



# International Covenant on Civil and Political Rights

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## Human Rights Committee 121st session

### Summary record of the 3419th meeting

Held at the Palais Wilson, Geneva, on Thursday, 19 October 2017, at 10 a.m.

*Chair:* Ms. Waterval (Rapporteur)

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Consideration of reports submitted by States parties under article 40 of the Covenant  
(*continued*)

*Sixth periodic report of Australia (continued)*

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*Ms. Waterval (Rapporteur) took the Chair.*

*The meeting was called to order at 10 a.m.*

**Consideration of reports submitted by States parties under article 40 of the Covenant**  
*(continued)*

*Sixth periodic report of Australia (continued) (CCPR/C/AUS/6; CCPR/C/AUS/Q/6)*

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

2. **Mr. Walter** (Australia), resuming his delegation's replies to the questions raised at the previous meeting, said that some states and territories had adopted a specific act on the protection of human rights but that no such legislation existed at the federal level. Individual rights were protected in different ways; for example, article 17 of the Covenant, on the right to privacy, was implemented through the Privacy Act 1988 and a complaints mechanism run by the Office of the Australian Information Commissioner. The National Human Rights Action Plan 2012 had been drawn up by the previous Government; there had been no proposals to develop a new plan.

3. The Government prepared detailed responses to the Committee's Views on communications concerning Australia, following consultations with the relevant state, territorial and federal agencies. The Views and responses were routinely published online, unless privacy concerns had been raised. The Government sought to provide updated information to the Committee on the status of authors of communications, as appropriate, and to ensure that Views were taken into account in the development of policies. Although they were not considered legally binding, the Committee's Views served as guidance on the scope and nature of the State's obligations under the Covenant.

4. Following the second universal periodic review of Australia in 2015, the Government had taken steps to improve the coordination, efficiency and transparency of its treaty body reporting process; it had, for example, established an interdepartmental committee at the federal level to coordinate reporting. There were plans to launch a new website containing information on follow-up to treaty body recommendations by the end of 2017.

5. The Attorney-General's Department and the Parliamentary Joint Committee on Human Rights had issued guidance on the drafting of statements of compatibility with human rights; civil servants preparing such statements could also seek assistance from the human rights unit of the Attorney-General's Department. The Parliamentary Joint Committee on Human Rights could request and publish further information to support statements of compatibility that were of inadequate quality and often did so.

6. Although the Parliamentary Joint Committee on Human Rights made every effort to complete its report on a bill before that bill was passed, so that its findings could inform the Parliament's deliberations, the timeliness of its reporting depended on a number of factors, including the speed with which ministers responded to its requests. If necessary, the Parliament could take remedial action in response to reports submitted after the relevant legislation had been passed.

7. Under the Telecommunications (Interception and Access) Act of 1979, telecommunications agencies were required to encrypt and preserve certain metadata for a period of two years. Between October 2015 and June 2016, those agencies had granted thousands of requests for access to data, in order to assist with criminal and national security investigations. Access was granted only to authorized senior officials and there were reporting and oversight mechanisms in place to prevent the misuse of data.

8. Under legislation passed in 2015, dual nationals who engaged in activities that were inconsistent with their allegiance to Australia, including terrorism, could be stripped of their Australian citizenship by the Citizenship Loss Board. Since the adoption of that legislation, one person had been stripped of his Australian citizenship because he had fought for Islamic State in Iraq and the Levant. In order to prevent statelessness, the legislation applied only to dual nationals.

9. The security environment had changed since the establishment of the Independent National Security Legislation Monitor and new tools were needed to protect against the rapidly evolving methods employed by terrorists. The Government had no doubt that the newly appointed Monitor would perform his duties effectively.

10. **Ms. O’Keeffe** (Australia) said that there were safeguards in place to ensure that all decisions on medical treatment, including sterilization, concerning children or persons with disabilities were made with due regard for the rights of those persons. It was not always easy to determine how best to protect those rights; in some cases, for example, there was a risk that childbirth would cause trauma.

11. In federal records, individuals could choose to be identified as of non-specific gender or a gender other than the sex assigned to them at birth, without undergoing reassignment surgery. State and territorial legislation in that area varied, however: in Victoria, for example, only unmarried persons who were at least 18 years old and had undergone reassignment surgery could apply to change their gender in state records, whereas in South Australia, there were no such requirements.

