IX. Individuals

International criminal jurisdiction - Proposed International Criminal Court - Draft Code of Crimes Against the Peace and Security of "Mankind" - Australian position

The Australian statement concerning the Report of the International Law Commission on the Work of the Forty Fourth Session was delivered before the UN Sixth Committee on 28 October 1992 by Professor Ivan Shearer. It read in part as follows:

> Australia wishes ... especially to congratulate the Working Group of the International Law Commission on its Report on the question of an international criminal jurisdiction. That Report is a remarkably even-handed and succinct exposition of a complex topic.
>
> The Report clearly identifies the merits of the proposal as well as the difficulties inherent in it. However, the Report also indicates ways of circumventing these difficulties and of arriving at solutions which offer realistic prospects of a viable and beneficial form of international criminal jurisdiction.
>
> Australia has already indicated its support of the proposal and specifically of directing the International Law Commission, as it itself has requested, to proceed with the preparation of a Draft Statute.
>
> In his address to the 47th Session of the General Assembly on 28 September this year, Australia's Foreign Minister, Senator the Hon Gareth Evans, stated, in the context of steps to be taken by the Assembly to consolidate respect for human rights:
>
> > There is for instance a growing call by the international community for a mechanism to try individuals for breaches of international humanitarian law and other international crimes. Australia supports consideration being given to an international criminal jurisdiction to deal with such offences, and considers that the International Law Commission should continue its important work on this topic, specifically by drafting a statute for an international criminal court.
>
> Australia has not come to this position lightly or without due consideration of the difficulties of the proposal. ...
>
> The end of the Cold War era, the many reasons why States are conscious as never before of their interdependence, and recent examples of armed conflict, all combine to compel the conclusion that initiatives such as the creation of an international criminal jurisdiction are now feasible. The proposal before us shows, at the very least, that a Statute can be drafted which could attract wide support and adherence.
>
> The approach indicated by the Working Group contains the following features, among others, which Australia regards as of particular importance:

- the detachment of the Statute of the Court from the Code of Crimes Against the Peace and Security of Mankind;
- the jurisdiction of the Court to be confined, in the first phase of its operations at least, to private persons, and not to States;
- the jurisdiction of the Court to be essentially voluntary and to be concurrent with that of national courts;
- the Court, in the first phase of its operations at least, to be a facility to be called upon in need, and not a standing full-time body.

In the present statement my Delegation does not intend to touch upon all the issues raised in the Report. There are a few specific issues, however, on which Australia would like to offer preliminary comments in the hope that these will be taken into account by the Commission in the preparation of a draft Statute.

The Subject-Matter Jurisdiction

Australia generally supports the approach of the Working Group. The offences subject to the jurisdiction of the Court should be those defined in international conventions in force, which would include the Code of Crimes Against the Peace and Security of Mankind (when that Code enters into force).

The question of narcotic drug offences needs to be approached along the lines supported by Working Group in para 450 of its Report. The Court ought not to be swamped with routine cases. ...

The Personal Jurisdiction

More detailed consideration needs to be given to this basis of jurisdiction. In principle the notion of "ceded jurisdiction" seems to be correct in the scheme proposed whereby the Court is exercising concurrent, not exclusive jurisdiction. The cases mentioned in paras 454 and 455 are likely to be the more common forms of ceded jurisdiction and should not require the consent of any other State, not even the national State of the alleged offender. In cases where the State ceding jurisdiction is neither the State in whose territory the offence was committed nor the State of the nationality of the offender, but whose title to prosecute rests on some other connection, or mere custody, the consent of the territorial State or national State should be required only if these States have agreed to prosecute in the event of extradition.

An International Trial Mechanism other than a Court

For the reasons given in paras 473–487 of the Working Group's Report, it may not be appropriate to devise mechanisms short of facilities for trial in the Statute of the Court. But consideration might be given to making provision, as an integral part of the Code itself and not in the Statute, for an international fact-finding body of the kind provided for in Article 90 of Additional Protocol I to the Geneva Conventions of 1949 (1977). In the event that the International Criminal Court was prevented from trying offences against the Code through lack of acceptance of its Statute by relevant States, the fact-finding facility would constitute a potent means whereby the international community could express its concern. Moreover, there would not appear to be such strong reasons as in the case of Geneva Protocol I for making the

competence of such a fact-finding body dependent on the consent of interested States.

Bringing Defendants Before a Court

The question of the constitutional inability of some States to surrender their own nationals is referred to briefly in the Report, but not resolved. It may possibly be resolved on the basis that surrender to an international court is not in formal terms extradition, or on the basis of the *sui generis* nature of the court. Alternatively the point may be met by prior agreement that if the national State surrenders a defendant of its nationality for trial, or agrees to the surrender of its nationals by another State, that defendant will, if convicted, be returned to the national State for execution of sentence. In other words, there may not be, in the relevant constitutional sense, an extradition where a surrender has occurred for trial only and where the national State, having control over the execution of sentence, does not surrender completely its power of protection.

Implementation of Sentences

I have just referred to the possible constitutional problem for some States in extraditing their own nationals. There is an additional consideration that imprisonment of an offender in a foreign country with possible differences in language, climate, culture, and in social and economic conditions, constitutes a gratuitous additional punishment unrelated to the offence. This consideration has led a number of countries in recent years to conclude mutual repatriation agreements in relation to citizens of one party convicted and sentenced in the courts of the other.

For these reasons it is suggested that consideration be given to including in the draft Statue a provision allowing the national State of the convicted offender to implement the sentence, if it so wishes.

Mr Chairman:

My Delegation wishes to conclude these brief preliminary comments and suggestions by responding to the request posed by the ILC, and reiterating its strong support for the proposal that the International Law Commission be given a clear mandate to proceed with the preparation of a Draft Statute of an International Criminal Court along the lines indicated in the Report of the Working Group.

The Australian Statement to the UN Sixth Committee after the adoption of the resolution on the International Law Commission contained the following comments:

The Australian Delegation is very pleased to see the adoption by consensus of the resolution on the ILC, as is traditionally the case.

This year this resolution contains a very important development, with the provision of a mandate to the ILC to undertake work on a Statute for an International Criminal Court, on the basis of the report of its 1992 Working Group. This new item is of great importance, and will be a matter of priority for the ILC.

Human rights - Universality - Role in development - International responses to breaches

The Secretary of the Department of Foreign Affairs and Trade, Dr Peter Wilenski, gave a speech on 22 October 1992 on "Democracy, Human Rights and Social Justice as Key Factors for Achieving Balanced Development" to the Strasbourg Conference on Parliamentary Colloquy in Canberra. Following are extracts from that speech:

> Thus one way of approaching this topic is that it is simply a tautology. Democracy, human rights and social justice are by definition included in the phrase, "balanced development" and thus self-evidently are key factors for its attainment.
>
> Nevertheless the topic does open up some interesting related questions. I shall mention three of the most contentious of these. All have been the subject of intense international debate.
>
> The first is whether those three concepts have the same meaning regardless of economic or cultural context.
>
> The second is whether promotion of democracy, human rights and social justice is a necessary condition for economic development.
>
> The third is what response gross deviations from democracy, human rights and social justice justify, or indeed, require from the international community, and how these may affect balance development.
>
> The first of the questions, then, is whether terms such as "democracy", and "social justice" have a common meaning in all countries or whether their meaning differs according to cultural, social and even economic context.
>
> There is increasing acceptance that there are many human values which do have universal application. These include such basic aspects of human existence as the right to life and freedom from arbitrary detention or torture. Nor is there in most countries a great deal of dissent about other rights (especially if one consults victims of oppression or discrimination rather than their oppressors) but rather there is debate over the trade-offs and possible conflicts between different rights.
>
> Not surprisingly in countries afflicted by widespread poverty, malnutrition and illiteracy, the economic and social aspects of human rights and social justice loom larger. Developing countries have consistently called for equal attention to be given to economic, social and cultural rights as to civil and political rights.
>
> These debates about the relative importance of political and economic rights have also been part of the discourse about human rights in industrialised countries. There has been a convergence of views on what are basic standards of human rights and fundamental freedoms which lie at the heart of the civic culture of these societies.
>
> Similarly, while debate about trade-offs between conflicting rights in particular situations will always be with us, we can expect that views will converge further on what people of different cultures believe constitute universal standards of human rights. There are few if any governments which

seriously contend that the Universal Declaration of Human Rights does not apply to them.

The growing debate on what these universal values comprise, is a sign that universality is no longer an unthinkable ideal, although differences of emphasis will remain.

The second question is whether democracy, respect for human rights and the attainment of social justice are not only worthwhile goals in themselves, but also necessary conditions for sustained economic growth.

The Asia-Pacific region, with its vastly different cultures, economies and political ideologies, provides a variety of case studies for empirical study of this question. The region includes three of the four remaining avowedly communist governments and some of the oldest and largest liberal democracies. Some of the poorest and richest States are here, and cultural and religious differences between and within States are enormous.

The outstanding feature of this region has been its economic dynamism, but empirically it is clear that a sharp distinction in economic performance can be drawn between those societies which have adopted open and outward looking forms of economic organisation, and those with closed or heavily protected economic systems.

It must be admitted, however, that economic "openness", on the one hand and a system of democracy and respect for human rights and social justice on the other, do not always coincide. ...

Another aspect of this question are the problems of ethnic nationalism and minority rights which have been highlighted in Europe and the former Soviet Union, but are also present in many countries of the Asia-Pacific Region, some of which are still in the process of nation-building.

In some countries, instability resulting from tensions between ethnic groups (or claims for self-determination and separatism), is a fundamental challenge to development, one which is sometimes used to justify deprivation of political freedoms and to divert attention from human rights abuses.

While each country must find its own way through these nation-threatening problems, there is a strong argument, in my view, that such instability is best contained by establishing guarantees of individual and minority rights and democratic institutions and processes through which minority groups can pursue and satisfy their interests in a peaceful way.

In the end, however, the case for democracy and social justice must and can stand on its own grounds rather than as an instrumental value for other ends.

The third question if I can re-phrase it, is what the contribution of outside countries should be to the promotion of democracy, respect for human rights and the attainment of social justice as part of balanced development. A controversial aspect to this has been whether a country's interest in these areas should influence relations through trade, investment or development assistance flows.*

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* On this aspect, see Chapter VIII pp 485-86 of this volume.

Many developing countries (including some which are genuinely democratic) are uncomfortable with, or even deeply suspicious of, the attempt to link these issues with other aspects of their external relations.

This "conditionality" is often seen as an attempt by the economically most powerful countries to impose their views on weaker, poorer countries to the detriment of their national interests and national sovereignty. This reaction is stronger because it is linked to resentment at the perceived inequality of the international economic (and political) order.

Some of these countries are vigorous advocates of democracy. It is the apparent imposition of outside models they find objectionable.

The NAM [Non-Aligned Movement] summit, again, set out these views: "we welcome the growing trend towards democracy and commit ourselves to cooperate in the protection of human rights. We believe that economic and social progress facilitate the achievement of these objectives. No country, however, should use its power to dictate its concept of democracy and human rights or to impose conditionalities on others."

Some abuses of human rights are however so egregious that they cry out for an international response. The former UN Secretary-General, Perez de Cuellar, in his last annual report reflected the changing consensus, noting "that the principle of non-interference with the essential domestic jurisdiction of States cannot be regarded as a protective barrier behind which human rights could be massively or systematically violated with impunity".

The reaction to the apartheid system in South Africa showed that the international community accepts that economic and other aspect of bilateral relations should be linked to concerns about human rights. There are circumstances in which governments move so far from the norms of internationally acceptable action that any cooperation must come into question. Australia has, for example, suspended its aid program in such circumstances.

But in many cases, quiet but vigorous persuasion is the more effective course. The rationale for promoting democracy, social justice and human rights is not the warm inner glow of taking up a righteous cause. It is to influence a change for the better.

This is in no way to suggest that violations of human rights can be excused or condoned – Australia has over the past five years made over 2300 official representations on human rights issues to more than 120 countries as part of the normal discourse of our bilateral relations – but to suggest that there are at the same time constructive and positive ways in which countries can assist the development of public institutions and of a home-grown domestic culture, developed willingly, which is the ultimate guarantor of human rights in any country.

Human rights – Australian international human rights policy

The Human Rights Sub-Committee of the Joint Committee on Foreign Affairs, Defence and Trade tabled its report, *A Review of Australia's Efforts to Promote and Protect Human Rights*, on 8 December 1992. The Government's response was tabled in the Senate on 27 May 1993. Extracts from the Report itself and from the Government's response will appear in Volume 15 of this

Year Book. Following are extracts from the Submission to the Committee's inquiry by the Department of Foreign Affairs and Trade (Submission by the Department of Foreign Affairs and Trade on the Australian Government's International Human Rights Policy and Activities, at Appendix 10 of the *Report*):

> 3. The Government considers that the standards set out in the Universal Declaration [of Human Rights] have an application which transcends national borders, and hence human rights constitute a legitimate subject for international scrutiny and concern. The Government does not accept that the treatment of human rights constitutes an "internal affair" for any country. ...
>
> 6. The Government appreciates that there are varying perspectives on human rights, and that cultural, social and historic influences should be taken into account in addressing human rights situations. Nevertheless, it is important to understand that there is no society which does not value human dignity nor recognise the fundamental nature of the principles set out in the Universal Declaration.
>
> 7. The Government also accepts that for many regional and other developing countries, economic rights are seen as especially important and agrees on the need to address the underlying causes of human rights abuse. We do not consider, however, that economic rights should be accorded priority over civil and political freedoms – the two are not mutually exclusive. A society which respects and promotes individual rights (with the physical and intellectual mobility and flexibility they involve) is more likely than not to enjoy economic growth. Australia rejects the hypothesis that a State may determine that the pursuit of the collective economic well–being of its citizens can justify the suppression of individual and democratic freedoms.
>
> 8. The bottom line objective of the Government in its pursuit of improved standards of human rights is to better the situation of the individual human rights victim. To this end, Government policy is to adopt the most constructive approach possible in a given situation.
>
> 9. Experience has shown that confrontation does not bring positive results for the victims of human rights abuse; rather it is more productive to engage in rational and open dialogue on human rights issues and cases of concern.
>
> 10. There are additional aspects which the Australian Government considers important to the credibility of its international human rights policy. It is essential that Australia be demonstrably consistent and non–discriminatory in raising human rights matters; there must be no selectivity in approaches to other countries. It is also necessary to ensure that in raising human rights concerns any approach is based on accurate information – in many instances, the initial steps in looking into human rights allegations involve careful enquiry rather than accusation. ...
>
> 13. The Government is conscious that it must itself subscribe to the principles and rights it seeks to uphold. There can be no denying that Australia's record has been far from perfect, in particular in respect to the treatment of Aboriginal and Torres Strait Islander people. We do not shy away from acknowledging this fact, though we point out at the same time that positive steps are being taken to redress past injustices and Government policy is to eliminate racial

and other discrimination from Australian Society. The Government takes an active part in the international promotion of indigenous peoples' rights.

14. Australia is also aware of the need to uphold vigorously the principle of international accountability by itself adhering to the major human rights instruments, and responding accurately and fully to enquiries raised as a consequence of the monitoring processes.

The Multilateral Arena

15. Australia strongly encourages all countries to adhere to international human rights instruments. Australia is itself a Party to nineteen of the twenty-four international instruments, including all the major conventions. ...

16. Australia attaches considerable importance to the effective operation of these international instruments, which with the Universal Declaration, form the basis of international human rights law. The Government has been active in advocating reform measures to rationalise the functioning of the monitoring bodies, and has nominated candidates to serve (in their personal capacity) on two of these bodies – the Economic, Social and Cultural Rights Committee, and the Committee on the Elimination of Discrimination Against Women.

17. Australia has also recently become a Party to the First Optional Protocol to the ICCPR, thus recognising the competence of the Convention's monitoring body (the Human Rights Committee) to receive communications from persons within Australia concerning Australia's compliance with the Convention. Australia is a Party to the Second Optional Protocol, against Capital Punishment.

18. The Government is a strong supporter of the United Nations' human rights role, including its standard-setting and monitoring activities. Australia is currently serving a three year term as a Member of the UN Commission on Human Rights, the main international forum for the promotion and protection of human rights. Australia also actively pursues human rights goals at the United Nations General Assembly.

19. The Government seeks to promote adherence to international standards through the operations of these forums. It therefore supports such mechanisms as special country rapporteurs, working groups and thematic studies.

20. Given the international composition of the UN bodies, the Government accepts that progress often requires negotiation, dialogue and consensus. As a country of Western traditions located in a developing region of the world, Australia is keen to play a role in promoting contacts and dialogue between regional groups at multilateral forums. With a history of support for developing countries' perspectives in such areas as economic rights and our focus on the Asia-Pacific region, the Government has developed a record of active involvement in multilateral consensus procedures.

Bilateral Approaches

21. Australia has been active in raising individual human rights cases and situations with other countries. It is the Government's policy to take up all individual human rights cases which are brought to its attention when it is satisfied that there are valid grounds for enquiry. A large proportion of these cases are initially referred to the Government by the Australian Parliamentary

Group of Amnesty International. Information is also drawn from Australia's overseas diplomatic network, and from groups and individuals within Australia. (Details of this activity appear in the second part of this Report.)

22. It is the Government's practice first to investigate the accuracy of any such allegations of human rights abuse, through its relevant diplomatic missions, before raising a case with the authorities of another country. The basic format of approaches to other governments in cases where it is considered action is warranted is first to seek clarification of the reported abuse in a non-confrontational manner; the receiving authority is informed that, if the allegation were correct, it would be a matter of concern to the Australian Government. The Government is careful not to initiate action in cases where it judges that to do so would not be beneficial to the individual(s) concerned.

23. Representations are normally made through the Australian diplomatic mission in, or accredited to, the country concerned as this is considered the most effective channel to register Australian views with the relevant authorities. In exceptional cases, representations are made by the Department of Foreign Affairs and Trade to diplomatic representatives in Canberra. Both the Minister for Foreign Affairs and Trade, Senator Gareth Evans, and the Minister for Trade Negotiations, Dr Neal Blewett, frequently raise individual cases and wider human rights concerns in their meetings with senior foreign government representatives abroad and in Australia.

24. The Government is well aware that this is an area of great sensitivity in the field of bilateral relations. However, it considers that with skilful handling, human rights issues can be managed without significant adverse impact upon other areas of bilateral relationships.

25. Australia is particularly conscious of the differing cultural and social perspectives on human rights amongst our Asian-Pacific regional neighbours. The Government considers that the best prospect for improving human rights situations within the region will usually lie in a non-confrontational approach and the development of mutual understanding. The Government's policy is to achieve the observance of internationally-accepted standards through common agreement based on dialogue and cooperation, without compromising on fundamental human rights principles.

