per cent obese, the Government had committed 872 million dollars over a six-year period to tackle lifestyle-related diseases. Other initiatives included a mandatory medical check-up for children aged 4, prior to their starting school, and promoting a healthy diet in school canteens. In general, the Government endeavoured to promote a healthy lifestyle for the population, particularly among vulnerable groups including indigenous peoples, and promoted breastfeeding. Lastly, on the issue of waiting times for non-essential surgery in public hospitals, in 2006–2007, 557,000 patients had been admitted for such operations, with an average waiting time of 32 days.

24. **Mr. O'Brien** (Australia) said that he agreed with the Committee members that food security was one of the major problems the international community needed to resolve as soon as possible. Three steps should be taken to address food security: provision of immediate assistance to all those suffering from famine, reduction of poverty and elimination of distortive measures in the agricultural and trade sectors. Australia had launched a long-term initiative to combat food insecurity and had obtained hundreds of millions of dollars to support its implementation.

25. **Mr. Commar** (Australia) said that Aboriginals had access to the same basic health-care system as Australians and that there were no population-group-specific systems in place. Nevertheless, the Australian State was financing a number of programmes and initiatives aimed mainly at remedying the inequalities between Aboriginals and other Australians in access to health care.

26. **Mr. Innis** (Australia), replying to a question from the previous meeting, recognized that children with disabilities were among the most vulnerable population groups and should be provided with specific protection in order to exercise their fundamental rights. The cases of sterilization that had been mentioned were extremely rare. Since 2000, only 32 sterilization requests had been submitted to the competent authorities. In any case, decisions concerning sterilization, which were extremely complex, had to be taken by the

courts and be based on law and not merely on medical opinion. Most decisions for sterilization were justified if a woman's or mother-to-be's life was in danger or a foetus at risk of irreparable damage.

27. There was no distinct indigenous nation; rather, indigenous peoples were regarded as part of Australian society and enjoyed the same rights and access to the same services as other citizens.

28. **Ms. Chin** (Australia) said that compulsory schooling started at the age of 4. According to the available statistics, 70 per cent of children under the age of 4 went to preschool, although that percentage only took State-funded establishments into account. No major disparity had been noted in preschool education between Australian children and indigenous children or children from remote areas. However, non-English-speaking children tended to start school later than others. To address that situation, the federal State had launched a programme to build nursery schools, including ones for children with special needs. No school segregated Aboriginal from non-Aboriginal students, and federal officials were working with the Australian States and Territories to ensure that all children, including those from remote areas, could go to school at every level. Australia had set up a mobility programme to enable young people, especially from the Northern Territory, to receive their education in boarding schools, and a scholarship programme for indigenous families. In general, the State was making every effort to improve school enrolment of indigenous children. In 2006, an estimated 41.4 per cent of indigenous students had earned a secondary school diploma.

29. Human rights-related issues were addressed throughout the education system. There was no human rights curriculum per se, except at the university level, through an elective advanced course in international human rights law. Moreover, university grants were available for students wishing to focus their research on human rights-related issues.

30. Australia was dedicated to developing indigenous language education. The Melbourne Declaration on Educational Goals for Young Australians, adopted in December 2008, focused in particular on the promotion of traditional indigenous culture and knowledge. Nevertheless, English remained the main language of instruction, and all Australian students had the possibility of learning or perfecting their English. The Government allocated considerable resources to teaching English, since it was convinced that mastery of English was key to facilitating indigenous peoples' integration into the job market. While Australian States and Territories were free to offer religious instruction, federal officials promoted intercultural and inter-faith education.

31. Some members of the Committee had expressed concern about the right to strike in Australia. Australia's Fair Work Act of 2009 did not in any way undermine the right to strike, but simply aimed to provide a better framework for exercising that right, namely as regards strike notices. A strike was legal if at least 50 per cent of a company's workers voted in favour. The strike ballot was free, democratic and secret. The Australian delegation would shortly provide written information on unemployment statistics and on the issue of forced labour.

32. **Ms. O'Brien** (Australia) said that the Australian intellectual property rights protection system was of general application, and offered the same high level of protection to indigenous and other authors alike. The Australian Government had no plans to adopt legislation applying exclusively to indigenous peoples. Nevertheless, it had recently submitted to parliament resale royalty legislation relating to works of art, to enable indigenous authors inter alia to benefit more financially from their artistic productions. Furthermore, the Copyright Act should help indigenous artists to earn royalties and prevent the inappropriate and even questionable, from a cultural standpoint, use of their works.