12. **Ms. Saastamoinen** (Australia) said that her country was one of the largest and least densely populated in the world. Eighty per cent of the total population lived in the eastern states. There were over 1,000 indigenous communities of varying sizes, most of which were based in remote or very remote areas. Such areas often lacked access to basic services; they were subject to high costs per capita and reliant on road transport, which was limited, especially in the wet season.

13. The Government was aware of the importance attached to land by indigenous communities and was working with those communities to develop innovative, place-based solutions to address their needs, through a network of regional staff, 30 per cent of whom were of indigenous origin. Steps had been taken to improve the delivery of services to remote populations, including the development of tele-health services and the use of the Global Positioning System to monitor community safety. Community night patrols, staffed primarily by indigenous persons, had been set up in several areas to address safety issues, in collaboration with the police.

14. The Government of New South Wales had recently announced the expansion of the domestic violence programme called “What’s Your Plan?” to 46 locations throughout the state. Under that scheme, aboriginal client and community support officers worked with aboriginal defendants to ensure that they did not breach apprehended domestic violence orders.

15. **Ms. Cleveland** said that she was deeply concerned by the State party’s legal framework on the processing of migrants and wished to draw attention to the State party’s non-refoulement obligations under the Covenant, as defined in paragraph 12 of the Committee’s general comment No. 31 on the nature of the general legal obligation imposed on States parties to the Covenant. The Committee’s requests for interim measures, including in deportation cases, should be considered legally binding.

16. Noting that the extradition process outlined in paragraphs 94 to 98 of the State party’s report did not comply with the Committee’s non-refoulement standard, she asked how the State party ensured compliance with that standard in both law and practice in the context of extradition; whether the Attorney-General’s decisions in extradition cases were subject to judicial review; and what standard of review was applied by courts to those decisions.

17. In the light of reports that the Migration Act 1958 provided that the State’s non-refoulement obligations were, in effect, irrelevant when it came to the removal of unlawful non-citizens, she would like to know whether those reports were accurate and how the provisions in question could be reconciled with the State party’s non-refoulement obligations under the Covenant. She also wondered how the State party ensured that its non-refoulement obligations were fully respected in regional processing countries; whether the process of refugee status determination in those countries was subject to oversight; and what steps would be taken to end the regional processing arrangements.

18. The Committee had received reports that, since 2013, nearly 800 asylum seekers had been intercepted at sea and subjected to a brief, on-board assessment of their claim, without access to legal counsel and without the right to appeal. She would appreciate more information on the nature of those assessments and on any plans to allow international observers to review the State party's policies and practices in that regard.

19. She would like to hear the delegation's comments on reports that under the fast-track assessment process introduced in 2014, asylum seekers' right to appeal and access to State-funded legal assistance were limited. It was unclear why some asylum seekers were excluded from the fast-track process and how the non-refoulement rights of those persons were protected. Overall, she would like to know what practical and legislative measures would be taken to ensure that all asylum seekers received a comprehensive, fair and efficient assessment of their claims, with appropriate procedural safeguards, in accordance with the Covenant.

20. Noting that some asylum seekers agreed to be returned to their country of origin despite the risks that they faced there, as a result of the poor conditions of detention in offshore facilities and the lack of resettlement solutions, she asked what measures were taken to ensure that persons who accepted voluntary return were not at risk of death or inhuman treatment. With respect to the plans to close several regional processing facilities, she asked how the State party would fulfil its non-refoulement obligations towards persons who were transferred elsewhere following the closure of those sites.

21. Given that the data provided on the website of the Australian Human Rights Commission was neither disaggregated nor up to date, the delegation was requested to provide statistics, disaggregated by gender, on the number of cases of discrimination recorded and investigated, as well as the number of hate crimes, including politically and religiously motivated crimes, that had been reported, investigated and prosecuted. It would also be useful to know what training had been provided to law enforcement officials to combat racial and religious profiling in the context of counter-terrorism and whether there were plans to introduce federal legislation to reconcile inconsistencies in state and territorial anti-vilification laws.