26. The recent Australian Human Rights Delegation to China constitutes a relevant example of the application of rational and open discussion in advancing Australian human rights goals. The Delegation carried out a constructive and non-confrontational dialogue, to the satisfaction of both sides, in the course of which Australian Government concerns on a range of human rights issues and on individual cases of prisoners of conscience were clearly conveyed. At the same time, the Delegation listened carefully to Chinese perspectives on human rights, and gathered much useful information on the Chinese legal, judicial and penal systems. Moreover, in accepting the visit the Chinese Government implicitly accepted the legitimate place of human rights on the international agenda as a proper subject for bilateral discourse. The Delegation visit also, importantly, provided the opportunity to contribute to a better understanding on the part of the Chinese authorities that there are alternative approaches to human rights and that there are advantages in

adopting a more open and humane attitude. This exemplifies the direction of Australia's international human rights policy.

Representations

1. The Department of Foreign Affairs and Trade maintains a register of Australia's bilateral human rights representations. This shows that during the period 1 July 1990 to 30 June 1991, the Australian Government made 428 representations to the government authorities of 78 different countries over individual human rights cases or situations. In addition, there was on-going activity on cases raised prior to 1 July 1990. (In the period from 1 July 1987, when statistics were first maintained, to 30 June 1991, the Government has made a total of 1657 representations to 122 different countries.)

2. These figures to not constitute the actual number of individual cases raised, as any one representation may include more than one person - some, for example, have involved as many as eighty individuals. ...

4. While it is difficult to precisely assess the results of specific representations, responses were received in approximately 20 to 25% of these cases, of which some 15% can be considered positive. Such responses could take the form of information on the health or whereabouts of the person concerned, advice that a prisoner had been released, or an assurance that the individual's human rights were being protected. Of course, it is not always possible to know whether a representation has produced a result, nor to suggest that an outcome is the sole result of any one representation.

United Nations General Assembly - Forty-seventh regular session - Human rights issues

On 23 December 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, issued a news release concerning the outcomes of the Forty-seventh session of the United Nations General Assembly. The news release read in part:

> Australia also continued to give a high priority at UNGA 47 to international human rights issues. We worked actively for the adoption by consensus of a strong resolution addressing the human rights situation in Burma and took a strong stance in supporting a resolution condemning the massive violation of human rights in Bosnia-Herzegovina. Australia was also active in reaching agreement on the agenda for the 1993 World Human Rights Conference and warmly welcomes the successful launch of the International Year of the World's Indigenous People.

Human Rights Conventions - Australian Declarations and Reservations

On 27 May 1992 the Attorney-General, Mr Duffy, answered a question upon notice from Mr Hollis (HR Deb 1992, Vol 184, p 3020). The question and answer were as follows:

> (Q) Further to the answers to questions Nos 981 (*Hansard*, 16 October 1991, p 2095) and 1177 (*Hansard*, 25 February 1992, p 151), did consultation conclude with the States and Territories in the forum of the Standing

Committee of Attorneys-General in Launceston on 13 March 1992 concerning declarations under (a) Article 14 of the 1966 International Convention on the Elimination of All Forms of Racial Discrimination and (b) Article 41 of the 1966 International Covenant on Civil and Political Rights?

(A) The declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination was raised in the meeting of the Standing Committee of Attorneys-General. I have since written to the State and Territory Attorneys-General concerning this matter. From the Commonwealth's perspective, I can see no reason in principle for not proceeding to make the declaration under Article 14.

As to the declaration under Article 41 of the International Covenant on Civil and Political Rights, I, in conjunction with my colleague the Minister for Foreign Affairs and Trade, will be giving further consideration to the bilateral aspects of that declaration before further consultations with the States and Territories.

On 24 June 1992 the Attorney-General, Mr Duffy, answered a question upon notice from Mr Hollis (HR Deb 1992, Vol 184, p 3860). The question and answer were as follows:

(Q) Will he bring up-to-date the information provided in the answers to questions Nos 94 (*Hansard*, 4 November 1987, p 2043), 31 (*Hansard*, 21 August 1990, p 1214), 442 (*Hansard*, 12 February 1991, p 417) and part (5) of question No 975 (*Hansard*, 26 November 1991, p 3332) concerning the withdrawal of the declaration which Australia made in ratifying the 1966 UN Convention on the Elimination of All Forms of Racial Discrimination?

(A) The answer to the honourable member's question is as follows:

(1) The text of the declaration made by Australia on ratification of the Convention is:

> THE GOVERNMENT OF AUSTRALIA furthermore DECLARES that Australia is not at present in a position specifically to treat as offences all the matters covered by article 4(a) of the Convention. Acts of the kind there mentioned are punishable only to the extent provided by the existing criminal law dealing with such matters as the maintenance of public order, public mischief, assault, riot, criminal libel, conspiracy and attempts. It is the intention of the Australian Government at the first suitable moment, to seek from Parliament legislation specifically implementing the terms of article 4(a).

(2) The Commonwealth has had the matter under review for sometime. The Human Rights and Equal Opportunity Commission in its National Inquiry Into Racist Violence Report (NIRV Report) recommended that any qualification on Australia's obligations under Article 4(a) of the Convention on the Elimination of All Forms of Racial Discrimination be removed. The Royal Commission into Aboriginal Deaths in Custody recommended that Governments which have not already done so legislate to proscribe racial vilification. In the response to that Report the Minister for Aboriginal and Torres Strait Islander Affairs noted that before legislative action can be taken, Australia would need to withdraw its reservation to Article 4(a) of the Convention. He also noted that the Government is disposed to legislate to specifically prohibit incitement to racial

violence in circumstances where an appropriate link could be established between the act of incitement and the act of violence threatened or occurring. The Government will be considering the issue of racial vilification shortly.

(3) New South Wales, Queensland, Western Australia and the Australian Capital Territory have legislated to prohibit racial vilification. Victoria has announced that it intends to introduce legislation to prohibit acts of racist abuse, harassment and incitement to racial hatred, South Australia is considering extending the law beyond existing discrimination prohibitions.

The following remarks were made on 28 July 1992 by Mr Robert Tickner, Minister for Aboriginal and Torres Strait Islander Affairs, in the course of an address to the Tenth Session of the United Nations Working Group on Indigenous Populations:

The Australian Government acknowledges that it is not just our fellow Australians who are watching the human rights of Australia's indigenous peoples.

The Australian Government acknowledges and welcomes the fact that the world is watching. No country can properly claim immunity from international human rights scrutiny and as a nation we are pleased to give our support to the need to further enhance United Nations mechanisms for monitoring and scrutinising the performance of governments on human rights issues.

Last year at this forum I was pleased to announce that the Australian Government was to accede to the First Optional Protocol to the International Covenant on Civil and Political Rights. On this occasion I am pleased to inform the Working Group that the Federal Attorney-General has announced that he is taking steps towards Australia making the appropriate Declarations under the United Nations Convention Against Torture and the Convention on the Elimination of All Forms of Racial Discrimination to allow individuals access to the relevant international forums.

On 6 October 1992 the Attorney-General, Mr Duffy, answered a question upon notice from Mr Hollis (HR Deb 1992, Vol 186, p 1501). The question and answer were as follows:

(Q1) Did consultation conclude with the States and Territories in the forum of the Standing Committee Attorneys-General in Perth on 2 July 1992 concerning declarations under (a) Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, (b) Article 41 of the International Covenant on Civil and Political Rights and (c) Articles 21 and 22 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment?

(Q2) Did Australia attend the first session (9–13 September 1991) and second session (30 March – 10 April 1992) in Geneva of the Preparatory Committee for the 1993 World Conference on Human Rights in Vienna?

(Q3) When will the third session of the Preparatory Committee be held and will Australia attend it?

(Q4) Will Australia have made the four outstanding declarations before the World Conference is held?

MR DUFFY: The answer to the honourable member's question is as follows:

(A1) No. However, the Standing Committee is not the only means by which consultation with the States occurs on these matters. I have been engaged in correspondence with my State and Territory counterparts on these issues over recent months.

(A2) Yes.

(Q3) The third session of the Preparatory Committee will be held from 14–19 September 1992. I understand that Australia will be attending that session.

(A4) The question of whether and when declarations will be made which extend Australia's treaty obligations is properly a matter for decision by the Governor–General–in–Council.

On 7 October 1992 the Minister representing the Minister for Foreign Affairs and Trade, Mr John Kerin, answered a question upon notice from Mr Hollis (HR Deb 1992, Vol 186, p 1679). The question and answer were as follows:

(Q) Further to the answer to question No 975 (*Hansard*), 26 November 1991, p 3332), what have been the results, if any, of the reconsideration of Australia's reservations regarding (a) Article III of the Convention on the Political Rights of Women, (b) Article 10, 14 and 20 of the International Covenant on Civil and Political Rights, and (c) maternity leave and combat duty in the Convention on the Elimination of All Forms of Discrimination Against Women?

(A) The Minister for Foreign Affairs and Trade has provided the following answer to the honourable member's question:

(a) The question of reconsideration of the reservation regarding Article III of the Convention on the Political Rights of Women which concerns recruitment to, and service in, the Defence Forces, depends on policy developments in other portfolios. In this regard, I understand that the Department of Defence is currently reviewing the employment of women in combat–related positions.

(b) All reservations to the International Covenant on Civil and Political Rights will necessarily be examined in the course of the preparation of the Report to the United Nations Human Rights Committee, required under Article 40 of the Covenant. The Report is currently being prepared by the Attorney–General's Department. The Attorney–General announced on 22 July 1992 that the Commonwealth Government would be introducing legislation into the Parliament dealing with the problem of racial vilification. As a result of this announcement, the Government has decided that the Attorney–General, in consultation with the Minister for Foreign Affairs and Trade, should review the terms of Australia's reservation to Article 20 with a view to modifying that reservation.

(c) The question of reconsideration of the reservations regarding maternity leave and combat duty in the Convention on the Elimination of All Forms of Discrimination Against Women depends upon policy developments in other portfolios. In this regard, I understand that the Office of the Status of women in the Department of the Prime Minister and Cabinet is preparing a policy discussion paper on the feasibility of introducing a form of universal paid maternity leave in Australia. I understand further that the Department of

Defence is currently reviewing the employment of women in combat-related positions.

On 13 October 1992 the Minister representing the Minister for Foreign Affairs and Trade, Mr John Kerin, answered a question upon notice from Mr Mack (HR Deb 1992, Vol 186, p 2073). The question and answer were as follows:

(Q1) Is the Government failing to make operative the machinery of international conventions which Parliament has approved?

(Q2) Is Australia a party to the 1965 International Convention on the Elimination of All Forms of Racial Discrimination?

(Q3) Has Australia implemented Article 14 of the Convention allowing the Committee on the Elimination of All Forms of Racial Discrimination to receive and consider communications from individuals and groups of individuals within Australian jurisdiction; if not, why not?

(Q4) Is Australia a party to the 1966 Covenant on Civil and Political Rights?

(Q5) Has Australia implemented Article 41 and accepted the competence of the Human Rights Committee established under the Covenant; if not, why not?

(Q6) Is Australia a party to the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment?

(Q7) Has Australia implemented Articles 21 and 22 of the Convention and accepted the competence of the Committee Against Torture established under the Convention; if not, why not?

(Q8) Is Australia party to the Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol 1), 1977.

(Q9) Has Australia implemented Article 90 of the Protocol and accepted the competence of the International Fact Finding Commission established under it; if not, why not?

(Q10) What steps is the Government taking or proposing to take to implement fully the provisions of the international conventions referred to in the preceding parts to which Australia is a party?

MR KERIN: The Minister for Foreign Affairs and Trade has provided the following answer to the honourable member's question:

(A1) No. The Australian Government takes seriously its obligations under international instruments and seeks to act in full conformity with these obligations.

(A2) Yes.

(A3) No. The Australian Government has been considering making the declaration under Article 14 and has undertaken consultations to that end with the States and Territories, as appropriate in a federal system. Since Australia has acceded to the first Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), there is no objection in principle to making the declaration to allow for a similar process under the racial convention. The Attorney-General has consulted with his State and Territory counterparts and a majority of States and Territories supported the making of the declaration. The

Government is now giving detailed consideration to this matter, including consultations with Ministers to whose portfolio responsibilities the Convention is most relevant.

(A4) Yes.

(A5) No. This matter has been under consideration in the Standing Committee of Attorneys–General for some years. On 11 May 1992 I wrote to the Attorney–General, Mr Michael Duffy, requesting that Australia expeditiously pursue the making, of a declaration under Article 41. The Attorney–General is consulting with the States and Territories on this matter.

(A6) Yes.

(A7) No. The Australian Government has been considering making the declaration under Article 22 and is addressing the questions of consultation and consideration in a manner identical to that outlined in paragraph (3) above. Making of a declaration under Article 21 will be considered in conjunction with Article 41 of the ICCPR and the Attorney–General is consulting with the States and Territories concerning such a declaration. Again, in my letter of 11 May 1992 to the Attorney–General I requested that Australia expeditiously pursue the making of declarations under Articles 21 and 22.

(A8) Yes. Australia signed Protocol 1 on 7 December 1978 and ratified the Protocol on 21 June 1991. The Protocol came into effect for Australia on 21 December 1991.

(A9) Yes. Australia made the declaration on 13 September 1992 and is in the process of depositing the instrument with the Swiss Federal Council, which acts as depository for the Protocol.

(A10) See preceding parts (3), (5), (7) and (9).

On 17 December 1992 the Attorney–General, Mr Duffy, answered a question upon notice from Mr Hollis (HR Deb 1992, Vol 187, p 4283). The question and answer were as follows:

(Q) Further to the answer to question No 1751 (*Hansard*, 6 October 1992, p 1501) and following his correspondence with his State and Territory counterparts and consultations in the Standing Committee of Attorneys–General at Taupo, New Zealand, on 14 October 1992, has the necessary paperwork been prepared for a submission to the Federal Executive Council concerning declarations under (a) Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, (b) Article 41 of the International Covenant on Civil and Political Rights, and (c) Articles 21 and 22 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; if not, when will the necessary paperwork be prepared?

MR DUFFY: The answer to the honourable member's question is as follows:

(A) I have completed my consultations with State and Territory governments on all the declarations. A majority of States and Territories have supported the making of the declarations. I am at present consulting with Ministerial colleagues on the making of the declarations allowing for individual complaints. I expect that consultation to conclude in the near future. Once those consultations have been completed, the responsibility for preparation and

submission of the necessary documents to the Executive Council for approval is the responsibility of the Minister for Foreign Affairs and Trade.

On 17 December 1992 the Attorney-General, Mr Duffy, answered a question upon notice from Mr Ted Mack (HR Deb 1992, Vol 187, p 4278). The question and answer were as follows:

(Q1) Has he consulted with his State or Territory counterparts about making the declaration under Article 14 of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination?

(Q2) Which States and Territories have supported the making of the declaration and on what date and in what form did each indicate its support?

(Q3) Did the Minister for Foreign Affairs and Trade write to him on 11 May 1992 requesting that Australia expeditiously pursue the making of declarations under (a) Article 41 of the 1966 International Covenant on Civil and Political Rights and (b) Articles 21 and 22 of the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment?

(Q4) What was the (a) date and (b) mode of consultation with each State and Territory on each of the matters referred to in part (3), and (c) on what dates and to what effect has each State and Territory responded?

MR DUFFY: The answer to the honourable member's question is as follows:

(A1) Yes.

(A2) The States and Territories which supported the making of the declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination are as follows:

- Australian Capital Territory – by letter of 5 May 1992;
- Victoria – by letter of 25 May 1992;
- South Australia – by letter of 28 May 1992;
- Queensland – by letter of 11 June 1992;
- Western Australia – by letter of 9 July 1992.

(A3) Yes.

(A4) The issue of the making of these declarations has been raised in the Standing Committee of Attorneys-General over a number of years. I consulted formally with the State and Territory Attorneys-General by letter of 9 April 1992 concerning the declaration under Article 22 of the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, and by letter of 29 September 1992 concerning the declarations under Article 41 of the International Covenant on Civil and Political Rights and Article 21 of the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.

The State and Territory Attorneys-General responded as follows in respect of the making of the declaration under Article 22 of the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment:

- Victoria, by letter of 25 May 1992, supported the making of the declaration;

- New South Wales, by letter of 18 August 1992, opposed the making of the declaration;
- South Australia, by letter of 28 May 1992, supported the making of the declaration;
- Queensland, by letter of 11 June 1992, supported the making of the declaration;
- Western Australia, by letter of 9 July 1992, supported the making of the declaration;
- Australian Capital Territory, by letter of 5 May 1992, supported the making of the declaration;
- Northern Territory, by letter of 30 April 1992, opposed the making of the declaration.

My letter of 29 September 1992, concerning the declarations under Article 41 of the International Covenant on Civil and Political Rights and Article 21 of the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, did not require an answer. Nevertheless, responses were received on this matter as follows:

- Queensland, by letter of 6 November 1992, supported the making of the declarations;
- South Australia, by letter of 2 November 1992, supported the making of the declarations;
- Victoria, by letter of 29 October 1992, indicated that the making of the declarations was primarily a matter for the Federal Government;
- Tasmania, by letter of 26 October 1992, opposed the making of the declarations;
- Australian Capital Territory, by telephone on 19 October 1992, indicated that the Territory had no new matters to raise in respect of the making of the declarations;
- Northern Territory, by letter of 12 October 1992, indicated that the Territory had no new matters to raise in respect of the making of the declarations.

On 22 December 1992 the Attorney-General, Michael Duffy, and the Minister for Foreign Affairs and Trade, Senator Gareth Evans, issued a news release which read as follows:

> The Attorney-General, Michael Duffy, and the Minister for Foreign Affairs and Trade, Senator Gareth Evans, today announced that the Government had decided to make a number of declarations under three important international human rights treaties to which Australia is a State Party.
>
> The Ministers said that Australia will make declarations under Articles 14 and 22 respectively of the Convention on the Elimination of All Forms of Racial Discrimination (CERD), and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).
>
> "The Government's decision will make it possible for individuals in Australia who consider that any of their rights set out in either of the two treaties have been violated, to refer their complaints direct to the appropriate

international treaty-monitoring bodies - the United Nations Committee on the elimination of Racial Discrimination, or the United Nations Committee Against Torture - provided that the complainants have exhausted all domestic legal remedies", Mr Duffy and Senator Evans said.

The Ministers also said that Australia would make declarations under Article 21 of the CAT and under Article 41 of the International Covenant on Civil and Political Rights (ICCPR).

"Those declarations permit other States that have also made the necessary declarations to lodge complaints over alleged breaches by Australia with the monitoring committees", they said.

"Australia's accession to the First Optional Protocol to the ICCPR last year was a major step in increasing Australia's international accountability on human rights. "The decision to make the declarations under the three treaties further demonstrates the Government's firm commitment to the universal application of international human rights standards and its willingness to accept international scrutiny of Australia's human rights record and performance", the Ministers said.

Human Rights Conventions - Australian Declarations and Reservations - Agenda of Standing Committee of Attorneys-General

On 27 May 1992 the Attorney-General, Mr Duffy, answered a question upon notice from Mr Melham (HR Deb 1992, Vol 184, p 3017). The question and part of the answer were as follows:

(Q1) Further to the answer to question No 1094 (*Hansard*, 25 February 1992, p 114), when and where have there been meetings of the Standing Committee of Attorneys-General since human rights matters were first placed on its agenda?