33. Some indigenous peoples sought recognition for permanent collective rights in order to control every aspect of their cultural heritage. Australia was actively involved in the work of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore of the World Intellectual Property Organization (WIPO).

34. **Mr. Pillay** wished to know whether children were still being held in the Christmas Island detention centre for illegal immigrants, which Australia's National Human Rights Commission had described as resembling a maximum-security prison.

35. He also wished to know whether the State party intended to amend its immigration law, which authorized certain forms of discrimination against persons with disabilities who wished to obtain a permanent residence permit.

36. He wondered whether the Government of Australia had taken any particular measure to combat the phenomenon of homelessness and specifically to address marginalized and disadvantaged population groups, who were disproportionately affected by the scourge.

37. **Ms. Barahona Riera** wished to know whether, after having acceded to the United Nations Declaration on the Rights of Indigenous Peoples, Australia planned to ratify the International Labour Organization (ILO) Convention concerning Indigenous and Tribal Peoples in Independent Countries (Convention No. 169).

38. Regarding ownership of real estate, she asked for clarification of the extent to which indigenous peoples might benefit from the amendment of the relevant legislation, particularly as regards the evidence they were required to provide for an ancestral claim to land.

39. Lastly, he wondered whether the State party had plans to implement a national programme on sexual and reproductive health and to address the fight against HIV/AIDS, and if so, what budget it would allocate to it.

40. **Ms. Bras Gomes** said it was preoccupying that indigenous peoples were so disproportionately affected by the phenomenon of domestic violence, a scourge often linked to a lack of access to resources and basic services, as well as to discrimination and inequalities suffered by the perpetrators of domestic violence.

41. **Mr. Matthews** (Australia) said that, as far as possible, unaccompanied children and families with children were not placed in detention camps for illegal immigrants, whether on Christmas Island or on mainland Australia. As of 30 April 2009, of the 33 detainees on the Island, 21 were minors, but those cases were governed by special agreements and were under the care of a person designated to look after them within the community.

42. The health restrictions under the Immigration Act aimed to preserve health and public safety, limit public health spending and prevent the blockage of existing health services so as to ensure access to health services for Australians and permanent residents. Nevertheless, on 28 November 2008, the parliamentary Joint Standing Committee on Migration had received a request to review those restrictions in order to evaluate how they affected the issuing of documentation to persons with disabilities and their family members.

43. **Mr. Innis** (Australia) said that his Government was aware of the excessive number of homeless persons in Australia, which could only be reduced by tackling all the underlying factors. His Government had committed massive resources to that end, with a view to halving the incidence of homelessness by 2020. Accordingly, it planned to set up a programme very closely linked to the programme to combat family violence.

44. **Ms. Millar** (Australia) said that the Government of Australia was currently considering ratification of the ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (Convention No. 169).

45. Concerning indigenous peoples' access to their ancestral lands and their obligation to provide evidence supporting their claim to those lands, it should be noted that half the lands in the Northern Territories had already been transferred to indigenous persons, who had freehold title to over 15 per cent of land at the national level.

46. Additional information on the programmes the Government planned to put in place to tackle HIV/AIDS and to provide sexual and reproductive health services to the population would be provided in writing.

47. Lastly, his Government was committed to human rights and planned to step up its exchanges with the United Nations treaty bodies and special procedures. Civil society had a dynamic presence in Australia, evidence of a true democracy.

48. Her delegation had provided detailed written replies to the list of issues in order to clarify matters not sufficiently covered in its fourth periodic report, and would also be providing written information on matters still pending.

49. **The Chairperson** said that he was pleased with the constructive dialogue that had taken place between the Committee and the Australian delegation, which had helped clarify matters not included in the report under consideration; he noted, however, that the report could have included more specific information on the State party's implementation of the Covenant. He thanked the Australian delegation and said that the Committee had concluded its consideration of the fourth periodic report of Australia.

50. *The delegation of Australia withdrew.*

*The first part (public) of the meeting rose at 12.20 p.m.*