22. She asked whether indigenous communities had been consulted about the measures taken to address the priorities identified in the Stronger Futures in the Northern Territory Act 2012. Under the Act, many of the restrictions contained in previous legislation remained in place, including alcohol restrictions, suspension of social security payments for parents whose children were absent from school and removal of customary law and cultural practice considerations from bail applications and sentencing in criminal trials. The Committee would welcome updated and disaggregated data on the implementation of those restrictions. She asked whether the State party intended to take action on the recommendations made by the Parliamentary Joint Committee on Human Rights in the context of its 2016 review of the Stronger Futures legislation and its concerns about the human rights compatibility of certain measures.

23. Taking note of the 2009 and 2012 amendments to the Native Title Act 1993, she asked what measures had been taken to address remaining barriers to the protection of indigenous land rights. The State party should indicate whether it intended to follow up on the recommendations by the Australian Law Reform Commission in its review of the Native Title Act and the recommendations of the Council of Australian Governments' investigation into indigenous land administration and use, including by lowering the threshold for proof of native title and by expanding the scope of native title rights and interests. Noting that compensation and reparation schemes for victims of the stolen generations and stolen wages policies had been established in three states, she wished to know whether the State party planned to establish a national reparations mechanism. In connection with the white paper on developing Northern Australia, she asked what was being done to ensure genuine engagement of landholders and effective protection and management of indigenous heritage sites and knowledge.

24. **Mr. Shany** asked the delegation to comment on reports that the Australian Human Rights Commission had been subject to much greater budget cuts than other government offices. He also wished to know what progress had been made with regard to the proposed

adoption of a national action plan on business and human rights. It emerged from the information provided by the State party that there was only administrative, but no judicial oversight of police applications for access to megadata and he requested clarification about the situation regarding access to emails.

25. It was not the Committee's intention to call into question the State party's right to exercise border control. However, it was concerned about issues relating to the principle of non-refoulement and the treatment of migrants while under Australian jurisdiction. While detention in the course of immigration proceedings was not per se arbitrary, it must be reasonable, necessary and proportionate. The State party's practice of mandatory detention under the Migration Act, lengthy detention as a rule, flawed application of adverse security assessments, and the failure to grant the individual access to the evidence against them were all cause for concern. The use of detention as a deterrent against unlawful entry into Australia in the absence of particular reasons specific to the individual could not be justified. Was it true that long-term detention, the average duration of detention and the number of persons detained following cancellation of their visa had increased? Was it also true that asylum seekers were held in the same facilities as persons whose visa had been cancelled and, if so, why? It would be useful to know how many asylum seekers were being held indefinitely for security reasons, if review courts assessed whether individuals might be detained arbitrarily, and whether decisions to detain were subject to periodic review. He asked whether the State party considered introducing a time limit on the overall duration of immigration detention.

26. Referring to high reported rates of mental health problems among migrants in detention, which allegedly correlated to the length and conditions of detention, he asked whether those persons had access to mental health services. He wished to know whether the State party recognized that aspects of prolonged indefinite detention whose duration was beyond the detainee's control could qualify as cruel, inhuman or degrading treatment. He asked what safeguards were in place to protect children from arbitrary detention. With regard to the reported increasing use of force and physical restraint against migrants in detention, he wished to know on what grounds the State party treated migrants like criminals. The Committee would welcome information about the duration of detention at sea, the availability of interpreters in such circumstance, and the procedure applied if the receiving vessel or territory withheld consent to deportation.

27. There was growing concern about the safety of asylum seekers and refugees in detention facilities. He asked what had been done to improve conditions of detention, curb violence and assaults, and investigate suspicious deaths, including those, for example, of Hamed Shamshiripour and Rajeev Rajendran, who had been found dead at the Manus Island regional processing centre. He invited the State party to indicate whether it had reached an arrangement with the Papua New Guinea authorities regarding the closure of that facility. The Committee was concerned at reports that harsh measures might be used to compel individuals into leaving processing centres, which would amount to de facto refoulement.

28. He requested information on the number of children held at the regional processing centre in Nauru, the reported high rates of mental illness and self-harm among them, and the rationale for including children in the mandatory detention policy. The Committee was concerned over the reported lack of expertise and independence of legal guardians for unaccompanied minors. The conflict of interest arising from their dual function as employees of the Department of Immigration and Border Protection and guardians of child asylum seekers or refugees was particularly worrying.