(Q2) What ratifications, accessions and declarations with respect to international human rights conventions are still on the Committee's agenda?

MR KERIN: The answer to the honourable member's question is as follows:

(A1) The Standing Committee of Attorneys-General decided on 5 March 1987 to place human rights matters, which had previously been considered at Ministerial Meetings on Human Rights, on the agenda of the Standing Committee. ...

(A2) The paper on Human Rights prepared by the Commonwealth for the most recent meeting of the Standing Committee of Attorneys-General reported on developments in respect of the following draft or proposed international instruments:

- the proposed convention on intercountry adoption,
- the draft universal declaration of the rights of indigenous peoples,
- the proposed standard rules on the equalisation of opportunities for disabled persons.

The paper also raised the following matters concerning existing international instruments to which Australia is a party:

- the optional declarations under Article 14 of the Convention on the Elimination of All Forms of Racial Discrimination, Article 22 of the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, and Article 90 of Protocol I Additional to the Geneva Conventions of 1949,
- the implementation of the first Optional Protocol to the International Covenant on Civil and Political Rights,
- the implementation of the Convention on the Rights of the Child,
- Australia's report to the Committee Against Torture under the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.

Human Rights Conventions - Australian Declarations and Reservations - World Conference on Human Rights

On 4 November 1992 the Minister representing the Minister for Foreign Affairs and Trade, Mr John Kerin, answered a question upon notice from Mr Hollis (HR Deb 1992, Vol 186, p 2663). The question and answer were as follows:

(Q1) Between what dates is the World Conference on Human Rights to be convened?

(Q2) When will the fourth session of the Preparatory Committee be held and will Australia attend it?

(Q3) Has Australia attended, or will it attend, any regional meetings before the Conference; if so, when and where?

(Q4) Will the necessary paperwork be submitted to the Executive Council in time for Australia to make declarations, before the Conference convenes, under (a) Article 14 of the Convention on the Elimination of all Forms of Racial Discrimination, (b) Article 41 of the International Covenant on Civil and Political Rights and (c) Articles 21 and 22 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment?

MR KERIN: The Minister for Foreign Affairs and Trade has provided the following answer to the honourable member's question:

(A1) The World Conference on Human Rights is to take place in Vienna from 14 to 25 June 1993.

(A2) The fourth session of the Preparatory Committee will be held in Geneva from 22 March to 2 April 1993. An Australian Delegation will participate in the session.

(A3) The Asian regional meeting preparatory to the World Conference has been postponed to a yet to be determined date. It was to have taken place in Bangkok in October. Australia would expect to attend the meeting if it were reconvened.

(A4) I expect that the necessary paperwork will be submitted to the Executive Council concerning these declarations before the World Conference convenes in June next year.

Convention on the Elimination of All Forms of Racial Discrimination - Declarations or Reservations with respect to Article 4(a) of Convention by State Parties

On 18 August 1992 the Minister representing the Minister for Foreign Affairs and Trade, Mr John Kerin, answered a question upon notice from Mr Melham (HR Deb 1992, Vol 185, p 101). The question and part of the answer were as follows:

> (Q1) Are there more than 104 States party to the 1965 International Convention on the Elimination of All Forms of Racial Discrimination?
>
> (Q2) Has any one State other than Australia made declarations or reservations with respect to Article 4(a) of the Convention; if so, what is the text of the reservation or declaration in each case?
>
> MR KERIN: The Minister for Foreign Affairs and Trade has provided the following answer to the honourable member's question:
>
> (A1) Currently there are 132 States parties to the International Convention on the Elimination of All Forms of Racial Discrimination.
>
> (A2) The following States parties have made declarations or reservations with respect to Article 4(a) of the International Convention on the Elimination of All Forms of Racial Discrimination: Antigua and Barbuda, Australia, Austria, Bahamas, Barbados, Belgium, Fiji, France, Italy, Malta, Nepal, Papua New Guinea, Tonga, and the United Kingdom of Great Britain and Northern Ireland.

[The text of each reservation or declaration was also provided in the answer.]

Human Rights Conventions - Timing of Australian reports

On 30 March 1992 the Minister representing the Minister for Foreign Affairs and Trade, Mr John Kerin, answered a question upon notice from Mr Hollis (HR Deb 1992, Vol 183, p 1438). The question and answer were as follows:

> (Q) When (a) did Australia last make and (b) is Australia next due to make reports to the (i) Human Rights Committee, (ii) Committee on the Elimination of All Forms of Racial Discrimination, (iii) Committee on the Elimination of Discrimination Against Women and (iv) Committee Against Torture?
>
> MR KERIN: The Minister for Foreign Affairs and Trade has provided the following answer to the honourable member's question:
>
> (A) The dates Australia last made reports, and the due dates for future reports are:
>
> (i) 1988 and November 1991 (to be submitted mid 1992);
>
> (ii) 1991 and October 1992;
>
> (iii) 1988 and May 1992;
>
> (iv) 1991 and September 1994.

On 4 November 1992 the Minister representing the Minister for Foreign Affairs and Trade, Mr John Kerin, answered a question upon notice from Mr

Hollis (HR Deb 1992, Vol 186, p 2664). The question and answer were as follows:

> (Q) Will Australia fulfil its obligations to present its first report to the Committee on the Rights of the Child by 16 January 1992?
>
> MR KERIN: The Minister for Foreign Affairs and Trade has provided the following answer to the honourable member's question:
>
> (A) Australia's initial report to the United Nations Committee on the Rights of the Child under Article 44 of the Convention on the Rights of the Child is currently being prepared by the Attorney-General's Department. Given the complex division of responsibilities in Australia between the Federal Government and the State and Territory Governments for the provision of services to children, it is necessary to consult closely with State and Territory Governments as well as relevant Commonwealth agencies in the preparation of the report. On 6 January 1992, the Attorney-General's Department sought input from the States and Territories. Responses from all States and Territories except the Northern Territory have now been received. It is now expected that Australia's initial report will be completed early in 1993 following comprehensive consultations with the relevant agencies and non government organisations.
>
> Advice has been received that the Committee on the Rights of the Child faces a serious backlog of reports and anticipates a three to four year delay in dealing with reports.

Convention on the Elimination of All Forms of Discrimination Against Women - Australia's second report

On 25 June 1992 the Prime Minister, Paul Keating, issued a news release which read in part:

> This morning I had great pleasure in formally presenting Australia's second CEDAW [Convention on the Elimination of All Forms of Discrimination Against Women] Report to Her Excellency Mrs Mervat Tallawy, the Chairperson of the United Nations Committee on the Elimination of Discrimination Against Women. ...
>
> Australia is obliged to report every four years to the United Nations as part of our responsibilities as signatories to the Convention on the Elimination of All Forms of Discrimination Against Women, a convention the government ratified within months of taking office in 1983. By ratifying CEDAW we committed ourselves to developing policies and programs to improve the status of women in Australia. The Government quickly responded to this responsibility by using CEDAW as one of the constitutional underpinnings for the Sex Discrimination Act which was passed by the Parliament in 1984. Ratification of CEDAW also obliges us to report periodically on our progress in improving the status of women, and the Report I presented this morning is Australia's second such report. The Report was prepared and coordinated by the Office of the Status of Women (OSW) in my department, with input from all departments of the Federal Government, the State governments of New South Wales, Victoria, South Australia, Queensland, Western Australia and Tasmania, and the governments of the Northern Territory and the Australian

Capital Territory. Non-government organisations' views were also formally canvassed for the first time. ...

The ratification in 1991 of the International Labour Organisation Convention 156 on Workers with Family Responsibilities was another landmark for women. It committed the Government to develop policies and programs to minimise the pressures on people with jobs and families, and in particular address the double load carried by working women with domestic responsibilities.

In the legal arena, the Sex Discrimination Act has been amended to improve and extend coverage, and the effectiveness of the Affirmative Action (Equal Employment Opportunity for Women) Act 1986 has recently been reviewed through a process of community consultations which revealed a high level of acceptance by business and the community for these measures which aim to increase women's job opportunities.

Convention on the Elimination of All Forms of Racial Discrimination - Australian Reservation on Article 4(a) of Convention - Proposed racial vilification legislation - Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

The following is extracted from a statement made on 7 October 1992 by the Australian Deputy Permanent Representative, Mr Richard Rowe, to the Third Committee of the United Nations on "Racial Discrimination and Self-Determination":

The fight against racism begins with the fight against ignorance and prejudice, and with the elimination of the social, economic and political discrimination at both individual and societal institutional levels that flow from ignorance and prejudice. Education is crucial to this process.

In Australia a national inquiry into racist violence was announced in 1988 in light of a widespread community perception that racist attacks, both verbal and physical, were increasing. During 1988, a number of church and community leaders and other prominent anti-racists were subjected to what seemed to be a well-organised campaign to intimidate them or deter them from their activities.

In any society, racist violence is the most serious expression of racism. The inquiry's investigation of racist violence therefore necessarily involved an examination of racism in our community. The inquiry recognised from the outset that racist violence against Aboriginal and Torres Strait Islander peoples was a long standing problem which was likely to differ significantly in extent and effect to that directed against people of non-English speaking background. This was confirmed by the evidence given to the inquiry. The evidence indicated that multiculturalism is working well in Australia, in spite of our racial, ethnic and cultural diversity. Australia's experience of racist violence, intimidation and harassment is nowhere near the level experienced in many other countries. Nonetheless, the inquiry found the level of racist violence and harassment presented in evidence, especially against Aboriginal and Torres Strait Islander peoples, should be a matter of concern to all Australians.

In April 1991 the Australian Government, as part of its national social justice agenda for a multicultural Australia, launched a community relations strategy. As part of the strategy, and in response to the recommendations of the national inquiry into racist violence, a number of programs were launched ... .

The Australian Government has offered to host an international seminar on the role of national institutions in combating racism in 1993. The seminar, which would be part of the program of activity under the second decade against racism, could be expected to focus on a number of case studies drawing on the experience of national institutions, providing an exchange of views between countries with well-established institutions and countries where there are serious human rights problems. ...

Unfortunately, education will not, of itself, eliminate racism. With this in mind, the Australian Government has foreshadowed, in accordance with its obligations under the international Convention on the Elimination of All Forms of Racial Discrimination, the introduction of racial vilification legislation. Under this legislation, it is anticipated that both civil remedies and criminal offences will be utilised to deal with the problem of racial vilification. The legislation is expected to deal with the dissemination of ideas based on racial superiority or hatred, and the public incitement of others to hate, have contempt for, or ridicule individuals or groups because of their race, colour, nationality ethnic or national origin. It will also be a crime to incite others in this way if the intention is to create fear among any racial groups. In 1991 Australia acceded to the First Optional Protocol to the International Covenant on Civil and Political Rights. Australia is now taking steps to enable it to make the appropriate declarations under the torture convention and the racial discrimination convention to allow individuals access to the monitoring committees for those two conventions.

Internationally, we must strengthen the UN's capacity to monitor progress toward the elimination of racial discrimination. In January 1992 a meeting of States parties to the racial discrimination convention agreed to amend the convention to provide for regular budgetary funding for the CERD committee. We hope that the General Assembly will, during the current session, take the necessary measures to implement this decision, together with a similar decision by the States parties to the torture convention in relation to the committee against torture.

The General Assembly will also consider, during this session, the draft Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, approved by the last session of the Commission on Human Rights. Its adoption will further enhance the role of the UN in the protection of minority rights.

In the course of the second reading speech on the Racial Discrimination Legislation Amendment Bill 1992 on 16 December 1992, the Parliamentary Secretary to the Attorney-General, Mr Peter Duncan, said (HR Deb 1992, Vol 187, p 3888):

The purpose of this Bill is to make racial vilification unlawful and also to make incitement to racial hatred a criminal offence. At the outset let me make it clear that the legislation is intended to show the Government's present intentions relating to this difficult area. The legislation is being introduced to allow for

the widest possible public comment and discussion on the proposals. The Government does not have a finally established position on this Bill and I encourage all interested parties to provide comment on the legislation. To facilitate that comment the Bill will be left to lie in the Parliament over the summer recess. At present our intention would be that passage of the legislation would take place some time early in the next session of this Parliament.

This legislation will implement into Australian law the obligations contained in article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination. Article 4(a) requires States which are parties to the Convention to declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin and also the provision of any assistance to racist activities, including the financing thereof.

Australia ratified the Convention on 30 September 1975 and made a reservation on article 4(a). Australia declared that it was the Government's intention, at the first suitable moment, to seek from Parliament legislation specifically implementing the terms of article 4(a). Over 125 States have ratified the Convention. One of the great focuses of human rights initiatives since 1945 has been on efforts to have the right to be free from invidious discrimination on grounds of race, gender or religious belief irreversibly accepted in the world. ...

The Bill amends the Crimes Act 1914 to make it a criminal offence for a person publicly to utter or publish words or engage in conduct which, having regard to all the circumstances, is likely to stir up hatred against a person or group of persons distinguished by race, colour, national or ethnic origin. It also makes it an offence for a person to inspire fear by a group of persons that violence is about to be applied to them. The law is intended to cover racist statements or propaganda of a serious and damaging kind. Examples would include the leaflets placed in letter boxes by extremist organisations nominating certain races as plotting to overthrow the government or public speeches calling for the forcible repatriation of certain ethnic groups or for violence to be perpetrated against certain ethnic groups.

The Bill also amends the Racial Discrimination Act to make it unlawful for a person to publicly utter or publish words or engage in conduct which, having regard to all the circumstances, is likely to stir up hatred, serious contempt or severe ridicule against a person or persons or a group of persons, distinguished by race, colour, national or ethnic origin. There is a provision in the Bill that ensures that certain valid activities are not brought within its scope – that is, the publication or performance of bona fide works of art, genuine academic discussion of any matter of public interest, making or publishing a fair report of any event or matter of public interest.

It may be helpful to give an example of where it is envisaged that the dividing line between lawful and unlawful behaviour might fall. Republication in full of a nineteenth century book on Australia with some racist passages concerning Chinese and Aborigines but with an introduction placing the work in its historical context certainly would not be covered. On the other hand,

publication of a pamphlet consisting exclusively of a selection of those same racist passages with an accompanying text advocating that all Chinese persons in Australia should be deported would be covered. By inserting these provisions into the Racial Discrimination Act, it makes it possible to retain the very considerable advantage of adopting existing conciliation procedures and increases the educative role of the law. ...

The Government is of the view that no legislative action should be taken at this stage to make racist violence a Commonwealth crime but that existing State and Territory criminal law be relied upon. However, this matter has been left open and the Government invites further comment on this area as well. The Government is aware that certain sections of the community would like to see legislation on racist violence.

The Government's current Bill does not cover abuse of, or incitement to hatred of, religious groups or individuals that are attacked on the grounds of their membership of such groups. This is essentially because the Bill concerns amendments to the Racial Discrimination Act 1975, which is founded on the International Convention on the Elimination of All Forms of Racial Discrimination. This Convention does not cover religious discrimination.

The Government believes that inciting religious hatred and vilification of religious groups should be unlawful but considers that the Racial Discrimination Act is not the appropriate place for such a provision. Australia fully supported the adoption of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief. The Attorney-General will shortly be declaring that declaration to be an international instrument relating to human rights and freedoms for the purpose of the Human Rights and Equal Opportunity Commission Act 1986. The Attorney has already consulted with the State and Territory Attorneys-General as required by that Act.

By declaring the religion declaration under the Human Rights and Equal Opportunity Commission Act, Australia will demonstrate that it is firmly committed to its principles. The move is also consistent with the Government's response to the report of the National Inquiry into Racist Violence, which supported, subject to the consideration of constitutional issues, the amendment of the Racial Discrimination Act to provide that discrimination against or harassment of a person on account of that person's religious belief be prohibited where the religious belief is commonly associated with persons of a particular race or ethnic group. The effect of declaring an instrument under the Human Rights and Equal Opportunity Commission Act is to extend the promotion, research, inquiry and reporting functions of the Human Rights and Equal Opportunity Commission to the rights recognised in the instrument and to provide a mechanism for complaints to be lodged by persons claiming to have been discriminated against on the basis of their religious beliefs.

The Government is of the view that, as the Bill covers vilification on the ground of race, colour, national or ethnic origin, it covers everybody. These four characteristics are broad enough to cover characteristics imputed to a person even if those characteristics are untrue. For instance, if an Anglo-Saxon woman who has converted to Islam is more than likely attacked wearing the hijab or Muslim women's headscarf, she is attacked not because the attacker

believes she is a Muslim but because the attacker thinks that she is an Arab woman. This legislation would pick such instances up.

Convention on the Elimination of All Forms of Racial Discrimination - Australian report - Swan Brewery site

On 13 October 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, provided an answer to a question upon notice from Senator Chamarette (Sen Deb 1992, Vol 155, pp 1539, 1646). The question and answer were as follows:

(Q) Firstly, will Australia's eighth periodic report to the Committee on the Elimination of All Forms of Racial Discrimination, due on 31 October 1992, refer to: the Western Australian Government's action to overrule the WA Aboriginal Heritage Act by excising the old Swan Brewery precinct from that Act; the disturbance of that site, which is held to be significant by the Aboriginal Cultural Material Committee study of 1990; and the failure of the Western Australian Government to consult with the Aboriginal community over the future of this site? Secondly, in what terms will the report refer to the issue of the old Swan Brewery site?

(A1) Australia's next report to the Committee on the Elimination of Racial Discrimination will in fact be the ninth report, and due on 30 October 1992.

The sixth, seventh and eighth periodic reports covering the period October 1984 to December 1990 were considered by the Committee on 6 and 7 August 1991.

Australia's ninth report to the Committee will be, in accordance with our reporting obligations, a relatively brief updating report covering significant developments since the period covered by the last report (December 1990).

A comprehensive periodic report is submitted every four years. The eighth periodic report was such a report, and thus the next detailed report will be due in October 1994.

In accordance with normal practice, other relevant bodies, and in particular ATSIC [Aboriginal and Torres Strait Islander Commission], have been consulted in the preparation of the ninth report.

In view of the lead time necessary for other bodies to submit material and for the actual preparation of the report, the ninth report will cover the period January 1991 to June 1992.

I should point out that in Australia's eighth periodic report reference was made to the 1990 High Court decision in *Bropho v State of Western Australia* [(1990) 171 CLR 1] (the *Swan Brewery Site* case).

It is also relevant that Minister Tickner is currently considering what options are available to him in regard to the protection of the Swan Brewery site, and accordingly it would be inappropriate for me or Australia's ninth report to in any way pre-empt his response.

For these reasons, the Australian Government does not intend to make reference in the ninth report to the specific issues raised by Senator Chamarette.

(A2) Although Australia's ninth report will not make specific reference to the issue of the old Swan Brewery site it will, however, refer to the legislative sequels to *Bropho v State of Western Australia*, in particular proposed legislative amendments to the WA Aboriginal Heritage Act, announced in February 1992.

The Western Australian Government stated that the purpose of such amendments includes improving the protection of significant Aboriginal sites and objects to ensure the continuing preservation of Aboriginal culture and heritage in Western Australia, and to increase the involvement of Aboriginal people (and in particular Aboriginal custodians of sites) in the preservation and protection of important places and objects.

