



**International covenant  
on civil and  
political rights**

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HUMAN RIGHTS COMMITTEE  
Ninety-fourth session  
Geneva, 13-31 October 2008

**LIST OF ISSUES TO BE TAKEN UP IN CONNECTION WITH THE  
CONSIDERATION OF THE FIFTH PERIODIC REPORT OF AUSTRALIA  
(CCPR/C/AUS/5)**

**Constitutional and legal framework within which the Covenant is implemented /  
protection of children/ equality before the law / rights of ethnic, religious or linguistic  
minorities (arts. 2, 24, 26 and 27)**

1. Please indicate whether there is legislation in place to implement all the provisions of the Covenant and whether the State party envisages introducing constitutional or legislative protection of human rights at the Federal level (i.e. a Federal Bill or Charter of Rights) protecting all the rights contained in the Covenant.
2. Please indicate whether the State party envisages withdrawing its reservations to the Covenant (art. 10, paras. 2 (a) and (b) and 3; art. 14, para. 6 ; and art. 20).
3. Please indicate what measures and mechanisms are in place to implement and ensure compliance with the Committee's views under the First Optional Protocol to the Covenant. In particular, please indicate developments, if any, with respect to such individual communications where the State party considered that "further dialogue on the matter would not be fruitful" or did not accept the Committee's views and recommendations (e.g.: *A v. Australia*, No.° 560/1993; *Young v. Australia*, No.° 941/2000; *Cabal and Pasini v. Australia*, No.° 1020/2001; *Baban v. Australia*, No. 1014/2001; *Bakhtiyari v. Australia*, No.° 1069/2002, *D & E v. Australia*, No.° 1050/2002 and *Shafiq v. Australia*, No. 1324/2004).
4. Please clarify whether the State party considers that its agents abroad are bound by the State party's obligations under both the Covenant and its Second Optional Protocol.

5. Please explain how the State party ensures that its anti-terrorism legislation, notably the Anti-Terrorism Act (No. 2) 2005, is compatible with the rights guaranteed by the Covenant, in particular regarding the increased powers provided to the Australian Security Intelligence Organization (ASIO); the imposition of preventative detention and control orders; and the powers to stop, question and search. Please also indicate how many, among the recommendations made in November 2005 by the Senate Constitutional and Legal Committee review on the Anti-Terrorism Bill, were accepted and implemented by the State party. Has an independent Reviewer been appointed to review and report on terrorism related laws?

6. Please update the Committee on the outcome of the different strategies undertaken to reduce the disproportionate number of Indigenous Australians in conflict with the criminal justice system.

7. In the light of the recent Government's Apology to Indigenous Australians, please inform the Committee on the measures taken to:

- (a) Make the native title system more equitable, following the July 2008 announcement by the Federal Attorney General of an "overhaul" of the system;
- (b) Follow up to the recommendations made by the Aboriginal and Torres Strait Islander Social Justice Commissioner in its annual report on Social Justice issues, in particular those suggesting the prioritization of funding for initiatives addressing family violence and child abuse.

8. Please inform the Committee on measures taken to remedy the reported disproportionate number of indigenous children and children with mental illness and intellectual disabilities in the juvenile justice system.

9. Please briefly inform the Committee on the main findings of the report of the Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse in the Northern Territory ("Little Children are Sacred" of 2007). Please also comment on the allegation according to which the follow-up measures taken to respond to the findings of this report (Northern Territory Emergency Response) were adopted without adequate consultation with the Indigenous communities and would suspend, in part, the operation of the Racial Discrimination Act.

**Equal rights of men and women, measures to prevent discrimination (arts.3 and 26)**

10. Please provide detailed information on the phenomenon of violence against women, in particular domestic violence, including statistics covering the last five years, disaggregated by gender, age, type of violence and relationship between the author of violence and the victim, concerning the number of complaints recorded, civil or criminal investigations conducted, penalties imposed, and compensation granted to the victims or their families. Please also provide information on measures taken to address violence against women.

**Right to life and prohibition of torture and cruel, inhuman or degrading treatment  
(arts. 6 and 7)**

11. Australia's extradition law provides that extradition cannot be granted unless the requesting country provides an undertaking that the death penalty will not be imposed or, if imposed, will not be carried out. Please indicate what measures are taken by the State party to ensure that these undertakings are effectively honoured.