29. Contrary to the State party's position whereby it had no jurisdiction over the regional processing centres in Nauru and Papua New Guinea, the Legal and Constitutional Affairs References Committee of the Australian Senate, in its April 2017 report, had found that: "The Australian Government clearly has a duty of care in relation to the asylum seekers who have been transferred to Nauru or Papua New Guinea. To suggest otherwise is fiction." According to the report, the State party had ultimate decision-making power as the contracting agency and was the primary source of guidance and expertise to the Governments of Nauru and Papua New Guinea when it came to the management of all matters associated with the presence of refugees and asylum seekers. The conditions in

regional processing centres must therefore comply with the State party's obligations under the Covenant. It appeared that the facilities were not monitored for the compatibility with international human rights standards and that the Australian Human Rights Commissioner had been refused access. The veil of secrecy surrounding the conditions prevailing in offshore facilities was unacceptable.

30. He enquired about the scope of application of the 2015 Australian Border Force Act in offshore facilities and wished to know, in particular, how the provision establishing a penalty of up to 2 years' imprisonment for persons denouncing human rights abuses in such facilities was compatible with the Covenant. He asked whether the persons exempt from those provisions were subject to any other secrecy obligations. The Committee would welcome information on the way in which the rights of persons held in the Christmas Island detention centre were guaranteed, given its remoteness, and whether the facility would be closed down as planned. He would welcome an explanation as to the rationale underlying the different treatment of boat-migrants and other irregular on-shore migrants with regard to family reunification entitlement.

31. He asked whether it was true that the State party planned to restrict international funding for activist groups. Lastly, he would be interested in the federal Government's position vis-à-vis state-level initiatives such as restrictions on the right to protest or bans on prisoner voting.

32. **Mr. Heyns** thanked the State party for the information concerning the supervision of investigations into police misconduct at state level by the independent coroner. However, to his knowledge, the coroner had no power to investigate, which meant that investigations could only be conducted by the police itself. The resulting lack of independent investigations was particularly relevant to indigenous peoples, 209 of whom had reportedly died at the hand of the police between 1980 and 2013. He asked whether those deaths, and other incidents of police violence, had been investigated properly.

33. He would welcome clarification about the practice whereby victims of trafficking were allowed to remain in the country for a period exceeding 45 days, provided they were taking part in judicial proceedings. Could the State party provide any examples of cases where compensation had been afforded to victims of trafficking? It would also be useful to know what measures had been taken to punish business complicity in trafficking.

34. He asked whether the State party recognized the reported problems of prison overcrowding, solitary confinement and routine strip searches in places of detention. If so, had any remedial measures been taken? He wished to know what procedure was in place to ensure independent oversight of prison facilities. It would also be useful to know whether the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, once ratified, would apply to all detention centres under the jurisdiction of the State party, including offshore facilities. Furthermore, the State party should indicate whether the national preventive mechanism would be granted access to all places of detention, and whether there would be a special focus on children. He requested information about measures taken by the State party to address the problem of indigenous overrepresentation in prison. Given that indigenous peoples made up 2 per cent of the population in the State party, but 27 per cent of the prison population, it was only fair to ask whether measures such as mandatory sentencing and imprisonment for fine defaults might be part of the problem. It might also be useful to consider whether diverting offenders and enhancing the political participation of indigenous people might be part of the solution.

35. The State party had a striking number of security laws and special measures in place, including restriction of movement to prevent terrorist attacks, detention for up to 7 days without recourse, up to 5 years' imprisonment for the failure to cooperate by providing information and indefinite detention in connection with antiterrorism measures. The question arose whether the extent of such legislation might not be out of proportion, given the actual threat. There was a danger of establishing a quasi-permanent state of emergency where the use of exceptional powers became the rule and no longer needed to be justified. He suggested that the State party might wish to consider raising the age of criminal responsibility from 10 to 12 years.