Convention on the Rights of the Child - Parties

On 26 May 1992 the Minister representing the Minister for Foreign Affairs and Trade, Mr John Kerin, answered a question upon notice from Mr Hollis (HR Deb 1992, Vol 184, p 2859). The question and answer were as follows:

(Q) Will the Minister bring up-to-date the information in the answer to question No 522 (*Hansard*, 11 March 1991, p 1738) concerning the UN Convention on the Rights of the Child?

MR KERIN: The Minister for Foreign Affairs and Trade has provided the following answer to the honourable member's question:

(A) I refer the honourable member to the answer to question No 1323 (*Hansard*, 30 March 1992, p 1434) which provided the information requested. Since that list was compiled Tunisia (30 January 1992), Lesotho (10 March 1992) and the Central African Republic (23 April 1992) have ratified the Convention and Lithuania (31 January 1992) and Latvia (14 April 1992) have acceded to the Convention.

Convention on the Rights of the Child - Female genital mutilation - Australian action

On 1 April 1992 the Attorney-General, Mr Duffy, answered a question upon notice from Mr Bradford (HR Deb 1992, Vol 183, p 1654). The question and answer were as follows:

(Q1) Has his attention been drawn to a report by Justice Elizabeth Evatt and Kirsty Magarey which states that some cases of female genital mutilation had been documented in Australia with some daughters being sent to their parents' homelands for the ritual?

(Q2) Is female genital mutilation illegal in Australia; if so, what action is being taken to prevent it; if not, why not?

MR DUFFY: The answer to the honourable member's question is as follows:

(A1) I am aware of the Law Reform Commission's discussion paper No 48 on Multiculturalism: Criminal Law.

(A2) Female genital mutilation is not expressly prohibited by law but there is little doubt that it would constitute an assault and therefore breach State and Territory criminal law.

Australia is a party to the United Nations Convention on the Rights of the Child. Paragraph 3 of Article 24 of that Convention provides:

> 3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

It is through publicity campaigns and the work of agencies such as the Human Rights and Equal Opportunity Commission, that attitudes of the community toward practices such as female circumcision can best be changed. This of course is a lengthy process.

However the Law Reform Commission, in its discussion paper, does not consider that there is a case for the enactment of special legislation to prohibit female genital mutilation as the numbers affected are likely to be very small and there is disproportionate risk that legislation would be counter–productive. The Commission favours action in co–operation with the community to assess the extent of the problem and to provide educators and counselling directed to particular communities. It considers that these communities should be made aware that the practice is an offence under the general law and that those who take part may be liable to severe penalties.

Convention on the Rights of the Child - International Covenant on Civil and Political Rights - Western Australian legislation on juvenile sentencing

The following remarks were made on 28 July 1992 by Mr Robert Tickner, Minister for Aboriginal and Torres Strait Islander Affairs, in the course of an address to the Tenth Session of the United Nations Working Group on Indigenous Populations:

> I must also report on recent legislative developments in the State of Western Australia in respect of sentencing options for young offenders.
>
> The Juvenile Crime (Serious and Repeat Offenders) Sentencing Act 1992 passed earlier this year in that State provides for mandatory detention or imprisonment for some juveniles regardless of the court's views as to the appropriateness of such detentions. The relevant legislation has other provisions which, according to advice provided by the Human Rights and Equal Opportunity Commission to Federal and Western Australian governments, are contrary to the recommendations of the Royal Commission into Aboriginal Deaths in Custody and in breach of the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights. Both the Federal Attorney–General and I have expressed our concern about the implications of the legislation to the Western Australian Government.
>
> The Western Australian Government has conducted a number of reviews which have been critical of the legislation but it has yet to announce what action it proposes to take in response to these reviews.

Genocide Convention 1948 - International Covenant on Civil and Political Rights - Possible and actual Australian legislative measures

On 26 May 1992 the Attorney-General, Mr Duffy, answered a question upon notice from Mr Melham (HR Deb 1992, Vol 184, p 2848). The question and answer were as follows:

(Q1) Did the Commonwealth Criminal Law Review Committee recommend in its final report in December 1991 that legislation be enacted on the lines of the United Kingdom Genocide Act 1989 to implement fully Australia's obligations under the 1948 Genocide Convention?

(Q2) Has the Government considered enacting the necessary provisions of the Convention?

(Q3) Did Part II of the Human Rights Bill 1973 contain clauses to give effect to the rights recognised in the 1966 Covenant on Civil and Political Rights?

(Q4) Has the Government considered adopting legislative measures to give effect to the rights recognised in the Covenant?

MR DUFFY: The answer to the honourable member's question is as follows:

(A1) Yes. I mention that the Genocide Convention came into force for Australia in 1951. While the Gibbs Committee found that existing Australian law provides adequate penalties for most of the acts described in the Convention as genocide, some of these acts are not offences under Australian law.

(A2) Consideration is being given to the enactment of appropriate legislation.

(A3) Yes.

(A4) This Government is fully committed to complying with Australia's obligations under the International Covenant on Civil and Political Rights ("the ICCPR"). There is no obligation under the ICCPR to implement it by introducing specific legislation. There now exists a wide range of measures, including Federal, State and Territory legislation, which give protection to the rights recognised under the Covenant.

This Government and previous Governments have enacted a range of legislation specifically designed to protect human rights. This legislation includes the following: the Human Rights and Equal Opportunity Commission Act 1986, the Racial Discrimination Act 1975, the Sex Discrimination Act 1984 and the Privacy Act 1988.

The Human Rights and Equal Opportunity Commission Act 1986 came into effect on 10 December 1986. The ICCPR is one of five international instruments attached as Schedules to the Act. The Commission is empowered to promote human rights as defined in the Covenant as well as to administer the Commonwealth Sex Discrimination Act 1984 and the Racial Discrimination Act 1975, to settle complaints and to undertake research and education activities. (These Acts, while enacted in furtherance of the specific UN conventions on race and sex discrimination, also give partial effect to Australia's obligations under article 2 of the ICCPR to eliminate all forms of discrimination based on status.)

In addition to the passage of the Sex Discrimination Act, in 1988 the Parliament passed the Privacy Act which commenced on 1 January 1989. The Preamble to that Act refers to the ICCPR and to Australia's undertaking under the Covenant "to give effect to the right of persons not to be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence" (Article 17).

The Government is also considering enactment of legislation on discrimination on the basis of disability.

Human rights - Partial prohibition of political advertising in the electronic media - Consistency with the International Covenant on Civil and Political Rights

On 28 August 1992, the High Court of Australia held that Part IIID of the Broadcasting Act 1942 (Cth) was unconstitutional (see pp 347–51 above). The effect of Part IIID was to prohibit the broadcasting of paid political advertisements on radio and television during election periods for Commonwealth, State, Territory and local government elections. Part IIID had been inserted into that Act by the Political Broadcasts and Political Disclosures Act 1991 (Cth) in order to address the problems: (i) that the high cost of broadcast advertising makes political parties potentially vulnerable to to corruption or undue influence by substantial donors; (ii) that the high cost of broadcast advertising precludes all but the major political parties and wealthy interest groups from getting their message across; and (iii) that brief advertisements relying on emotive manipulation "trivialised" political debate.

Prior to the enactment of Part IIID, Mr Henry Burmester, Principal International Law Counsel, Attorney-General's Department, gave the following advice, dated 27 May 1991, on the consistency of the proposed legislation with the International Covenant on Civil and Political Rights:

> The following comments are provided on the international law issues raised in the letters from Mr Burdekin (the Federal Human Rights Commissioner) to the Minister for Administrative Services concerning the proposed legislation relating to political advertising.
>
> (2) It is clear that the major area of dispute between Mr Burdekin and the Government is over the way in which the Government proposes to address what it sees as a pressing social need, namely the protection and integrity of the electoral process. Mr Burdekin does not dispute that the general purpose addressed by the legislation is one that provides a legitimate basis for certain restraints on the ground of public order (*ordre public*) within the meaning of article 19(3) of the International Covenant. Rather, he disagrees about whether the *means* have been demonstrated to be justified as permissible within the meaning of the relevant provisions in the Covenant.
>
> (3) There are three basic grounds on which he considers the legislation fails to meet the international law requirements. The three grounds are:
>
> (a) that the Government has still not demonstrated the necessity to constrain free expression in the way proposed;

(b) that the legislation is not a proportional response to meeting what the Government asserts is the justification for it namely, preservation of the integrity of the electoral process; and

(c) the legislation is discriminatory in a relevant international law sense.

In saying this, Mr Burdekin largely restates his earlier arguments.

(4) As an aside, I note that Mr Burdekin reaffirms his rejection of the argument that the fact that the cost of an advertisement creates inequality supports the legislation ("bought speech" is not "free speech"). However, my understanding of the argument is not that the restraint is designed to achieve equality *per se*. It is rather that such restraint is necessary in the public interest to preserve the integrity of the electoral process. It then becomes, as indicated above, an issue whether one of the three alleged failings of the legislation do in fact exist so as to detract from a legitimate purpose.

(5) On the issues of necessity and proportionality, there is essentially a difference of view. Mr Burdekin says that he has considered the material relied upon by government but ultimately is not convinced that the particular response is justified. This difference cannot be resolved on the basis of legal argument alone, given there are not authoritative pronouncements by international tribunals directly on the issue. It must be emphasised that governments have a wide margin of appreciation in relation to the public order exception. While government has to justify any restriction, there is not, in my view, any requirement to justify with proof beyond reasonable doubt or even on the balance of probabilities. It suffices if the justification can be reasonably made out. ... See generally, P Sieghart, *The International Law of Human Rights* (1993) pp 99–101.

Discrimination

(6) ... There are essentially two issues which rise in relation to the suggestion of alleged discrimination. These are:

(a) Do the groups of persons identified by Mr Burdekin as likely to suffer discrimination by the legislation (visually impaired and illiterate), have a status that falls within the categories protected by the relevant provisions of the International Covenant dealing with discrimination? This essentially depends on whether persons having those disabilities fall within the category "other status" in Article 2 of the Covenant.

(b) Even assuming that such persons are covered by that expression, the question remains whether there is in fact discrimination in their enjoyment of particular rights under Article 19 or Article 25 of the Covenant.

(7) I turn first to consider the meaning of "other status". As Mr Burdekin acknowledges, ..."there is not unanimity among experts in this areas as to the breadth of the obligation imposed by the term". The interpretation of these words is difficult. ... There is certainly no authority which says disabled persons definitely are included. In the circumstances, it does not seem necessary to reach a concluded view. As Mr Burdekin points out there is a separate Declaration on the Rights of Disabled Persons which has been incorporated in the Human Rights and Equal Opportunity Commission Act and the Government may be taken, therefore, not to wish to discriminate unfairly

against such persons. For present purposes, I will assume such persons may be covered by the expression "other status".

(8) Even without reaching a final view as to whether illiterate or blind people do fall within the category covered by the expression "or other status", it seems possible to reject the argument made by Mr Burdekin that their rights are infringed. This is on the separate ground that the proposed legislation does not in fact discriminate, in international law terms, against such persons. [Mr Burdekin] considers the discriminatory nature of the impact to be obvious. He considers that the fact that each individual is unable to choose themselves what information they should receive amounts to an infringement of those persons' rights.

(9) However, Mr Burdekin acknowledges ... that it is possible to put certain limitations on the information received by persons, eg that necessary to protect children from harmful material. Such restraint would have a similar impact on visually impaired or illiterate persons as the proposed advertising restraints. If that is the case, then it would seem equally permissible to limit receipt of certain types of information by all persons, even though it will have greater impact on visually impaired or illiterate persons, on the ground that it was necessary to protect the integrity of the electoral process. In other words, one comes back to the issue whether the proposed general restraints on certain advertising are a legitimate response to a "public order" concern within the meaning of Article 19(3).

(10) Mr Burdekin appears, however, in his earlier letter ... to make a different argument to the effect that any justification under Article 19(3) cannot override the prohibition on discrimination, which applies in an absolute sense. Even on this view, however, it is only if discrimination in the international law sense can be established that one can say that the rights of the disabled are infringed. Yet Mr Burdekin does not address this aspect in any detail, asserting that it is obvious. I disagree.

(11) A consideration of the relevant international law instruments indicates that the fact that a general law has a differential impact of itself does not amount to discrimination. In other words not all differential treatment that results from a law of general application amounts to discrimination. In the *Belgian Linguistic* case, 1968 YB, Eur Convention on Human Rights, 832 the European Court of Human Rights found that discrimination existed if the following conditions were met:

- the facts disclosed a differential treatment;
- the distinction does not have a legitimate aim, ie it has no objective and reasonable justification having regard to the aim and the effect of the measure under consideration; and
- there is no reasonable proportionality between the means employed and the aim sought to be realised.

(12) In other words any discrimination or distinction which had a legitimate aim and for which there was an objective and reasonable justification or proportionality between the means employed and the aim sought to be realised would not amount to discrimination within the meaning of the Covenant. See generally, P Sieghart, The *International Law of Human*

Rights (1983) pp 77–78. Thus, as with the general justification of the advertising restrictions under Article 19(3), in determining whether there is discrimination within the meaning of Article 2 one has to recognise that there is "a margin of appreciation" and not any discrimination is contrary to the provisions of Article 2. In the present case it is important to note that the law applies generally; it does not exclude the receipt by the relevant disabled persons of all political information, but only information in certain limited forms; the restriction on their receipt of such information results from a general prohibition applicable to receipt by *all person of such information for a legitimate purpose.*

The Bill

(13) I turn now to consider the comments on the provisions of the Bill itself. I note that Mr Budekin draws particular attention to the provision in the definition of "prescribed material" which refers to material continuing a reference to or comment on "an issue submitted or otherwise before, or likely to be submitted or otherwise before, electors in such an election". Mr Burdekin expresses concern about the width of this expression. This relevant paragraph at first glance may appear to extend the prohibition to material that on its face is not directly relevant to the electoral process. There is not further definition of the expression and some exaggerated interpretations have been suggested. As with all other elements in this definition it is necessary, in order to justify the restriction to show that it is necessary effectively to control advertising of that description so as to preserve the integrity of the electoral process. The Government no doubt would point to the need for the inclusion of such a clause to make effective any prohibition of more direct political advertising. In its absence the prohibition would arguably be less effective and the prohibition could be easily avoided. On this basis, it is possible to argee that inclusion of this clause was necessary and proportionate. It is important in this regard to have regard to the exemptions as a whole.

(14) Mr Burdekin then considers the question of the exemptions from the prohibition contained in the definition of "political matter". In particular, he considers that the definition of "exempt matter" unduly restricts *advertising of goods or services by the private sector*. However, the exemption for government advertisements only applies if the advertisements in question do not contain a political reference. This exemption is presumably inserted as otherwise, it could be argued, any Government advertisement would be caught by the definition of "political matter", given that it would be made on behalf of a Government or its agency. It is difficult to see this exemption as amounting to a discrimination against private advertising of goods and services. A reading of the Bill as a whole suggests such private advertising is still permitted essentially on the same basis as the advertising of Government goods and services, provided neither contain political references. The restrictions on advertising that apply to State or Territory Governments appear no different to those that apply to the Commonwealth. Again, as pointed out, the essential restriction is on advertising with a political content. If the definition of "political matter" is otherwise appropriate, I see no additional legal difficulty, from an international law perspective, as a result of the way in which the Act

seeks to deal with the question of advertising by governments and to try and put that on an equal basis with private advertising.

(15) In relation to the comments on the *"public-health" exception*, it appears to me that these comments raise essentially matters of policy and not additional international legal concerns not previously considered. The definition of "public health matter" is one that any advertiser in the area of health issues, whether government or private, will need to take into account. The purpose of the exemption is, however, clear, as indicated in the second reading speech and referred to by Mr Burdekin.

(16) In relation to *unpaid advertising* Mr Burdekin asserts that he is not satisfied that the interpretation of the legislation intended by government would in fact be upheld. However, the examples he gives of possible restrictions on unpaid political debate do not readily appear to fall within any concept of advertising that a court would be likely to adopt. A court, of course, is required to have regard to the second reading speech (s 15AB, Acts Interpretation Act). The general issue [a]gain remains whether the prohibition on unpaid advertising is necessary and proportional in order to ensure the integrity of the electoral process. Mr Burdekin indicates that he has not seen evidence that necessitates the extension of the ban to unpaid advertisements. This again comes down to a difference of view. I consider the reference to the possibility of Article 5 of the covenant being breached as an argument that has no real foundation.

(17) In relation to *charities* Mr Burdekin again contends that the Bill as drafted goes too far. However, as he himself acknowledges, to seek to include an exception for charities would raise, on his interpretation of the relevant international, the issue of discrimination which he already alleges exists in relation to certain disabled people. Again, it is essentially a difference in judgement as to what is necessary and proportional to meet the agreed legitimate purpose.

Overseas experience

(18) A separate note has been provided in relation to overseas experience. That note indicates that a number of countries in Europe do in fact have wide ranging prohibitions on political advertising.

In the course of the second reading speech on the Political Broadcasts and Political Disclosures Bill 1991 on 4 June 1991, the Minister for Justice and Consumer Affairs, Senator Tate, said (Sen Deb 1992, Vol 153, p 4245):

> The Government carefully considered the implications of the proposals on the right to freedom of speech, both as it is generally accepted and specifically under international law. In respect of the latter, article 19(2) of the International Covenant on Civil and Political Rights to which Australia is a party requires parties to guarantee the right of freedom of expression. This right is not absolute. Article 19(3) of the covenant provides that the right may be limited in the interests of public order. The prohibition of the broadcasting of political advertising is directed squarely at preventing political corruption and undue influence of the political process. The Government is satisfied that the proposals are a necessary and proportionate response to this threat and do not constitute a breach of our international obligations.

On 14 August 1991, the Senate resolved to refer the Political Broadcasts and Political Disclosures Bill 1991 to a Senate Select Committee. In its report, the Committee said (Parliament of the Commonwealth of Australia, *Report by the Senate Select Committee on Political Broadcasts and Political Disclosures*, November 1991, pp 26–29):

4.6 Human Rights Issues

4.6.1 The greatest objection to the Bill, raised in a majority of submissions, was that the Bill would curtail freedom of speech and of expression by banning political advertising on television and radio. Many submissions referred to Australia's obligations under Article 19 of the International Covenant on Civil and Political Rights. The Committee heard evidence from three experts in the international law and human rights fields: Mr Henry Burmester, Principal Adviser, Officer of International Law, Attorney–General's Department; Professor Philip Alston, Director, Centre for International and Public Law, Australian National University; and Mr Brian Burdekin, Federal Human Rights Commissioner.

4.6.2 ... [B]oth Professor Alston and Mr Burdekin recognised that the potential threat to the integrity of the electoral system represented a problem which could justify a government taking action to counter this threat under paragraph 3(b) of Article 19, ICCPR. Both disputed, however, that the proposed ban was a proportionate response to the problem or that the restrictions were "only such as are necessary". On this point, they held opposing views to Mr Burmester, who had advised the Government that the ban was a reasonable response, in international law terms, to an identified problem. In discussing the different approaches taken by himself and Mr Burmester, Mr Burdekin acknowledged Mr Burmester's point that the narrowing of the ban made it easier to defend in human rights terms and conceded that some of his own concerns had been met.