**Prohibition of slavery (art. 8)**

12. Please clarify whether all identified victims of trafficking benefit from victim support programmes or whether these programmes are limited to victims willing and able to cooperate with the police and prosecution authorities.

**Security of the person and the right not to be subjected to arbitrary detention /  
right to a fair trial (arts. 9 and 14)**

13. Please elaborate on the follow up to the recent statement made by the Minister for Immigration and Citizenship announcing a substantial change in the State party's asylum and migration policy. In particular, please explain:

- (a) Whether the State party envisages abolishing the current mandatory migration detention policy for those entering irregularly the State party's territory or overstaying their visa permit;
- (b) Whether the policy changes relating to immigration detention will apply throughout the State party, including any territories currently excised from the so-called "migration zone" of Australia;
- (c) Whether there is any plan to close the Christmas Island detention centre.

14. Please provide more information to the Committee on the so-called "dead-time provisions" contained in section 23 CA of Part 1C of the Crimes Act, which allow for the suspension of the calculation of the investigation period in certain circumstances. In particular, please elaborate on the provision contained in subsection 23 CA (8)(m), which applies to terrorism cases, providing that the investigation period does not include the time during which the questioning of a person is "reasonably suspended or delayed". Please indicate what the reasonable motives for the suspension are and whether there is a limit to the maximum period of "dead time" allowed.

15. Please indicate whether measures have been taken to abolish the mandatory sentencing legislation (so-called "three strikes law") still existing in the Criminal Code of Western Australia, which reportedly disproportionately affects children and indigenous peoples.

16. Is the State party considering the establishment of an independent body to investigate, correct and compensate wrongful arrest, detention and conviction?

17. Please comment on the compatibility with article 14 of the Covenant of the system of security clearances for lawyers - in cases involving classified or security sensitive information - contained in the National Security Information (Civil and Criminal Proceedings) Act of 2004.

**Treatment of persons deprived of liberty (art.10)**

18. Please inform the Committee on the steps undertaken to improve conditions of detention, including access to appropriate mental health care for prisoners experiencing mental illness. In addition, with respect to immigration detention, please provide information on action taken to implement the recommendations made by the Human Rights and Equal Opportunity Commission (HREOC) following the inspection of mainland immigration detention facilities in 2007.

19. Please comment on the steps taken to ensure that remand detainees are separated from those convicted and are subject to treatment appropriate in relation to their status as unconvicted persons. Please also elaborate on the reverse burden of proof – contained in the Crimes Act - with respect to bail for prisoners charged with a terrorism offence.

**Protection against arbitrary expulsion (art.13)**

20. Please provide information on the announced review of the powers of the Minister for Immigration and Citizenship aimed at creating a system of complementary protection in order to ensure that the State party no longer exclusively relies on the Minister's discretionary powers for expulsions and removals. Please also report on any steps taken further to this review.

**Freedom of thought, religion and expression (arts.18 and 19)**

21. Please inform the Committee on any steps, including legislative measures, to tackle the issue of discrimination and incitement to hatred on the basis of religion. In this respect, please indicate whether the State party has taken measures to follow up to the HREOC recommendations contained in the "*Ismaḥ — Listen*" report.

**Participation in public life (art.25)**

22. Please comment on the compatibility of the denial of the right to vote for prisoners serving a sentence of full-time detention with article 25 of the Covenant.

**Dissemination of information regarding the Covenant / form of the report  
(arts. 2 and 40)**

23. Please indicate what steps the State party has taken to disseminate information about the submission of its fifth periodic report, its examination by the Committee and the Committee's previous concluding observations on the fourth periodic report. Please also provide information about steps currently being taken to raise public awareness of the Covenant and its Optional

Protocol among judges, public officials, police and law enforcement officers, legal advisers and the public at large.

24. Please explain the process of elaboration of the report submitted by the State party under article 40 of the Covenant, and comment on its form (CCPR/C/AUS/5). In particular, please indicate how the State party considers that the report complies with the Committee's guidelines and serves the purpose of providing it with the necessary information regarding the implementation of the Covenant in the State party.

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