36. **Ms. Jelić** enquired about progress made in ensuring access to justice and to culturally appropriate legal assistance services for disadvantaged and marginalized persons. According to paragraph 164 of the State party's report, a process of reform of legal assistance arrangements had been under way since July 2015. She requested additional information regarding the scope of the reforms and their compliance with international standards. She also enquired about the stage reached in the collection of consistent data to create an evidence base for the civil justice system.

37. She asked whether an independent evaluation had been undertaken of the funding of support for free access to interpreters and justice agencies. Noting that, according to paragraph 170 of the report, state and territory governments were responsible for the health and criminal justice systems, including ensuring that interpreters were available to clients of the services that they funded, she asked whether such services were easily accessible for all clients. The Committee had received information from civil society on the urgent need to provide interpreters for Aboriginal and Torres Strait Islander peoples.

38. She enquired about legislative provisions to facilitate voting for persons with disabilities. The fact that the Commonwealth Electoral Act 1918 excluded persons with disabilities from compulsory voting could be conducive to discrimination in terms of the presumption of legal capacity. She also wished to know what action had been taken to ensure that the process of establishing that a person was of unsound mind and incapable of understanding the nature and significance of enrolment and voting was not abused in practice. Had the State party considered deleting the reference to "unsound mind" from the Act and rendering legislation at the federal and state level more consistent with the non-discrimination principle?

39. She drew attention to the need for effective consultations with indigenous peoples and their participation in decision-making processes at all levels of governance. The connection of indigenous peoples with the land was crucial for their survival and maintenance of their identity. There seemed to be no elected indigenous body with the capacity to communicate directly with the Parliament on self-determination and on the right to freely dispose of natural wealth and resources.

40. She commended the recognition that indigenous people were the primary source of information on the value of their heritage. It was unclear, however, how that principle was implemented in practice, since indigenous people were not represented in leading roles in politics, business and public affairs.

41. She asked whether the State party had considered amending the Native Title Act 1993 to include the principle of free, prior and informed consent and to ensure that it was implemented in practice, especially with respect to the use of land, mining and nuclear waste disposal. While indigenous land use agreements enjoyed the support of indigenous peoples, concerns remained with respect to transparency and consent. She enquired about plans to ensure that indigenous peoples were properly consulted prior to the conclusion of such agreements. She also wished to know what action had been taken to implement the recommendations of the Australian Law Reform Commission concerning a review of the Native Title Act and the results of the Council of Australian Government's investigation into indigenous land administration and use.

42. **Mr. Muhumuza** referred to the case of Ms. Dhu, who had died in police custody after being arrested for failing to pay fines. The coroner had reportedly recommended after the inquest that the Western Australian Fines, Penalties and Infringement Notices Enforcement Act 1994 should be abolished. He asked whether it had in effect been abolished and, if not, when such action was likely to be taken. He also wished to know whether the police officers who had failed to assist her had been disciplined. An Aboriginal and Torres Strait Islander woman had reportedly sought police assistance in September 2017 in a case of domestic violence. She had been arrested instead for an unpaid fine and taken away from her five children. Such action was inconsistent with the trauma-informed approach to domestic violence.

43. He asked whether the State party would allow refugees from Nauru and Manus Island who were moved to Australia for medical treatment to apply for refugee status, and whether it would facilitate family reunification for those who were indefinitely separated in

offshore locations. He also wished to know whether the State party would cease the detention at sea of asylum seekers and whether it would repeal the mandatory provisions of the Migration Act 1958.

*The meeting was suspended at 11.40 a.m. and resumed at 11.50 a.m.*

44. **Mr. Walter** (Australia) said that email content did not constitute metadata for the purposes of the data retention scheme. If law enforcement agencies required access to email content, a warrant would be required in the normal course of events.

45. Funding for the Australian Human Rights Commission had been subject to the Government's efficiency dividend strategy aimed at restoring a budget surplus. Funding for Commissioners had been reduced in 2014/15 from seven to six, reflecting the practice of combining Commissioner roles. However, a Commissioner on disability-related discrimination had been appointed in 2016, raising the number of Commissioners to seven without additional funding. There had also been a temporary reduction in funding to finance the Royal Commission into Institutional Responses on Child Sexual Abuse, which would complete its mandate in late-2017. The Australian Human Rights Commission occasionally received additional funding for specific projects.