4.6.3 Comments on the Bill made by the Senate Standing Committee for the Scrutiny of Bills included the acknowledgment that freedom of expression is not an absolute right. The Committee noted that a number of "necessary" restrictions on freedom of expression currently operated: "Ultimately, what is a necessary restriction is a matter of public policy. As such, it is a question which is appropriately a matter for decision by the Parliament."

4.6.4 ... A summary of controls operating in a number of liberal democracies is included in Appendix 5. (The Committee notes that none of the three international lawyers who appeared before it were aware of any challenges to these restrictions in international human rights forums. The Department of Foreign Affairs and Trade advised the Committee that the Australian Government had not raised concerns about possible breaches of human rights covenants with any of the countries listed in Appendix 5. This was because it had not been apparent that any of the relevant articles of the international covenants had been breached.) ...

4.6.6 When he appeared before the Committee, Mr Burdekin welcomed a number of significant amendments to the Bill including the curtailment of the ban to election periods, the restrictions on government advertising, exemption of public health matter, protection of radio accessibility for the print–

handicapped, adjustment to news coverage permitted of policy launches and the proposed exemption for charities. In spite of the amendments, however, Mr Burdekin's central concern with the Bill remained; namely:

> its impact on the rights of people with disability and others particularly dependent on radio and television for information, including those of non-English speaking background who can speak but perhaps not read English effectively, and their rights to freedom of information, on a basis equal to that of other Australians, through the media of their choice.

4.6.7 On the issue of the effect of the Bill on visually impaired and other print-handicapped people, the Committee had a range of evidence before it, including a compelling submission from the National Federation of Blind Citizens of Australia [NFBCA] which not only identified the problem of the unintended consequences of the Bill for the print-handicapped but put forward a number of options for addressing it. The NFBCA's preferred option involved use of the parliamentary broadcast network and accreditation of public broadcasters as Radio for the Print-Handicapped (RPH) service providers. [The NFBCA's recommendations were then set out.] ...

4.6.9 The Committee notes the Human Rights Commissioner's central concern with the impact of the Bill on the rights of the disabled, and the options put forward by the NFBCA to protect blind and other print-disabled people from the Bill's unintended discriminatory effects.

> The Committee recommends that the Government amend the Bill, as necessary, to give effect to the proposals put forward by the NFBCA in relation to the accreditation of public broadcasters as Radio for the Print-Handicapped service providers and the use of the parliamentary broadcasting network, as detailed in paragraph 4.6.7 above (Recommendation 1)

In a dissenting report, two members of the Committee said (Parliament of the Commonwealth of Australia, *Report by the Senate Select Committee on Political Broadcasts and Political Disclosures*, November 1991, pp 67–68):

> **Human rights**
>
> The Bill's effect on our democratic right of freedom of speech, and on our International Human Rights obligations was also widely canvassed by most witnesses.
>
> And, from all the submissions, only advice from the Attorney-General's Department contradicted that evidence; while Professor Philip Alston, one of Australia's top three constitutional lawyers, questioned the quality and level of expertise of the departmental advice.
>
> The Majority report by selective, and out of context use of evidence, seeks to denigrate the value of freedom of speech in a Democratic society. It blatantly seeks to dilute the strong comments against the ban by witnesses such as the Human Rights Commissioner Brian Burdekin, Professor Philip Alston and the Law Council of Australia.

Human Rights - Alleged breaches of human rights - Representations by Australia in 1990

On 25 February 1992 the Minister representing the Minister for Trade and Overseas Development, Senator Gareth Evans, answered a question upon notice from Senator Cooney (Sen Deb 1992, Vol 151, p 163). The question and answer were as follows:

(Q) With reference to the statement made by the Minister for Trade and Overseas Development on 7 November 1991 that in 1990 Australia raised more than 460 human rights cases in over 82 different countries (House of Representatives *Hansard*, 7 November 1991 p 2625):

(1) With which countries were the human rights cases raised?

(2) How many cases were raised with each country?

(3) What alleged breach of human rights was involved in each case?

SENATOR EVANS: The answer to the honourable senator's question is as follows:

(A)(1), (2) and (3) During 1990, the Australian Government made 460 human rights representations to eighty-two countries.

The number of representations made by the Government is not the same as the number of cases raised. In some instances, for example, one representation may have covered several human rights cases. Some representations also would have addressed general human rights situations, and not specific cases.

It is not the Government's practice to publicise details of the cases it has raised. To do so could be detrimental to those individuals concerned. To place such information on the public record could also call into doubt, in the minds of our interlocutors, the Government's motivations or could jeopardise the Government's ongoing dialogue with some States.

It is also my view that naming the countries to which Australia has made representations is likely to be counterproductive. I can, however, provide a regional breakdown of representations, which is as follows:

Southeast Asia 28	Eastern/Central Europe 19
North Asia 6	North America 7
South Asia 18	Central America 63
Indo-China 4	South America 104
South Pacific 2	Middle East 23
Western Europe 52	Africa 134

Human rights - Alleged breaches of human rights - Representations by Australia - East Timor

On 28 February 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, issued a news release which read as follows:

The Minister for Foreign Affairs and Trade, Senator Gareth Evans, today welcomed the statement issued by the Indonesian Army Chief of Staff, General Eddy Sudradjat, on the findings of the Military Honour Council's investigation

of the military's involvement on the 12 November 1991 killings in Dili, East Timor.

The statement by General Sudradjat outlined the military's approach to operations in East Timor and commented on the categories of errors and offences committed by the local command and those directly involved in the incident. It said that six "supervising officers" would be punished for their "errors and negligence": three would be discharged from military service and the other three removed (one temporarily) from "positions within the established army/armed forces structure". Eight other officers would face court martials, for "errors of command responsibilities" or breaches of military ethics and discipline, ie actions which "were beyond appropriate limits, which led to criminal actions". In addition, five other officers would face further investigation to establish whether they "did not take action which should have been taken".

General Sudradjat concluded in his statement that "what these corrective steps represent is a reflection of the 'feeling of responsibility' by the Army/Armed Forces for everything which occurred".

Senator Evans said that this statement on the outcome of the Indonesian military's investigation represented an explicit acknowledgement of wrongdoing by army personnel involved in the incident. "It displays a clear sense of responsibility on the part of the military for the tragic events in Dili last November", Senator Evans said. "It amounts to an appropriate recognition that the military's behaviour was excessive and that those responsible should be penalised."

Senator Evans said that the Government, through the Embassy in Jakarta, would monitor the follow-up action foreshadowed by General Sudradjat.

Senator Evans said also that the Government remained concerned about the following issues and would continue to make representations to the Indonesian Government on them:

- that no-one would be detained or otherwise penalised for non-violent political activities, that those detained in Dili, Denpasar and Jakarta be treated humanely and that those brought to court be given proper legal representation and fair trials;
- the need for the future policies and practices of the Indonesian security forces in East Timor to be effectively controlled and generally much more sensitive to the needs and aspirations of the East Timorese people; and
- the need for the Indonesian Government to develop a systematic approach to longer term reconciliation in the province, including improved social and economic development and greater recognition of East Timor's distinctive cultural identity.

On 3 March 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said in the course of an answer to a question without notice (Sen Deb 1992, Vol 151, p 545):

> [O]fficials from our Embassy in Jakarta have been in regular contact with a whole range of government and non-government sources in order to ascertain the charges laid against the East Timorese in relation to the Santa Cruz

killings* affair. Our latest information is that, of the 384 East Timorese originally detained in Dili, Bali and Jakarta for their alleged activities in connection with the 12 November affair and for related activities, 345 have already been released and another 26 are shortly to be released.

Of the remaining 13, four are to face subversion charges and nine are to be charged with lesser offences. As to what those lesser offences are, we know that three detainees in Jakarta are to be charged with violations of the criminal code – namely, publicly expressing enmity or hatred or insulting the Government. With regard to those charged with subversion, although it is the case, as has been reported, that the maximum penalty is death, in practice this sentence is rarely imposed. I for one would find it absolutely extraordinary were the imposition of that sentence to be the case here.

As to the second part of the question [which asked what steps were being taken to ensure the humane treatment and fair trials of detained East Timorese], I have raised it with my counterpart, Foreign Minister Alatas, and our Embassy is also continuing to make clear in representations to the Indonesian Government our belief that no–one should be detained or otherwise penalised for non–violent political activities, that those detained should be treated humanely, and that those brought to court should be given proper legal representation and fair trials.

On 28 April 1992 the Prime Minister, Mr Paul Keating, said in the course of an answer to a question without notice (HR Deb 1992, Vol 183, p 1829):

I visited Indonesia and Papua New Guinea from 21 to 26 April. I deliberately chose Indonesia for my first overseas visit to demonstrate that it is at the forefront of our priorities. ...

On East Timor, I repeated our Government's concern about the 12 November killings but said we thought the Indonesian Government's resonse had been credible. I emphasised three points: the need for the armed forces' role to be more sensitive; the need for long term reconciliation, taking account of the East Timorese people's economic aspirations; and concern in Australia about using the criminal code to deal with non–violent political protests.

On 7 May 1992 the Prime Minister, Mr Paul Keating, said in the course of a Ministerial Statement concerning his visit to Indonesia and Papua New Guinea (HR Deb 1992, Vol 183, p 2631):

There has been some comment in the Australian media to the effect that, in my discussions with the Indonesian Government, I did not give sufficient weight to Australian concerns about East Timor and human rights issues. Let me repeat what I said about this publicly in Jakarta.

While recognising the importance of the media in both countries, I believe it is not up to them but up to the two governments to set the agenda for the bilateral relationship. The Indonesian Government responded positively to our putting first priority on the establishment of a basis for a long term cooperative relationship. Having established a constructive basis for dialogue, I took appropriate opportunities to raise with President Suharto, Foreign Minister

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* Also known as the "Dili massacre". See p 342, n 98, above.

Alatas and Defence Minister Murdani, our concern about the killings in Dili last November and human rights in East Timor. I registered firmly our view that the unhappy situation in East Timor detracts from Indonesia's otherwise impressive achievements, and said it is likely to continue to attract close public attention in Australia.

I repeated the Australian Government's view that the Indonesian Government's response to the Dili killings had been a credible one. I underlined our continuing concern for the welfare of the East Timor people and emphasised three points:

- the need for a more benign, and therefore constructive, approach by the armed forces;
- the need for long term reconciliation, taking account of the economic aspirations of the people of East Timor; and
- our concern about using the criminal code to deal with non-violent political protest.

I explained that our aim as concerned outsiders was not to challenge Indonesian sovereignty over East Timor, but to assist where we could in measures for the welfare of the people, and to support a process of reconciliation between them and the Indonesian authorities. As a practical example of how Australia can help, a memorandum was signed during my visit providing for an $11.5m aid project to improve water supply and sanitation in parts of East Timor.

On 16 June 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, answered a question without notice from Senator Bourne (Sen Deb 1992, Vol 153, p 3647). The question and answer were as follows:

(Q) Is the Minister aware that Indonesian courts have imposed sentences of up to 10 years on organisers of the protest march in Dili on November 12 last year? This stands in contrast to the sentences of 20 months or less given by military tribunals to officers connected with the killing of unarmed marchers on the same occasion. Does the Minister believe the sentences are reasonable under international law and according to the Universal Declaration of Human Rights and associated covenants?

(A) Although it is difficult to make a definitive comment at this stage, given that not all of the civilian trials have been completed and also that a number of the civilians and military who have been sentenced have said they will appeal, nonetheless I am disturbed at the apparent discrepancies so far in the sentences that have been administered for the civilians and the military. It is the case that sentences in the civilians' trials have ranged from six months to 10 years imprisonment while sentences in the military trials have ranged from eight to 18 months.

The trials of the military personnel are at least indicative of the commitment by the Indonesian authorities to follow through the process foreshadowed earlier this year by the Military Honour Council which was established to investigate the role of the military in the killings. These trials are, of course, in addition to the disciplinary action that was taken earlier this year resulting in the discharge of three officers from military service and the

removal of three officers, one temporarily, from positions within the established armed forces structure.

We do recognise that much of the action taken by the Indonesian Government in response to the Dili killings, particularly the public acknowledgement of wrongdoing by the military, does constitute unprecedented action in Indonesia. But, as I have already said, we do believe it is important that those responsible for the killings be appropriately punished.

As to the kind of action that the Australian Government has taken in this respect, I remind Senator Bourne that, from the time we first became aware of the killings, we made known at the most senior levels in Indonesia our view that those responsible should be appropriately punished and that no-one should be detained or punished for non-violent political activities.

More recently, I have instructed our Embassy in Jakarta to convey our reaction to the disparities in sentences in the terms which I have just outlined. In the course of a general discussion about Australia-Indonesia relations with His Excellency Radius Prawiro, the very senior Indonesian Minister who is presently in Australia, I yesterday indicated to him that, notwithstanding our appreciation of the overall response to the situation, we were worried by the discrepancies in the sentences.

I say finally, to clarify it for the record, that in conveying these concerns now, and in any other conversations I have had or representations we have made, we are not seeking of course to interfere in any way with the Indonesian judicial process.

On 8 December 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, answered a question without notice from Senator Bourne (Sen Deb 1992, Vol 157, p 4377). The question and answer were, in part, as follows:

(Q) Can the Minister for Foreign Affairs and Trade confirm reports from East Timor which suggest a military crackdown in the province, including the death of Jorge Manuel Serrano and the arrest, torture and rape of supporters and family members of East Timor resistance leader Xanana Gusmao?...

(A) I am not sure that what is happening in East Timor at the moment can be described as a full scale military crackdown, but certainly the atmosphere there reportedly has been tight and tense for some time. I am, of course, aware of reports that a number of others in East Timor besides Xanana have been detained, apparently including his sister and brother-in-law. ...

I have seen reports being circulated by Amnesty about the possible torture and death of detainees, including Jorge Manuel Serrano, whom Senator Bourne mentioned. I am simply unable to offer any further information or confirmation of those allegations at this stage.

As to the question of maltreatment, Indonesian authorities are very aware of international concern, not only about Xanana's case but also about the detention of others in East Timor. Their actions so far have shown, I think, that they are responsive to that concern. I have made repeated representations through our Jakarta Embassy and here raising the Australian Government's concerns in connection with the detention of both Xanana and the others I have mentioned. In Xanana's case, Senator Bourne should be aware that, as I have

said publicly, I have received assurances at the highest levels from the Indonesian Government that he would not be ill-treated.

The Australian Government has also specifically requested, as have others, that the Indonesian Government allow access by the ICRC [International Committee of the Red Cross] to Xanana, seeking assurances that this would be granted and supporting the Red Cross's efforts. In that context I now welcome the fact that ICRC representatives did meet with Xanana yesterday in Jakarta at police headquarters. As the representative said in a radio interview this morning, the findings of the ICRC do remain confidential in accordance with its terms of operation in Indonesia and, indeed, in many other parts of the world. However, it can be said that Indonesian authorities, in allowing the ICRC to visit Xanana without witnesses, have complied with an important condition of access set by the organisation. The ICRC representative also said that permission to meet Xanana at the place of detention and provision for a repeat visit, which was indicated would take place, met its further conditions.

On learning of the detention of others in East Timor besides Xanana, I immediately raised that matter with the Indonesian Government. I urge, and I continue to urge now, the Government to allow all detainees to be accorded due and proper legal process, including representation, and for them not to be ill-treated. We continue to urge that the ICRC also have access to them.

Human rights - Alleged breaches of human rights - Representations by Australia - Kurdish people

On 1 April 1992 the Minister representing the Minister for Foreign Affairs and Trade, Mr John Kerin, said in the course of an answer to a question without notice (HR Deb 1992, Vol 183, p 1588):

The Government is concerned about the escalating level of violence in Kurdish areas of Turkey since 20 March. No official figures have been released, but various reports indicate that up to 80 people have been killed and up to 200 wounded in the course of actions by the Turkish armed forces against terrorist actions by the Kurdish Workers Party, known as the PKK. Turkish Government measures to date include the imposition of curfews and large numbers of arrests. The Australian embassy in Ankara is continuing to monitor the situation closely. On 30 March we directed our Ambassador in Ankara to convey Australian concerns to the Turkish Government, including urging the Turkish authorities to exercise restraint in any anti-terrorist action against the PKK, and to ensure that the human rights of the Kurdish people are protected.

Over a long period Australia has closely monitored the treatment of the Kurds, not only by Turkey but also by Iraq. The Government is very concerned about reports in today's press that once again Iraqi troops have been deployed against Kurds in northern Iraq. We recognise the strain placed on Turkish resources in providing a safe haven for Kurds fleeing Iraq from attacks by Saddam Hussein in the aftermath of the Gulf war, and we appreciate the support provided by Turkey for Australia's contribution to the relief effort.

During the visit to Australia last year of Turkish President Ozal the Government raised, both publicly and privately, the question of human rights in regard to the Kurds. Our representations reflect our firm commitment to the universal application of internationally accepted standards of human rights.

Our current representations to the Turkish Government should therefore be seen within this context in the hope that the Kurdish people will receive and have protected their basic human rights.

Human rights - Alleged breaches of human rights - Representations by Australia - Syria

On 29 April 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said in the course of an answer to a question without notice (Sen Deb 1992, Vol 152, p 1788):

I am very pleased that reports now confirm that Syria has now lifted discriminatory restrictions on travel abroad by Syrian Jews and lifted restrictions also on the disposition of property by the Syrian Jewish community. ...

It is undeniable that members of this community have been subject to quite severe discrimination, particularly regarding their ability to travel outside Syria. The Australian Government, along with other countries, has taken a very consistent and firm stance with respect to this issue. We have been making direct representations to the Syrian authorities through our Embassy in Damascus for several years, and these issues were raised directly by my predecessor, Mr Hayden, during his visits in 1984 and 1988. I have had occasion, of course to raise the issue also with the Syrian Ambassador here. ...

The limit on family travel has been a particularly unfortunate restriction on human rights. We will have to monitor closely whether in practice whole Jewish families will now be able to leave Syria together. It is to be acknowledged that Syrian Jews, like all Syrians, are still prohibited from travelling to Israel.

I also take this opportunity to record that we welcome the reported release from prison on 19 April of Selim and Eli Swed who were, we understand, the only two Jews still imprisoned in Syria. Without overstating the kind of influence a country like Australia has, I believe that representations by us and others have been important contributors to the Syrian Government's decisions. We hope that will be confirmed in practice.

Human rights - Alleged breaches of human rights - Representations by Australia - Sudan

On 16 June 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said in the course of an answer to a question upon notice (Sen Deb 1992, Vol 153, p 3749):

(1) ... Despite assurances by the Sudanese government that all Sudanese citizens would be treated equally, the Christian minority in Sudan, which is based mainly in the South, has become increasingly alienated. The Catholic Church, for example, has complained that the education system is designed to convert the entire population to Islam, notwithstanding the existence of non-Arabic speaking, non-Muslim groups, which include not only Christians, but many animist tribal groups of southern Sudan.