46. Coroners' powers were equivalent to those of a court. They received evidence from the police and were also empowered to receive evidence concerning the death of an individual from a range of witnesses and to draw their own conclusions.

47. **Mr. Playford** (Australia) said that the Multi-Stakeholder Advisory Group on the United Nations Guiding Principles on Business and Human Rights had produced a report that had been considered by the Minister for Foreign Affairs and the Minister for Trade, Tourism and Investment. The Minister for Foreign Affairs had informed the Advisory Group the previous week that the Government was not proceeding with a national action plan for the time being, but that it would focus on key initiatives to further business and human rights, such as the enactment of legislation to establish a modern slavery and supply chains reporting requirement. Large corporations and other entities would be required to publish annual statements outlining their action to address modern slavery in their operations and supply chains, including human trafficking.

48. **Ms. Saastamoinen** (Australia) said that indigenous affairs remained a priority for the Government. It recognized that each indigenous community was unique and worked with communities to ensure that policies, programmes and services addressed their unique needs. Civil and political rights were enjoyed by everyone within Australian territory and subject to its jurisdiction without discrimination, including Aboriginal and Torres Strait Islander peoples, who also enjoyed the right to self-determination, although the precise scope of that right remained unsettled under international law.

49. The following were key areas for the Government: meaningful recognition of the value of the Aboriginal and Torres Strait Islander heritage; development of a new way of engaging with indigenous Australians in a partnership aimed at supporting their social and economic empowerment; reduction of indigenous disadvantages, including through the "Closing the Gap" approach; support for indigenous peoples' initiatives; ensuring that indigenous peoples lived in safe communities; support for education, employment, health and well-being; and recognition and support for indigenous cultures and for their land and environment.

50. The Government recognized the importance of self-determination for indigenous peoples, and their entitlement to control their destiny and to be treated respectfully. It supported action by indigenous communities and organizations to build stronger governance and decision-making structures. For instance, Australia was supporting the Empowered Communities initiative aimed at promoting positive change at the community level in eight regions. The Government was committed to sharing information and allowing indigenous leaders to make informed decisions about appropriate reforms for their people.

51. The Government was converting the former transactional approach to indigenous communities into one of genuine partnership and support for their social and economic empowerment. Its Regional Network engaged actively with Aboriginal and Torres Strait Islander communities, determining local needs and developing appropriate solutions. The



National Congress of Australia's First Peoples had recently been provided with \$A 3 million to engage with the Government and indigenous communities in initiatives such as Closing the Gap, to work with Redfern leaders on key issues, and to offer policy advice to the Government. The Prime Minister had recently reappointed the seven members of the Indigenous Advisory Council, and the indigenous leader June Oscar had become the new Aboriginal and Torres Strait Islander Social Justice Commissioner. A number of workshops were to be held with indigenous women and girls on the right to be safe and the right to succeed.

52. A White Paper on Developing Northern Australia issued by the Government in 2015 set out key growth policy and initiatives aimed at promoting better use of land and water resources, developing transport and infrastructure, and encouraging investment. Indigenous Australians had been involved in developing the White Paper, including through the White Paper Advisory Group and the Indigenous Advisory Council. On 1 September 2017, senior indigenous leaders from northern Australia had attended the inaugural Ministerial Forum on Northern Development to discuss indigenous business, innovation and growth. The White Paper provided for support for native title corporations in building long-term capacity to engage potential investors; land administration and township leasing in the Northern Territory; and land tenure reform pilots.

53. The Stronger Futures in the Northern Territory Act 2012 and its package of support initiatives provided for extensive consultation with 73 communities. The National Partnership Agreement on Remote Aboriginal Investment would provide \$A 986 million for Government investment during an eight-year period. A number of reviews of the legislation had been undertaken, and the Government was currently considering its response.

54. The Victorian, South Australian and Northern Territory Governments had announced that they would be engaging in negotiations with Aboriginal and Torres Strait Islander peoples in their communities on treaty arrangements.

55. The indigenous incarceration statistics were admittedly quite appalling. Twenty-seven per cent of adult prisoners were indigenous, and there had been an increase of 77 per cent in the number of indigenous prisoners during the period from 2001 to 2015. About two thirds of adult prisoners had been imprisoned for violence-related offences, and about three quarters were recidivists. Action was being taken to address the causes of incarceration and recidivism, for instance by means of the Throughcare Project. There were 10 such projects, which comprised therapeutic services for offenders during incarceration and after their release. To date the projects were having a strong positive impact. A youth throughcare model was also being developed. The Commonwealth Government had asked the Australian Law Reform Commission to undertake an inquiry into the overrepresentation of indigenous people in detention facilities. The Commission was due to submit its report on 22 December 2017. The Royal Commission into the Protection and Detention of Children in the Northern Territory was also due to submit a report on 17 November 2017.

56. Following the death of Ms. Dhu in police custody, the Government of Western Australia planned to review the fine default system and assess what further measures were required. Progress had been made with regard to promoting indigenous leadership, particularly at national level; an increasing number of persons from indigenous communities held leadership posts, including as ministers, senators and government advisers.

57. **Ms. O'Keefe** (Australia) said that a voluntary process had been launched in 2014 to nominate land for nuclear waste facilities; the Barnidoota and Kimba sites in South Australia had been shortlisted, with broad community support. However, no decision had yet been made regarding the final location of the facility: the waste disposal centre would not be forced on an unwilling community. The authorities planned to hold further consultations and evaluations, including an indigenous heritage assessment.

58. Under the Native Title Act, claimants were required to have a connection with the land and waters in accordance with traditional laws and customs, maintained through generations, although there was no continuous occupation requirement. Moreover, claimants had access to financial aid and legal representation. Native title holders had the

right to compensation on just terms for any loss, diminution, impairment or other effect of certain compensable acts on their rights and interests.

59. The ruling of the Full Federal Court on voluntary land use agreements had created a certain level of uncertainty about the legal effect of more than 100 such documents. In order to address the problem, the Government had held consultations and, in June 2017, had passed the Native Title Amendment (Indigenous Land Use Agreements) Act, with broad support from native title organizations. The Act confirmed the validity of all affected land use agreements and aimed to ensure that native title claimants would be able to determine whom they wished to sign agreements on their behalf. There were also plans to introduce a series of reforms, taking into account recommendations made in two key reports, published by the Australian Law Reform Commission and the Council of Australian Governments, on indigenous land administration and use. Key stakeholders, including the National Native Title Council, Australian states and territories, as well as industry groups, had provided feedback on those recommendations and the Government planned to hold public consultations on a proposal paper before the end of the year. In that regard, the Government also planned to establish an expert technical advisory group of indigenous, government and industry representatives.

60. **Mr. Mansfield** (Australia) said that, in order to prevent deaths at sea and permanently disrupt the business model of human traffickers, Australian border control staff ensured the safe return to the country of origin, place of departure or regional processing country of any persons attempting to reach Australia by sea. The Government's approach was firm but consistent with its international obligations, including those relating to non-refoulement. Measures were in place to ensure that people would not be returned to places where they faced a real risk of harm: arrivals were given the opportunity to explain their reasons for attempting to enter the country and were interviewed by trained protection officers, in the presence of an interpreter. The evaluation process was thorough, included referrals to assessment officers and was based on comprehensive country information. There were no plans to change the current system.

61. Article 197 (c) of the Migration Act 1958 was compatible with the principle of non-refoulement and the Government's international obligations, as it focused on the practical aspects of deportation. The removal of non-citizens was contingent on specific criteria, and robust mechanisms existed to address the issue of non-refoulement prior to deportation, including through protection visas or the application of ministerial powers of intervention, if that was deemed in the public interest.

62. With regard to the fast-track assessment process, it should be noted that of the approximately 35,000 unlawful maritime arrivals in Australia with unresolved status in 2015, all but 71 had, to date, either lodged an application for asylum, departed from Australian territory or had their cases processed. Trained officers were working on resolving all remaining cases, taking individual circumstances into account.

63. The majority of persons not entitled to protection had their cases automatically referred to an independent merit review body. Under the provisions of the Migration Act, applicants were only excluded from a merit review in very specific circumstances, for example if they had the option to reach a safe third country, if they had dual nationality, if their visa application had previously been refused or if they had made unfounded claims or used bogus documents.