Sudan is a party to the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, and to the Convention on the Elimination of all Forms of Racial Discrimination. It has signed, but not ratified, the Convention Against Torture. The human rights situation in Sudan was considered by the Commission on Human Rights at its 47th and 48th sessions (1991 and 1992) under its confidential procedures.

Australia has made representations to the Sudanese Government on individual human rights cases and on the Sudanese government's forced mass relocation of displaced persons. In March this year, Sudan, when responding to representations the Australian Government had made on some individual human rights cases, issued an invitation to the Amnesty International Parliamentary Group (AIPG) to visit Sudan to obtain first-hand information about the human rights situation there.

During the recent visit to Australia of the (non-resident) Sudanese Ambassador to present credentials, I took the opportunity to express the Australian Government's concern about the difficulties faced by international aid organisations in delivering relief supplies and services and about the human rights situation in Sudan.

(2) The Anti-Slavery International Society for the Protection of Human Rights (ASI), a British-based human rights organisation, made submissions to the United Nations Working Group on Contemporary Forms of Slavery in 1987 and 1988 alleging that people taken captive in military operations in Sudan were being forced into slavery. ASI's 1988 annual journal also contained a report to this effect. It has not produced further reports or submissions on the subject since then. We understand that Africa Watch, an American-based human rights group, is monitoring the situation. Sudan is a party to the Slavery Convention of 1926 (as amended) and to the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices of Slavery.

The Australian Government shares, with the overwhelming majority of States, an abhorrence of slavery and unreservedly condemns its practice in all forms.

On 2 December 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, answered a question upon notice from Senator Chamarette (Sen Deb 1992, Vol 156, p 4095). The question and part of the answer were as follows:

(Q1) Is the Minister aware of reports from the Sudan that two foreign aid workers have been killed by deserters from the Sudan People's Liberation Army, and that two other aid workers are missing?

(Q2) Can any further information about this incident be provided?

(Q3) What is the Australian Government's attitude to the conflict in Sudan, in particular: (a) what representations has the Government made to the Government of the Sudan; (b) what representations has the Government made in the United Nations; (c) does the Government support the exercise of the rights of the people of Southern Sudan towards self-determination, as provided in the United Nations' charter; and (d) what aid and assistance can the Government provide for those left injured, homeless or orphaned by the war in the Sudan?

SENATOR EVANS: The answer to the honourable senator's question is as follows:

(A)(1) and (2) A United Nations employee of Burmese nationality and a Norwegian journalist were killed in southern Sudan in late September. The bodies of two other aid workers, a Kenyan man and a Filipina woman, kidnapped at the same time, were found later. The Kenyan worked for UNICEF and the Filipina was a nurse with the non-government organisation (NGO) Interaid. The Sudan People's Liberation Army (SPLA) claimed that a breakaway faction was responsible for the deaths but the UN declared that it held the SPLA in general responsible. It was the first time aid workers had been killed by the rebels in southern Sudan since 1987. The four died of gunshot wounds but the UN reported that they had not been caught in crossfire as the SPLA had claimed. The UN's Operation Lifeline Sudan suspended relief efforts in the area involved after the bodies were found. ...

The latest information from our High Commission in Nairobi is that responsibility for the deaths has not yet been formally established, with the Torit and Nyuon factions blaming each other. A UN investigative team headed by Assistant Secretary-General Abdou Ciss visited Kenya and southern Sudan in October. The team interviewed UN and NGO personnel as well as representatives of the various factions of the SPLA. The report has been submitted to the Secretary-General but has not yet been released.

(A3)(a) The Australian Government deplores the killings and shares the serious concerns of the international community for the innocent people affected by the civil war in Sudan. We have made representations to the Government of Sudan concerning the human rights situation, in particular, the grave human rights crisis in Juba, southern Sudan. Following the receipt of a report from Amnesty International in September on the human rights situation in Juba, our Embassy in Cairo made representations to the Sudanese Government, conveying the Australian Government's deep concern over the allegations. The Sudanese Government has not yet responded to our representations. I also raised Australia's concerns about human rights abuses, including detention without trial and the displacement of people from their homes, when I met the Sudanese Ambassador to Australia (resident in Kuala Lumpur) in May.

(b) Although Australia has not made any representations on the Sudanese conflict in the United Nations, we have asked our missions in New York and Geneva to provide information on the international community's reaction to the increasingly serious situation in Sudan, and what plans are underway to prevent it escalating further. In this context the United Nations Under-Secretary General for Humanitarian Affairs, Mr Jan Eliason, visited Sudan in mid-September to review humanitarian affairs there. Following his discussions with the Sudanese Government, 21 new air corridors for relief supplies have been agreed upon. The number of non-government organisations operating in Sudan has also been increased from 26 to 46. A follow-up visit by a member of Mr Eliason's staff is planned shortly and will include a visit to the Nuba mountains to assess the situation there.

Australia participated in a critical review of the human rights situation in Sudan at CHR 48 in 1992 under the confidential procedures of the Commission on Human Rights. The human rights situation in Sudan remains under

consideration by the Commission and will be examined under this procedure at CHR 49 which will be held in Geneva from 1 February to 12 March 1993.

On 17 December 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, answered a question upon notice from Senator Chamarette (Sen Deb 1992, Vol 157, p 5531). The question and answer were, in part, as follows:

(Q1) Is it correct that there is a case in Sudan where Pastor Mattaboush, who was convicted in 1986 of crimes against Islam arising from his evangelical work, is still serving a thirty year sentence in El Obeid Prison ...?

(Q3) Has the Australian Government raised this case with the Government of Sudan; if not, why not?

SENATOR EVANS: The following is provided in answer to the honourable senator's question:

(A1) According to the most recent information obtained by the Australian Embassy in Cairo, which is accredited to Sudan, Pastor Mattaboush was being detained in prison in El Obeid although there are unconfirmed reports that he has since been transferred to Koba prison in Khartoum. ...

(A3) The Australian Government has made representations to the Government of Sudan, through the Australian Embassy in Cairo, seeking information on Pastor Mattaboush's case and his welfare. The Government of Sudan has not responded to these representations. The Australian Government is deeply concerned at the deteriorating human rights situation in Sudan. We have made a number of representations to the Government of Sudan, in particular concerning the grave human rights situation in Juba. We have also been active multilaterally in trying to ensure that the international community is fully seized of the situation. At the 47th General Assembly of the United Nations in New York the Third Committee has adopted a strong resolution, co-sponsored by Australia, which among other things calls for the Commission of Human Rights to consider at its next session (CHR 49) the appointment of a Special Rapporteur to examine the human rights situation in Sudan. This result reflects growing international concern about the human rights situation in Sudan and places further international pressure on Sudan to improve its human rights record.

Human rights - Alleged breaches of human rights - Representations by Australia - Turkey and Cyprus

On 16 June 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said in answer to a question upon notice (Sen Deb 1992, Vol 153, p 3747):

In response to an application (Application No 8007/77) of the Republic of Cyprus against Turkey, the Report of the European Commission on Human Rights concerning Turkish human rights violations in Cyprus was adopted by the Council of Europe on 4 October 1983. The Committee of Ministers of the Council of Europe decided to release the report publicly on 2 April 1992. I understand that in terms of procedure the Committee of Ministers of the Council of Europe has resolved to take no further action on the case. The Australian Government does not plan to take any action on the report.

The Australian Government accepts the conclusions of the European Commission on Human Rights that Turkey violated various articles of the European Convention on Human Rights. The conclusions are in accordance with our understanding of the situation in Cyprus.

(Given the length of time since the Report was adopted by the Council of Europe and the decision of the Committee of Ministers of the Council of Europe that no further action be taken on this case the Australian Government has not made any representations since the report was publicly released. The Australian Government, however, takes an active interest in the human rights situation in Cyprus. The Australian Government supports the United Nations Secretary-General's efforts to mediate a solution to the divisions which beset Cyprus. It is also monitoring the progress of the bipartisan Committee on Missing Persons. It is the hope of the Australian Government that both will aid in the swift resolution of the human rights problems in Cyprus.

On 26 February 1992, at the 48th Session of the Commission on Human Rights in Geneva, the leader of the Australian Delegation stressed that Australia fully supported the efforts of the United Nations Secretary-General to achieve a settlement of the Cyprus problem. He went on to say that it was important that momentum towards a settlement be maintained, and that all parties continue to work towards narrowing their differences to achieve a comprehensive settlement.

The Australian Government is not in a position to provide legal assistance to Australian citizens of Greek Cypriot origin who have been deprived of property and possessions in Cyprus. First, the Australian Government does not, as a general rule, provide legal assistance to Australian citizens involved in legal actions outside Australia. Secondly, the Australian Government has no substantive role to play because, under the relevant principles of international law, a government can only espouse such a cause to another government on behalf of a person who was a citizen of the pleading country at the time the loss or injury occurred and who was continuously a citizen of that country until the time representation was made.

Human rights - Alleged breaches of human rights - Representation by Australia - Burma

On 26 February 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, issued a news release which read in part:

Australia will provide emergency relief funds worth $250,000 to assist Rohingya refugees in Bangladesh, the Minister for Foreign Affairs and Trade, Senator Gareth Evans announced today.

The Rohingyas, an Islamic minority from Burma (Myanmar), are arriving in Bangladesh at an estimated one thousand a day. They claim to be fleeing their homeland in fear of persecution.

Australia has made strong representations to Burma, calling on the Burmese authorities to observe internationally accepted human rights standards in its treatment of the Rohingyas and other minority groups.

On 19 July 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, issued a news release which read in part:

The Minister for Foreign Affairs and Trade, Senator Gareth Evans, paid tribute today to Daw Aung San Suu Kyi who tomorrow, 20 July, begins her fourth year under house arrest in Rangoon. ...

Senator Evans called Daw Aung San Suu Kyi's detention, which began on 20 July 1989, thoroughly reprehensible. He repeated his call for her immediate and unconditional release, as well as the release of all remaining political prisoners in Burma.

Human rights - Alleged breaches of human rights - Burma - Australian support for Resolution of United Nations Third Committee

On 7 December 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said in the course of an answer to a question without notice (Sen Deb 1992, Vol 157, p 4231):

Last Friday, 4 December, the third committee of the UN General Assembly adopted an important resolution by consensus, which includes a call upon the SLORC [State Law and Order Restoration Council] to release Daw Aung San Suu Kyi unconditionally. That resolution, which Australia strongly welcomes, does underline the international community's very grave concern at the continuing failure of the Burmese Government to move towards democracy and the continued seriousness of the human rights situation in that country.

The resolution also urges the Burmese Government to ensure full respect for human rights and fundamental freedoms and the protection of the rights of persons belonging to ethnic and religious minorities whom, it notes, have been particular targets for oppressive measures. It calls upon the SLORC to facilitate the speedy repatriation of refugees, to cooperate fully with the UN organs in this matter and to fully cooperate with the Special Rapporteur appointed by the UN Commissioner on Human Rights to examine the situation there, and to permit him access to any person he considers it appropriate to meet during his visit to that country. The fact that this resolution, which we co-sponsored and were actively involved in drafting, was adopted by consensus will again send a very clear signal to the SLORC about the breadth of international concern at the situation in that country and Burma's increasing political isolation, even from countries within its own region.

Human rights - Alleged breaches of human rights - Representations by Australia - Thailand

On 20 May 1992 the Prime Minister, Mr Paul Keating, issued a news release following violence and deaths at political demonstrations in Thailand. The news release read in part:

Now that the full extent and character of the recent violence in Bangkok has become clearer, I take the opportunity on behalf of all Australians to express our horror at the actions which have led to this needless loss of life.

We are appalled at the widespread use of excessive force by the Thai military.

The Thai Ambassador is being called in today to the Department of Foreign Affairs and Trade to be told of the strength of Australia's concern over the situation in Thailand. Our Ambassador to Thailand is under instructions to repeat these concerns at senior level in Bangkok.

Human rights - Alleged breaches of human rights - Representation by Australia - Iran - Salman Rushdie

The following is drawn from an article in the Department of Foreign Affairs and Trade publication *Backgrounder* of 5 June 1992 concerning a visit to the Middle East by the Minister for Foreign Affairs and Trade, Senator Gareth Evans, in May 1992 (Vol 3 No 10, p 7):

Senator Evans used his meetings to reiterate Australian concerns about human rights issues. He reaffirmed the importance of observance of internationally accepted human rights standards. Ways to address this subject constructively were explored. Senator Evans urged the Iranian authorities to re-examine the internationally damaging issue of threats against author Salman Rushdie.

Human rights - Dispute over recognition of former Yugoslav Republic of Macedonia - Australian position

On 2 June 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, answered a question upon notice from Senator Bourne concerning the dispute over recognition of the former Yugoslav Republic of Macedonia (Sen Deb 1992, Vol 153, p 3337, and see Chapter III, p 5 of this volume). The question and answer were, in part, as follows:

(Q2) Has the Australian Government informed parties to the dispute of the need to protect the fundamental human rights of minorities as set out in numerous international conventions?

(A2) Australia's commitment to the universal observance of internationally accepted human rights standards and its active support for the promotion and protection of human rights throughout the world are well-known and need no elaboration. In discussions with representatives and officials from the Balkan region we have regularly raised human rights concerns. We would support appropriate international action to address human rights problems in the region.

South Africa - Ciskei Massacre - Responsibility of South African Government

On 8 September 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said in the course of an answer to a question without notice (Sen Deb 1992, Vol 154, p 486):

I know that all Australians will be sickened by the deliberate, calculated massacre of peaceful demonstrators which occurred at the hands of the Ciskei defence forces yesterday. Eye witness accounts, which have been confirmed by television footage, show that the Ciskei defence forces fired indiscriminately on peaceful demonstrators who were not in any way acting violently at the time or threatening violence. I say immediately that it is very difficult to accept the statement made by South African Ambassador Tothill this morning on ABC

radio that the ANC should be regarded as sharing the responsibility for its provocation of the massacre. What the ANC was clearly doing was exercising its peaceful right to demonstrate in a democratic and peaceful manner. ...

There have been reports that the South African defence force units were in the area at the time of the massacre. We do not yet have any firm information about their role other than they do not appear to have been in any way participating directly in the shooting which occurred. It has to be said, however, that the massacre was committed by the Ciskei defence forces. The Ciskei Government is, of course, an entirely artificial product of the apartheid system, propped up by the South African Government, not recognised by any other government other than the South African Government, and which has an appalling record for abusing human rights. Certainly under international law the South African Government has to assume responsibility for the actions of the Ciskei authorities. We are of course looking to the South African Government to quickly take action to ensure that those responsible for the killings are brought to justice.

Refugees - Determination of refugee status - Definition of "refugee" - Persons not fitting "refugee" definition

On 27 May 1992 the Minister for Immigration, Local Government and Ethnic Affairs, Mr Hand, answered a question upon notice from Mr Scholes (HR Deb 1992, Vol 184, p 3022). The question and answer were as follows:

(Q1) Has his attention been drawn to claims that the definition Australia uses for refugee status is too restrictive?

(Q2) Has he examined proposals that persons from oppressed minorities be treated as refugees?

(Q3) Has the number of persons who would qualify as refugees under the proposal referred to in part (2) been estimated?

MR HAND: The answer to the honourable member's question is as follows:

(A1) As a signatory to the 1951 United Nations Convention and the 1967 Protocol relating to the Status of Refugees Australia applies the definition of refugee contained in those documents.

The Convention and Protocol define a refugee as a person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

These are internationally agreed criteria which are applied in the determination of refugee status by the Department of Immigration, Local Government and Ethnic Affairs.

(A2) There is no provision for a class determination of refugee status. Persons from oppressed minorities can qualify as refugees on a case by case basis if they are outside the country of claimed persecution, and can demonstrate that the oppression they suffered, as individuals, amounted to persecution.

(A3) No. After defining oppression it would be necessary to catalogue all the "oppressed minorities" in the world. This would not be a fixed number of persons but a fluid population that would be impossible to catalogue.

On 10 September 1992 the Minister for Immigration, Local Government and Ethnic Affairs, Mr Hand, answered a question upon notice concerning a particular category of the immigration intake (HR Deb 1992, Vol 185, p 865). In the course of his answer, he said:

> General criteria for the new Special Assistance Category focus on two main elements: the degree of distress suffered by an individual as a result of severe civil disorder or violence or the fact that they are a member of a disadvantaged or repressed minority; and the extent of their link with Australia. There will also be individual sub-program criteria specific to each group to ensure that selection is centred on those in greatest need of assistance. ...
>
> In the light of strong community support for Australia's humanitarian intake and the continuing need for humanitarian assistance around the world, the Government has taken action to ensure that our ability to respond is not artificially constrained by problems of definition. The new Special Assistance Category is designed to allow us to reach groups who are in situations of real need, have a special need to settle in Australia but who do not fit the United Nations definition of a refugee or our traditional programs.

Refugees - Determination of refugee status - Detention of refugee applicants - Changes to review procedures

In the course of a second reading speech on the Migration Amendment Bill 1992 on 5 May 1992, the Minister for Immigration, Local Government and Ethnic Affairs, Mr Hand, said (HR Deb 1992, Vol 183, p 2370):

> I now wish to foreshadow major Government amendments to the Bill which I will move during the committee stage. The Government is conscious of the extraordinary nature of the measures which will be implemented by the amendment aimed at boat people. I believe it is crucial that all persons who come to Australia without prior authorisation not be released into the community. Their release would undermine the Government's strategy for determining their refugee status or entry claims. Indeed, I believe it is vital to Australia that this be prevented as far as possible. The Government is determined that a clear signal be sent that migration to Australia may not be achieved by simply arriving in this country and expecting to be allowed into the community.
>
> Australia will, of course, continue to honour its statutory and international obligations as it always has done. Any claims made by these people will be fully and fairly considered under the available processes, and any persons found to qualify for Australia's protection will be allowed to enter. Until the process is complete, however, Australia cannot afford to allow unauthorised boat arrivals to simply move into the community.
>
> The Government has no wish to keep people in custody indefinitely and I could not expect the Parliament to support such a suggestion. Honourable members will note that the amendment calls for custody for a limited period. The period provided for in the amendment is 273 days - this translates into

nine months. This period is, however, restricted to that time where consideration of a person's claims is directly within the control of my Department. Where factors are outside the control of my Department, the period is suspended. For example, where it is up to the applicant to provide information relevant to a claim, the time taken to provide that information would not be included in the period. ...

Mr Deputy Speaker, honourable members, if a claimant's application for refugee status or entry is refused he or she will have to leave Australia. The Department will be under an obligation to effect removal as soon as practicable. This will, of course, always depend on the time it takes to make the appropriate arrangements with the receiving country to properly effect removal.

The most important aspect of this legislation is that it provides that a court cannot interfere with the period of custody. I repeat: the most important aspect of this legislation is that it provides that a court cannot interfere with the period of custody. No law other than the Constitution will have any impact on it.