64. There was no policy of indefinite mandatory detention of unlawful non-citizens and detention was only used as a last resort, following a risk assessment. Unlawful arrivals could be placed in detention until health, identity and security checks had been carried out, as could non-citizens who posed an unacceptable risk to the community, had repeatedly failed to comply with visa conditions or were awaiting removal from Australia. The detention period was not prescribed by law but ended when a person was either granted a visa, transferred or removed from the country. All detained persons were informed of the reasons for their detention and the legal remedies and options available to them, including of returning to their country of origin. The Commonwealth Immigration Ombudsman assessed cases involving periods of detention longer than two years. In order to avoid

arbitrary detention, cases were also regularly reviewed by detention review managers, on the basis of specific criteria.

65. Adverse risk assessments were issued in cases where visa holders or applicants could pose a risk to the community. There were currently five persons in immigration detention owing to an adverse assessment, of whom two had reached Australia as unlawful maritime arrivals and three had entered the country legally.

66. The Governments of Nauru and Papua New Guinea managed the regional processing of refugees, exercising control over the management of open processing centres, procedures for determining refugee status within their jurisdictions and the provision of education, health and other services. The Government of Australia provided capacity-building and other support in that regard. For example, it assisted with the development of the refugee determination process, helped to implement settlement service arrangements and contracted service providers to deliver health and education services.

67. The closure of the Manus Island processing centre was scheduled for October 2017. Alternative accommodation would be offered to refugees and persons not eligible for international protection, while specialist health care funded by the Government of Australia, including mental health services, would continue to be available to refugees and other persons in Papua New Guinea beyond the end of October.

68. Under the provisions of the amended Australian Border Force Act, disclosure of protected information was only prohibited if it could harm national or public interests. Protected information included that which could prejudice public health, national security, defence or international relations or impede the prevention, detection or investigation of a crime, as well as certain personal or commercial information. Disclosure was still permitted in cases where: it was required in the course of employment or service; it was authorized or required by law; it was necessary to eliminate a threat to life or health; it was required by a court or tribunal; it was already in the public domain; or if consent had been granted. Unauthorized disclosure was penalized only if it applied to conduct that would constitute an offence under the amended legislation. It should be noted that, to date, no charges had been brought for breaches of secrecy provisions under the Border Force Act.

69. **Mr. Shany** asked whether all non-citizens awaiting removal were placed in detention, regardless of the time frame for their deportation. If that was indeed the case, it was not clear how that approach differed from a policy of mandatory indefinite detention.

70. On the issue of the Manus Island regional processing centre, he wished to know whether the State party accepted that, either under the principle of effective jurisdiction or of non-refoulement, it was under an obligation to assess the situation, including with respect to security, of the individuals transferred to that processing centre, and whether it was actually engaged in doing so.

71. He invited the State party to clarify the status of the Referendum Council report and the two recommendations made therein. More generally, he wished to know whether the Government planned to hold referendums on the constitutional recognition of Aboriginal and Torres Strait Islander peoples and on constitutional reform.

72. **Ms. Cleveland** asked for clarification regarding reports that the employment contracts of staff in offshore detention facilities prevented them from speaking about conditions in those facilities. She would be interested to know whether the A\$ 3 million of funding allocated to the National Congress of Australia's First Peoples in fact represented a cut in funding, given that the previous administration had initially pledged a larger sum. On the issue of voting rights, the fact that nearly 50 per cent of indigenous people did not appear on the electoral roll, either because they were unable to meet eligibility requirements or owing to the ban on voting by prisoners in various jurisdictions, raised concerns regarding the representation of indigenous people. What measures was the Government taking to ensure their full participation in public life?

73. **Mr. Walter** (Australia) thanked the Committee for a constructive dialogue and expressed appreciation for its streamlined approach to reporting. He also looked forward to continued cooperation with civil society organizations on human rights matters. While the Government was proud of the country's human rights record, it was also aware of areas for

improvement and looked forward to working together with Australian states and territories on any recommendations that the Committee would include in its concluding observations. He stressed the Government's commitment to upholding human rights at national, regional and international level.

74. **The Chair** said that she welcomed the State party's openness to dialogue and indicated that the progress made and any outstanding areas of concern would be reflected in the Committee's concluding observations.

*The meeting rose at 1 p.m.*