The amendment provides that those boat people already in Australia will be in the new custody from the date this Bill receives the royal assent. In other words, the 273 days will commence on that date. For those unauthorised boat people who arrive in Australia between 27 April and 1 December this year, custody will start when the person is detained. The 273 days will start on the day that the detainee makes an application. The formula for suspending the period applies once the 273-day period starts.

Designated persons not in custody on the date of royal assent may be detained without warrant and kept in custody. This will mean that persons who have escaped from custody since arriving in Australia and those who may have been released from custody must be taken back into custody. In those cases the 273 days will start to run on the day they are taken back into custody. The existing rights and status of a person in other respects of the Migration Act will be unaffected.

I might say, in closing, that this legislation is only intended to be an interim measure. The present proposal refers principally to a detention regime for a specific class of persons. As such it is designed to address only the pressing requirements of the current situation. However, I acknowledge that it is necessary for wider consideration to be given to such basic issues as entry, detention and removal of certain non-citizens.

It is my intention shortly to recommend to Ministers a comprehensive program of legislative amendment to ensure that our immigration law is the best mechanism to deal with current migration issues and needs. The program is being designed in close consultation with the Attorney-General's Department. It will be the result of careful and extended consideration of those issues and needs.

The second reading speech on the Migration Reform Bill 1992 was tabled in the Senate by the Minister for Justice, Senator Tate, on 12 November 1992 (Sen Deb 1992, Vol 156, p 2958). The following is extracted from that speech:

On 5 May of this year, during the debate on the Migration Amendment Act 1992, the Minister [for Immigration, Local Government and Ethnic Affairs, Mr

Hand] foreshadowed to the House that he would be recommending a comprehensive program of legislative amendments to ensure that our migration law is the best mechanism available to deal with current issues and needs. ...

In the Migration Reform Bill currently before the Senate the Minister proposes a range of measures to enhance the Government's control of people who wish to cross our borders.

The Bill sets out more effective means of regulating entry, detention and removal of people who do not establish an entitlement to be in Australia. The reforms are complemented by an enhanced scheme of independent merits review rights.

Mr President, a primary objective of the Migration Act is to regulate, in the national interest, the entry and presence in Australia of persons who are not Australian citizens. The Government views it as essential that all provisions and policies under the Act be interpreted in a way which furthers this objective. An objects provision will be inserted in the Act to remind the community, the administrators and the courts of this intention. Under the reforms, a non-citizen will require a single authority – a visa – to travel to, enter or remain in Australia. ...

At present we have an array of laws which govern detention and removal depending upon how a person arrived in Australia. This is confusing to the public and administrators alike. The Bill will provide for a uniform regime for detention and removal of persons illegally in Australia.

Non-citizens who are in Australia without a valid visa will be unlawful and will have to be held in detention. Unlawful non-citizens who satisfy prescribed criteria will be able to acquire lawful status and release from detention by the grant of a "bridging visa". Bridging visas will not be available to people who arrive in Australia without authority. Depending on their circumstances, they will be immediately removed from Australia, or will be subject to detention until any claim they wish to make has been resolved.

When a person who is in Australia unlawfully has exhausted all available application and merits review entitlements, the law will require that person to be removed as soon as practicable. Deportation will only apply in relation to the current "criminal", "national security" and "certain serious offences" categories.

Mr President, the measures that the Minister has announced so far will lead to greater precision in our efforts to control the border.

Under the reforms, decision-making procedures will be codified. This will provide a fair and certain process with which both applicant and decision-maker can be confident. Decision-makers will be able to focus on the merits of each case knowing precisely what procedural requirements are to be followed. These procedures will replace the somewhat open-ended doctrines of natural justice and unreasonableness.

The Reform Bill proposes significant extensions to the current system for review of migration decisions. Credible independent merits review will ensure that the Government's clear intentions in relation to controlling entry to Australia, as set out in the Migration Act, are not eroded by narrow judicial

interpretations. Under the Reform Bill, the following people who are adversely affected by a decision will be entitled to independent merits review:

- on-shore refugee claimants
- on-shore cancelled visa holders except those cancelled at the border
- on-shore applicants for a visa except those detected at the border, and
- an Australian sponsor of an off-shore applicant for a visa.

As now, people off-shore will not be entitled to merits review.

A specialist Refugee Review Tribunal [RRT] will be established to provide independent and determinative merits review of on-shore refugee status decisions. The Tribunal will be non-adversarial, operating along similar lines to the IRT [Immigration Review Tribunal], with power to hold hearings and record its decisions in writing. ...

The proposals dealing with refugee processing contained in this Bill further strengthen the procedures in two ways. They provide a fair system for the applicants and at the same time provide the necessary protection for the Australian community.

In the general migration area, the Immigration Review Tribunal will handle the expanded jurisdiction.

In a small number of IRT or RRT cases where an important principle of general application is involved, the Principal Member of that Tribunal will be able to refer the case to a Presidential bench of the Administrative Appeals Tribunal. The AAT will provide guidance for primary and review decision-makers dealing with similar principles in other cases without the disadvantages of delay and expense associated with court appeals.

These changes to the migration merit review system broadly accord with views which I have received informally from the Committee to Review the System of Review of Migration Decisions. The Minister established this Committee, chaired by a former Immigration Minister, the Honourable Ian Macphee, to consider the effectiveness of the merits review system introduced in 1989.

As the Minister has indicated, the Government wishes to make the application of the legal concepts of migration decision-making predictable. Judicial review rights for decisions on the grant or cancellation of a visa will be set out in the Migration Act. Judicial review will only be possible after the applicant has pursued all merits review rights, or where merits review is not available.

Grounds for review will include failure to follow the codified decision-making procedures set out in the Act. As the codified procedures will allow an applicant a fair opportunity to present his or her claims, failure to observe the rules of natural justice and unreasonableness will not be grounds for review.

On 9 December 1992 the Minister for Justice, Senator Tate, presented to the Senate the Government's response to the Special Report No 1 of the Joint Committee on Migration Regulations (Sen Deb 1992, Vol 157, p 4555). That report had been tabled in both Houses of the Parliament on 5 September 1991. The Government's response included the following statements:

The Committee expressed concern that undocumented arrivals may be held in detention for lengthy periods before their applications are submitted. The Committee made several recommendations in relation to the implementation of strict time limits in which applications should be made, including:

(a) that undocumented arrivals at the border be required to submit a written notice of intention to apply for refugee status within 48 hours;

(b) claimants be required to submit full applications within 28 days of date of arrival, with a possible extension of 28 days in appropriate circumstances;

(c) the Government provide increased assistance to organisations such as Legal Aid Commissions and Refugee Advice and Casework Services in order for applicants to meet the proposed deadlines;

(d) border claimants be given priority in the assessment of applications;

(e) that the initial determination of a border claimant's application be made within three months and priority be given to the determination of any appeals from border claimants.

RESPONSE

On 12 February 1992 the Government announced new measures to improve processing of refugee claimants and, in particular, expedite the process of applications made by those claimants who are in custody.

These measures include the introduction of time limits within which a person may apply for recognition of refugee status. The onus will be placed on a claimant to make an application and respond to requests for further information within a set time-frame.

Border claimants and others who are arrested and detained as illegal entrants will be given priority and processed within approximately two months.

Amendments were recently made to the Migration Act to require undocumented asylum seekers who arrived by boat, or arrive by boat up to 30 November 1992, to be detained in custody until their claims are resolved. These Amendments also encourage claimants to cooperate in the processing of their applications as the length of custody will be affected by delays in presentation of information.

The Amendments are an interim measure to ensure integrity of Australia's border while the Government explores further legislative possibilities for strengthening the Government's ability to respond to legal challenges to the refugee determination process, whilst maintaining current standards of fairness and equity. Further amendments of a long term nature are expected in the 1992 Budget Session.

The issue of Government assistance to organisations such as Legal Aid Commissions and Refugee Advice and Casework Services is currently being considered.

Refugees - Applicants for refugee status in Australia - Statistics

On 17 December 1992 the Minister for Immigration, Local Government and Ethnic Affairs, Mr Hand, answered a question upon notice from Mr Campbell

(HR Deb 1992, Vol 187, p 4259). The question and answer were, in part, as follows:

(Q1) How many persons have arrived in Australia since 1977 seeking refugee status?

(Q2) How many of the persons referred to in part (1) were sent to (a) their country of origin or (b) another country?

(Q3) How many people of each nationality have sought refugee status?

MR HAND: The answer to the honourable member's question is as follows:

(A1) Statistics relating to the number of applications for refugee status in Australia lodged before 1982 are not readily available and would require a quite extensive search of statistical records and manual extraction of information.

In the period 1 January 1982 to 30 June 1992 a total of 29,514 applications for refugee status in Australia were received by my Department. This figure includes applications lodged by persons who arrived in Australia by boat, without authority to enter, during that period.

Table 1 provides detailed statistics relating to applications received since 1 January 1982.

Table 1

REFUGEE APPLICATIONS RECEIVED

1 January 1982 – 30 June 1992

1982*	170	1988/89	564
1983*	183	1989/90	3,373
1984*	167	1990/91	14,020
1985/86	315	1991/92	9,795
1986/87	488		
1987/88	439	TOTAL	29,514

* Figures relate to cases considered by the then Determination of Refugee Status (DORS) Committee rather than to the number of refugee applications received.

(A2) The compilation of statistics relating specifically to the number of unsuccessful on-shore refugee applicants who have had their departure enforced by my Department only commenced on 1 July 1992 when enhancements to the Compliance data base became operational. Figures prior to that date are included in statistics relating to all enforced departures from Australia.

In the period 1 July to 30 September 1992, 105 unsuccessful DORS [Determination of Regugee Status] applicants had their departure enforced. Eighty-seven were supervised departures and 18 were deported. A breakdown by nationality is at Table 2 [omitted].

Information relating to the destination of persons whose departure has been enforced is not captured by data systems in place in my Department. Normally, such persons would be returned to the country of their nationality.

(A3) Statistical information relating to the nationality of persons applying for refugee status in Australia prior to 1 January 1989 is not readily available and would require an extensive manual extraction of information. Details of applications for refugee status received by nationality in the period 1 January 1989 to 31 July 1992 are at Table 3 [omitted].

International Labour Organisation - Australian ratification of ILO Conventions - Committee of Experts on the Application of Conventions and Recommendations

On 15 September 1992 the Minister representing the Minister for Industrial Relations, Mr Willis, answered a question upon notice from Mr Hollis (HR Deb 1992, Vol 185, p 1090). The question and part of the answer were as follows:

(Q1) Which ILO conventions have been ratified by Australia since 1972 and on what dates?

(Q2) Will the Minister bring up-to-date the information provided in the answers to questions Nos 1567 (*Hansard*, 8 May 1989, p 2192) and 1568 (*Hansard*, 3 May 1989, p 1903)?

MR WILLIS: The Minister for Industrial Relations has provided the following answer to the honourable member's question:

(A1) Since 1972 Australia has ratified the following 18 ILO conventions:

Convention Number	*Title Ratified*	*Date*
58	Minimum Age (Sea) (Revised), 1936	11.6.92
81	Labour Inspection, 1947	24.6.75
83	Labour Standards (Non-Metropolitan Territories), 1947	15.6.73
86	Contracts of Employment (Indigenous Workers), 1947	15.6.73
87	Freedom of Association and Protection of the Right to Organise, 1948	28.2.73
92	Accommodation of Crews (Revised), 1949	11.6.92
98	Right to Organise and Collective Bargaining, 1949	28.2.73
100	Equal Remuneration, 1951	10.12.74
111	Discrimination (Employment and Occupation), 1958	15.6.73
131	Minimum Wage Fixing, 1970	15.6.73
133	Accommodation of Crews (Supplementary Provisions), 1970	11.6.92
137	Dock Work, 1973	25.6.74
142	Human Resources Development, 1975	10.9.85
144	Tripartite Consultation (International Labour Standards), 1976	11.6.79
150	Labour Administration, 1978	10.9.85

156	Workers with Family Responsibilities, 1981	30.3.90
159	Vocational Rehabilitation and Employment (Disabled Persons), 1983	7.8.90
160	Labour Statistics, 1985	15.5.87

(A2) The following information brings up–to–date the information provided in the answer to question No 1567 (*Hansard*, 8 May 1989, p 2192).

The Government has been concerned for some time that the rate at which Australia considers and, if appropriate, ratifies ILO conventions has been too slow. Consequently, in May 1991 the Government established an Interdepartmental Task Force to review, over a period of 18 months, the ratification prospects of 74 (later increased to 75) unratified ILO conventions with a view to significantly increasing the number of conventions ratified by Australia in the short to medium term. This initiative was not intended to replace the existing arrangements for federal–State consultations concerning ILO conventions which are considered appropriate for action in part or in whole by the States and Territories, and the Task Force has consulted extensively with them. By agreement with the States and Territories, however, those arrangements were made more flexible in that consultations have taken place outside, as well as within, the established consultative machinery.

As a result of this initiative, since May 1991 federal–State consultations have not been confined to those conventions previously identified by Commonwealth, State and Territory Ministers of Labour as suitable targets for ratification, but have covered all those conventions within the remit of the Task Force which are appropriate for action, in whole or in part, by the States and Territories. There are 67 such conventions amongst the 75 conventions within the remit of the Task Force. The following table lists the 67 conventions under headings showing (i) those which have been ratified since May 1991; (ii) those which have been categorised by the Task Force as suitable targets for ratification; (iii) those which have been categorised as unsuitable targets for ratification; and (iv) those which have yet to be placed in any category.

(i)	**Conventions Ratified**
C.58*	Minimum Age (Sea) (Revised), 1936
C.92*	Accommodation of Crews (Revised), 1949
C.133*	Accommodation of Crews (Supplementary Provisions), 1970
TOTAL	3
(ii)	**Considered Suitable Targets for Ratification**
C.53*	Officers' Competency Certificates, 1936
C.73	Medical Examination (Seafarers), 1946
C.119	Guarding of Machinery, 1963
C.120	Hygiene in Commerce and Offices, 1964
C.129	Labour Inspection (Agriculture), 1969
C.134	Prevention of Accidents (Seafarers), 1970
C.135*	Workers' Representatives, 1971

C.139 Occupational Cancer, 1974
C.140 Paid Education Leave, 1974
C.141 Rural Workers' Organisations, 1975
C.145 Continuity of Employment (Seafarers), 1976
C.146 Seafarers' Annual Leave with Pay, 1976
C.147 Merchant Shipping (Minimum Standards), 1976
C.148 Working Environment (Air Pollution, Noise and Vibration), 1977
C.149 Nursing Personnel, 1977
C.151* Labour Relations (Public Service), 1978
C.152 Occupational Safety and Health (Dock Work), 1979
C.154 Collective Bargaining, 1981
C.155* Occupational Safety and Health, 1981
C.158 Termination of Employment, 1982
C.161 Occupational Health Services, 1985
C.162* Asbestos, 1986
C.164 Health Protection and Medical Care (Seafarers), 1987
C.167* Safety and Health in Construction, 1988
C.170 Chemicals, 1990
TOTAL 25

(iii) Considered not Suitable Targets for Ratification

C.13 White Lead (Painting), 1921
C.14 Weekly Rest (Industry), 1921
C.55 Shipowners' Liability (Sick and Injured Seamen), 1936
C.68 Food and Catering (Ships' Crews), 1946
C.74 Certification of Able Seamen, 1946
C.77 Medical Examination of Young Persons (Industry), 1946
C.78 Medical Examination of Young Persons (Non–Industrial Occupations), 1946
C.79 Night Work of Young Persons (Non–Industrial Occupations), 1946
C.89 Night Work (Women) (Revised), 1948
C.90 Night Work of Young Persons (Industry) (Revised), 1948
C.94 Labour Clauses (Public Contracts), 1949
C.95 Protection of Wages, 1949
C.96 Fee–Charging Employment Agencies (Revised), 1949
C.97 Migration for Employment (Revised), 1949
C.102 Social Security (Minimum Standards), 1952
C.103 Maternity Protection (Revised), 1952
C.106 Weekly Rest (Commerce and Offices), 1957

C.110 Plantations, 1958
C.115 Protection Against Radiation, 1960
C.117 Social Policy (Basic Aims and Standards), 1962
C.118 Equality of Treatment (Social Security), 1962
C.121 Employment Injury Benefits, 1964
C.124 Medical Examination of Young Persons (Underground Work), 1965
C.127 Maximum Weight, 1967
C.136 Benzene, 1971
C.138 Minimum Age, 1973
C.153 Hours of Work and Rest Periods (Road Transport), 1979
C.157 Maintenance of Social Security Rights, 1982
C.163 Seafarers' Welfare, 1987
C.165 Social Security (Seafarers) (Revised), 1987
C.171 Night Work, 1990
TOTAL 31

(iv) To Be Determined

C.69 Certification of Ships' Cooks, 1946
C.113 Medical Examination (Fishermen), 1959
C.114 Fishermen's Articles of Agreement, 1959
C.125 Fishermen's Competency Certificates, 1966
C.126 Accommodation of Crews (Fishermen), 1966
C.132 Holidays With Pay (Revised), 1970
C.169 Indigenous and Tribal Peoples, 1989
C.172 Working Conditions (Hotels and Restaurants), 1991
TOTAL 8

* previously identified by Ministers of Labour as priority conventions.

Consultations on those conventions categorised as suitable targets for ratification but not yet ratified are continuing, with the emphasis on those conventions that concern matters of intrinsic importance and/or are close to ratification. That is the criterion used by Ministers of Labour to identify "priority" conventions. As the above table shows, three of the nine conventions previously identified by Ministers of Labour as "priority" conventions were ratified in June 1992. The remaining six "priority" conventions are included in the 25 conventions categorised by the Task Force as suitable targets for ratification, and are therefore the subject of continuing consultations.

Article 19 Reports

Since 1988, Australia has provided reports on the following unratified conventions, at the request of the ILO Governing Body, under Article 19 of the ILO Constitution:

Year	*Convention Number*	*Title*
1989	147	Merchant Shipping (Minimum Standards), 1976
1990	140	Paid Educational Leave, 1974

Article 22 Reports

Australia is required under Article 22 of the ILO Constitution to report periodically on the measures which it has taken to give effect to the provisions of ratified conventions.

Since 1988, Australia has reported on the following conventions:

Number	*Title*
2	Unemployment, 1919
8	Unemployment Indemnity (Shipwreck), 1920
10	Minimum Age (Agriculture), 1921
11	Right of Association (Agriculture), 1921
12	Workmen's Compensation (Agriculture), 1921
16	Medical Examination of Young Persons (Sea), 1921
18	Workmen's Compensation (Occupational Diseases), 1925
19	Equality of Treatment (Accident Compensation), 1925
22	Seamen's Articles of Agreement, 1926
27	Marking of Weights (Packages Transported by Vessels), 1929
29	Forced Labour, 1930
42	Workmen's Compensation (Occupational Diseases) (Revised), 1934
81	Labour Inspection, 1947
87	Freedom of Association and Protection of the Right to Organise, 1948
88	Employment Service, 1948
98	Right to Organise and Collective Bargaining, 1949
100	Equal Remuneration, 1951
105	Abolition of Forced Labour, 1957
111	Discrimination (Employment and Occupation), 1958
122	Employment Policy, 1964
123	Minimum Age (Underground Work), 1965
142	Human Resources Development, 1975
144	Tripartite Consultation (International Labour Standards), 1976
150	Labour Administration, 1978
160	Labour Statistics, 1985

In 1992, Australia is required to report on the following ratified conventions:

Number	*Title*
7	Minimum Age (Sea), 1920
9	Placing of Seamen, 1920
47	Forty-Hour Week, 1935
99	Minimum Wage-Fixing Machinery (Agriculture), 1951
112	Minimum Age (Fishermen), 1959
131	Minimum Wage Fixing, 1970
137	Dock Work, 1973
156	Workers with Family Responsibilities, 1981
159	Vocational Rehabilitation and Employment (Disabled Persons), 1983

The following information brings up-to-date the answer to Question No 1568 (*Hansard*, 3 May 1989, p 1903):

Four annual Sessions of the International Labour Conferences have been held in Geneva in the month of June of 1989, 1990, 1991 and 1992.

The following Conventions and Recommendations have been adopted by the International Labour Conference. Australian Government delegates voted in favour of all the instruments.

International Labour Conference Session	*Instruments Adopted*
76th (June 1989)	Indigenous and Tribal Peoples Convention (No 169)
77th (June 1990)	Chemicals Convention (No 170) Chemicals Recommendation (No 177) Night Work Convention (No 171) Night Work Recommendation (No 178)
79th (June 1991)	Working Conditions (Hotels and Restaurants) Convention (No 172) Working Conditions (Hotels and Restaurants) Recommendation (No 179)
80th (June 1992)	Protection of Workers' Claims (Employer's Insolvency) Convention (No 173) Protection of Workers' Claims (Employer's Insolvency) Recommendation (No 180)

International Labour Organisation - Australian ratification of ILO Conventions - Reports under article 22 of ILO Constitution - Australian legislation

In the course of the second reading speech for the International Labour Organisation (Compliance with Conventions) Bill 1992 on 17 December 1992, the Minister for Higher Education and Employment Services, Mr Baldwin, said (HR Deb 1992, Vol 187, p 4161):

The Bill currently before the House proposes measures concerning conventions of the International Labour Organisation, the ILO.

Insertion of a regulation making power for certain limited purposes

Firstly, the Bill proposes the creation of a regulation making power to enable procedures to be prescribed for the purposes of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No 144). This convention was adopted by the International Labour Organisation on 21 June 1976 and ratified by Australia on 11 June 1979.

Convention No 144 requires the Government to consult, at least annually, with the most representative organisations of employers and workers about a variety of matters specified in the convention, including:

- action proposed in connection with new conventions and recommendations;
- the re-examination at appropriate intervals of unratified conventions and/or recommendations to which effect has not yet been given, to consider what measures might be taken to promote their implementation and ratification as appropriate;
- questions arising out of reports to be made to the International Labour Office under Article 22 of the Constitution of the International Labour Organisation concerning ratified conventions; and
- proposals for the denunciation of ratified conventions.

A matter of particular significance involves questions arising out of reports made to the International Labour Office under Article 22 of the ILO Constitution. Under this article, member States are required to report at regular intervals on the current state of relevant law and practice for each convention they have ratified.

Article 22 reports, as they are known, are examined by the ILO's Committee of Experts on the application of conventions and recommendations, which comprises 20 independent persons highly qualified in legal or social fields and with an intimate knowledge of labour conditions or administration. Upon examining an Article 22 report, the Committee of Experts can seek further information and can raise issues about Australia's compliance with ratified conventions. This is usually done in the form of a document known as a direct request, which in the case of Australia is addressed to the Commonwealth Government.

Where the Committee concludes that Australia does not comply with a particular convention, it may request the Government to make appropriate changes to Australian law and practice. Direct requests, and the Government's responses to them, can therefore be very significant. Accordingly, the Government considers it desirable to formalise procedures for the consultation required by Convention No 144, by the making of appropriate regulations, particularly in respect of the handling of direct requests.

The other measures proposed in the Bill are amendments to the Migration Act 1958 and the Navigation Act 1912 to bring Australian law into conformity with two ILO conventions. As honourable members would be aware, the Government is committed to the ratification of International Labour

Organisation conventions which are suitable for Australian conditions. Ratification of appropriate ILO conventions is desirable because:

- it supports and strengthens domestic policy and program initiatives;
- it confirms and maintains Australia's adherence to international labour standards, with consequent benefits for workers and employers;
- it lends credibility and authority to our international standing on labour, social and broader human relations matters;
- it underlines our support for the ILO; and
- it promotes higher labour standards in the Asian and Pacific region.

So far Australia has ratified 51 ILO conventions. In May 1991 the Government established an interdepartmental task force to review some 75 unratified conventions with a view to determining their suitability for ratification and increasing the number of conventions ratified by Australia. These amendments arise from that initiative.

As a general rule Australia does not ratify a convention until law and practice in all relevant jurisdictions complies with the requirements of the convention. The Bill proposes amendments to the Migration Act 1958 and the Navigation Act 1912 which will bring Australian law into conformity with a further two conventions: No 108, Seafarers' Identity Documents, 1958 and No 73, Medical Examination (Seafarers), 1946. The proposed amendments will also enable further progress to be made towards achieving compliance with Convention No 147, Merchant Shipping (Minimum Standards), 1976. Peak employer and union bodies, through the National Labour Consultative Council, have endorsed the suitability of convention Nos 73, 108 and 147 to Australian conditions and the desirability of their ratification.

Amendments to the Migration Act 1958

Amendments to the Migration Act are contained in Part 2 of the Bill and are designed to bring Australian law into compliance with the requirements of Convention No 108, Seafarers' Identity Documents, 1958. This convention has been examined by the ILO conventions task force, in conjunction with the Department of Immigration, Local Government and Ethnic Affairs, and has been classified as a suitable convention for ratification by Australia. The convention is one that is solely within the competence of the Commonwealth Government and does not require any action by the States and Territories to achieve compliance with its provisions.

Convention No 108 deals with the issue and recognition of seafarers' identity documents by the appropriate authority in each country. It also specifies that the documents shall remain in the seafarer's possession at all times.

The existing provisions of the Migration Act comply with the terms of the convention in relation to the issue and recognition of seafarers' identity documents. However, the Act currently specifies that a seafarer's identity document is to be held by the master of the vessel or the officer in charge of a resources or sea installation. The amendments to the Act are designed to bring Australian law into full compliance with the convention by providing that a seafarer's identity document is to remain in his or her possession at all times.

Amendments to the Navigation Act 1912

Amendments to the Navigation Act 1912 are contained in Part 3 of the Bill. They are intended to facilitate the ratification of ILO Convention No 73, Medical Examination (Seafarers), 1946 and to establish substantial equivalence with article 5 of Convention No 68, Food and Catering (Ships Crews), 1946. Convention No 73 applies to seagoing ships and provides that seafarers shall not be employed on a vessel to which the convention applies unless each seafarer holds a certificate attesting to his or her fitness for the work at sea for which that person is employed.

Most seagoing ships in Australian waters are engaged in interstate or overseas voyages. They thereby come within Commonwealth jurisdiction and are covered by the provisions of the Navigation Act. A small number of seagoing ships, however, fall within the jurisdiction of a State or Territory. The proposed amendment, which has been developed in consultation with the States and the Northern Territory, will enable regulations and orders to be made under the Navigation Act to give effect to the convention in respect of all seagoing ships in Australian waters. The Bill provides that such orders and regulations will not, however, apply to the extent that any existing or future law of a State or the Northern Territory gives effect to the convention.

The second of the proposed amendments to the Navigation Act will amend sections 117 and 118 to enable Australia to establish substantial equivalence with article 5 of Convention No 68, Food and Catering (Ships Crews), 1946. This is required if Australia is to ratify Convention No 147, Merchant Shipping (Minimum Standards), 1976. Convention No 147 is the principal ILO convention dealing with maritime labour matters.

Convention No 147, amongst other things, provides that compliance or substantial equivalence must be established with the conventions or articles of conventions specified in the appendix to that convention. Article 5 of Convention No 68 is specified in that appendix. The proposed amendments will ensure that a ship is carrying water of suitable quantity and quality and also food of suitable quality, quantity, nutritive value and variety for the crew of a vessel. I commend the Bill to the House and present the explanatory memorandum.

International Labour Organisation Conventions - Australian domestic law - Consistency with Convention

On 9 November 1992 the Minister for Industrial Relations, Senator Peter Cook, said in the course of an answer to a question without notice (Sen Deb 1992, Vol 156, p 2473):

The International Labour Organisation [ILO] is the oldest agency of the United Nations. As I recall, it was formed in 1917 and has continued in various guises since. It is tripartite in nature. Its conventions have the approval of employers, workers and governments around the world.

Australia adopted the ILO convention concerning freedom of association 19 years ago, and has adhered to it ever since. The supervising committee of the ILO – the committee of experts; a body of jurists of international repute – last year asked Australia to re-examine its domestic industrial relations law. It

held that the existence in this country of tort law on industrial relations and of sections 45D and 45E of the Trade Practices Act were in breach of the ILO convention I have referred to.

As well, it held that the New South Wales essential services legislation was drawn in such a way as to define services that were not essential in the bracket of "essential" and, thus, bring into the coverage of essential services, work and responsibilities that were not properly there.

In order to cut off any interjections or points of order, may I say that the Australian Government is the affiliate of, and has the responsibility of answering to, the ILO on these matters. Given the ILO's expression of view on sections 45D and 45E, it is interesting to note that in the Jobsback – properly called "Jobsack" – policy announced by the Opposition on 22 October, Mr Howard indicated quite clearly that he would continue the existence of sections 45D and 45E even though those provisions are found to be in contravention of the international labour law. He has also expressed the view that common law liability would obtain in Australia which, again, is in contravention of international labour law as declared by the ILO, and which Australia is bound to observe, given its adoption of those conventions.

The other area where one needs to look is the essential services area. I have already indicated what the finding of the jurists, the committee of experts, has been with respect to the New South Wales legislation in that area. It is clear that the Kennett Vital Industries Bill is in flagrant breach of most of the provisions of that convention, and Australia would get a black mark if that legislation were carried. If one looks at the "Jobsack" proposal, there is an imitation of the Vital Industries Bill in that being proposed by the Opposition for the national government. If that were carried, that would be in breach as well.

International Labour Organisation Convention 156 – Workers with family responsibilities – Australian legislation

In the course of the second reading speech for the Human Rights and Equal Opportunity Legislation Amendment Bill (No 2) 1992 on 3 November 1992, the Attorney-General, Mr Duffy, said (HR Deb 1992, Vol 186, p 2397):

> This Bill contains amendments to the Commonwealth's human rights legislation to ... proscribe dismissal of a worker on the ground of his or her family responsibilities. ...
>
> In March 1990, Australia ratified International Labour Organisation Convention 156 – A Convention Concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities – and it came into effect in March 1991. Prior to ratification, Australia already had a number of measures in place which comply with the principles underlying ILO 156. However, our ratification of ILO 156 relies on the flexibility provided by its staged implementation process, and the Government plans to undertake further action to supplement these measures in order to ensure full compliance over time.
>
> In March 1991 an interdepartmental committee (an IDC) was established to coordinate the development of the strategy chaired by the Department of

Industrial Relations. The overriding principle embodied in ILO 156 is that of equal opportunity for all in employment through, where possible, the removal of discrimination on the grounds of family responsibilities. To this end, the IDC endorsed the following legislative strategy, in two stages: one for immediate implementation and the second with a view to implementation within two years.

The first legislative stage is to amend the Sex Discrimination Act 1984 (the SDA) to proscribe dismissal from employment on the ground of family responsibilities. The second stage is to enter into wide ranging consultations with a view, at this point, to a further amendment to the SDA to prohibit more generally discrimination in employment on the ground of family responsibilities. It is this first stage which is the subject of the Bill before Parliament. This amendment seeks to give effect to article 8 of ILO 156, which provides that family responsibilities shall not, as such, constitute a valid reason for termination of employment.

I turn now to a more detailed description of the amendments. This amendment is intended to be narrow in its scope in that it provides protection only against discrimination on the grounds of family responsibilities which takes the form of dismissal. "Family responsibilities" is defined by reference to the terms of ILO 156, which applies to workers with family responsibilities in relation to their dependent children as well as the care and support of other members of the immediate family. This definition is not intended to be exhaustive.

The provisions of this Act are intended to apply to a situation in which an employee has assumed the responsibility for, and therefore could be said to have a special relationship with, any other member of his or her family with regard to their care and support. "Discrimination" is defined to include less favourable treatment – that is, direct discrimination. This new provision will apply only to a dismissal on the ground of the existence of family responsibilities or of a characteristic that appertains generally or is imputed generally to persons with family responsibilities. It is not intended to cover, for example, the dismissal of an employee because the employee is unwilling to change a shift, or has a period of unauthorised leave, even though both may be due to family responsibilities.

International Labour Organisation Conventions – Standards on minimum wages, equal pay and termination of employment – Proposed Australian legislation

In the course of a second reading speech on the Industrial Relations Legislation Amendment Bill (No 2) 1992 on 10 December 1992, the Minister for Industrial Relations and Minister for Shipping and Aviation Support, Senator Cook, said (HR Deb 1992, Vol 187, p 4747):

The International Labour Organisation is an agency of the United Nations. Through tripartite consultative mechanisms – that is, through conferences with equal numbers of workers, employers and representatives from government from all of its member States and by common resolution of its forum – it proclaims international labour conventions which it regards as the minimum level of international labour standard in the world. It is a standard that is, in

many cases, below the prevailing standard in Australia. Clearly, an international forum such as a UN agency has to have regard for the economic needs of developing and underdeveloped countries. In its next round of legislation, this Government proposes to encode those standards in Australian industrial law as a further safety net and as a further protection for Australian workers.

The World Health Organisation is well known for prescribing world health standards in order to lift the world into a healthier environment. The International Labour Organisation, in the prescription of its standards, does the same to regulate fair labour practice. It seems appropriate for Australia, as a country that supports the United Nations system and believes in protective minimums, to encode those standards in legislation. We will direct our attention to three standards. The first standard provides for minimum wages. That springs from a convention adopted by all States and approved by all governments and the Commonwealth. In proposing to introduce this standard, we will ask the industrial relations commissions in their respective jurisdictions – the Commonwealth jurisdiction for the Commonwealth commission and the State jurisdictions for the respective State commissions – to define a minimum labour standard in respect of each of the industries and award areas covered by those commissions.

The second standard is the equal pay convention – convention 100, convention 111, and the United Nations Convention on Discrimination Against Women in Employment. Those conventions will ensure that equal pay is encoded as a principle in Australia. The third standard will be in relation to unfair dismissals – protection against being unfairly dismissed and the right to redundancy. That will ensure that there is proper behaviour and no victimisation at the point of termination of employment. They will be minimum standards.

International Covenant on Civil and Political Rights – Department of Social Security reviews of Aidex demonstrators

On 31 March 1992 the Minister representing the Minister for Social Security, Senator Richardson, answered a question upon notice from Senator Reynolds (Sen Deb 1992, Vol 151, p 1440). The question and answer were, in part, as follows:

(Q1) What is the privacy policy of the Department of Social Security?

(Q2) What percentage of in-service training time is allocated to Social Security's staff for the purpose of understanding their responsibilities under privacy legislation? ...

(Q8) Does the department have information about Australia's obligations under the United Nations' Convention on Civil and Political Rights; if so, how is this disseminated in staff training?

(Q9) Has the department breached the United Nations' Convention by singling out protesters for "special reviews"?

SENATOR RICHARDSON: The Minister for Social Security has provided the following answer to the honourable senator's question:

(A1) The Department's policy is to follow the information privacy principles in the Privacy Act 1988 and to ensure that staff know about and comply with them and the confidentiality provisions in the Social Security Act 1991, the secrecy provisions in the Crimes Act 1914 and relevant Public Service Regulations.

(A2) A training package has been developed for privacy training for all staff. Privacy issues are also covered in other training modules and are an important element of many other technical training programs for regional office staff.

Privacy is an integral part of induction training for all recruits and training for public contact staff. The Privacy Contact officers in the Department also carry out some on-going training and information sessions on privacy issues.

The integration of privacy issues within many training modules means precise identification of the staff time involved is not possible. ...

(A8) The Department has information about Australia's obligations under the International Covenant on Civil and Political Rights (ICCPR). The key obligation for Departmental staff concerns the right to privacy. Relevant information is disseminated in staff training as outlined in (2) above.

(A9) The reviews were conducted following allegations that AIDEX demonstrators might not be eligible for social security payments. It is the Department's general policy to conduct reviews where there are allegations of non-eligibility for social security payments and the policy was applied in this case. The demonstrators were not treated any differently from other persons about whom allegations are made. On this basis the reviews do not contravene Australia's obligations under the ICCPR. This has been confirmed by the Attorney-General's Department.

Individuals - Bilateral Social Security Agreements

On 1 April 1992 the Minister for Social Security, Dr Neal Blewett, issued a news release which read in part:

Australia increased its international social security links today when a pensions agreement was signed with Austria.

Once the agreement comes into effect - scheduled for October 1992 - Austrian residents who have spent part of their lives in Australia would be able to claim the Australian pension without leaving Austria. Similarly, Austrians in Australia would find it easier to qualify for Austrian pensions and would be able to lodge claims for the Austrian pension with DSS [Department of Social Security] regional offices.

The signing brings the total number of international agreements to eight. Agreements with Italy, Canada, Spain and Malta were already operational, while agreements with Ireland and the Netherlands came into effect today. An agreement has been signed with Portugal, but has not yet come into effect.*

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* The relevant agreement with Portugal entered into force on 1 November 1992. The Australia-Austria Agreement on Social Security entered into force on 1 December 1992.

Dr Blewett said work was continuing on agreements with Denmark, Norway and Cyprus, all of which may be finalised this year. He added that discussions were proceeding with the USA, Finland, Greece and Turkey. Hopes were also high of concluding an agreement with Germany, whose social security system is very similar to Austria's.

Mutual assistance in criminal matters - Agreement with the Republic of Korea

On 25 August 1992 the Attorney-General, Mr Michael Duffy, issued a news release which read as follows:

A treaty for mutual assistance in criminal matters between Australia and Korea was signed tonight by Attorney-General, Michael Duffy, and the Minister for Justice from the Republic of Korea.

The treaty provides for assistance in the investigation and prosecution and proceeds of crime.

According to Mr Duffy, the treaty will improve the existing high level of cooperation between Australia and Korea in the field of law enforcement.

"This treaty builds on links already established between our nations following the signing of an extradition treaty in Seoul in 1990", he said.

Tonight's treaty signing brings to 15 the number of countries with which Australia has mutual assistance in criminal matters.

Negotiations are at varying stages with a further 19 countries.

"Serious organised crime very frequently has international dimensions. This treaty will add to the tools available to prosecutors and law enforcement agencies in both countries in the fight against such crime", Mr Duffy said.