THE EIGHTEENTH WILFRED FULLAGAR MEMORIAL LECTURE: INTERNATIONAL LAW-MAKING†

HON. E.G. WHITLAM*

Citizens,

You would expect this invocation since next week marks the bicentenary of the French Constituent Assembly's Declaration of the Rights of Man and the Citizen, on which all subsequent such statements and enactments have been based and by which they have all been judged.

In June 1988, when Professor Campbell, my colleague on the Constitutional Commission, sounded me out on giving the Fullagar Lecture and when thereafter the Dean of Law formally invited me, I had no doubt which subject I would choose. It had become more and more obvious to me that the best and perhaps the only hope of achieving comprehensive and contemporary standards of human rights in Australia was through international conventions. The great precedent was my Government's *Racial Discrimination Act* 1975 and the High Court's 1982 judgment in *Koowarta* v. *Bjelke-Petersen*[1] (Stephen, Mason, Murphy and Brennan JJ., Gibbs CJ, Aickin and Wilson JJ. *dissentientibus*). It had also been brought home to me at a meeting of the Bureau of the World Heritage Committee in Paris in May 1988 that international arrangements were essential if Australia's environment was to be safeguarded. Chief Justice Mason had observed early in the year, "Entry of a property in the World Heritage List, supported by the protection given by the Act, constitutes perhaps the strongest means of environment protection recognised by Australian law". The basis of this view was the World Heritage Convention which I ratified in August 1974 and which the High Court had upheld as a basis for the Hawke Government's first legislation, the *World Heritage Properties Conservation Act* 1983, in *Commonwealth of Australia* v. *State of Tasmania*[2] (Mason, Murphy, Brennan and Deane JJ., Gibbs CJ, Wilson and Dawson JJ. *diss.*). I had read and heard statements by ministers, public servants, corporations and individuals, often purporting to speak on legal advice, which exhibited malevolence and misrepresentation or, at least, misunderstanding. Even I came in for some vilification from Queensland representatives at a time when the Queensland Government was staging Expo; there would have been no Expo if my Government, acting on a long campaign by me, had not promptly acceded to the 1928 Convention relating to International Exhibitions and reserved the Bicentennial Year for a World

† Delivered at Monash University on 16 August 1989.

* A.C., Q.C. Prime Minister of Australia 1972-5.

[1] (1982) 153 C.L.R. 168.

[2] (1983) 158 C.L.R. 1.

Expo in Australia. (The first reference in Parliament was on 16 March 1965 and the latest on 28 February 1989.)

Lawyers should be much better informed and should act much more prudently in giving advice on environmental issues; the issues have irretrievably passed the bounds of building regulations and town planning requirements. Lawyers are not serving the community or preserving their reputations if they condone cries of "United Nations intrusion" and "Federal usurpation". The profession and the public need to become as familiar with the formulation and operation of international laws as of domestic laws. The drafting and adoption of an international convention entail a much more open procedure than the drafting and passage of an act of parliament. I therefore propose to commence this lecture with a pedagogic and prosaic account of the purpose, functions and procedures of Unesco and its World Heritage Convention.

Unesco was created in 1946 as the United Nations specialized agency whose purpose was to contribute to peace and security by promoting collaboration among the nations through education, science and culture. The Constitution of Unesco, which appears as the schedule to the *United Nations Educational, Scientific and Cultural Organization Act* 1947, was not again printed in Australia for 40 years. It is now available, with the amendments made at 16 sessions of the biennial General Conference, as a schedule to the report of the Australian delegation to the 24th session (1987).

Unesco has produced 30 conventions, more than any UN specialized agency other than ILO. It categorizes them under headings relevant to its areas of responsibility in the UN system:

education

natural sciences

culture and communication

libraries and archives

copyright and neighbouring rights.

With respect to cultural property the Constitution specifically enjoins the Organization to "maintain, increase and diffuse knowledge by assuring the conservation and protection of the world's inheritance of books, works of art and monuments of history and science and recommending to the nations concerned the necessary international conventions".

In 1950 the General Conference adopted and in 1952 and 1972 amended "Rules of Procedure concerning recommendations to member States and international conventions covered by the terms of Article IV, paragraph 4, of the Constitution". [See Appendix]. These Rules cover five pages in the *Manual of the General Conference.* A new edition of the *Manual* appears soon after each session of the General Conference. In brief, it takes action by at least three sessions of the General Conference, that is just over four years, to initiate, consider and adopt an international instrument.

In the run-up to the World Heritage Convention Unesco had adopted five Recommendations:

- International Principles Applicable to Archaeological Excavations (1956)

- The most Effective Means of Rendering Museums Accessible to Everyone (1960)
- The Safeguarding of the Beauty and Character of Landscapes and Sites (1962)
- The Means of Prohibiting and Preventing the Illicit Export, Import and Transfer of Ownership of Cultural Property (1964)
- The Preservation of Cultural Property Endangered by Public or Private Works (1966)

At its 16th session (1970) the General Conference adopted the following resolution:

> "3.412 The General Conference,
> *Bearing in mind* the Rules of Procedure concerning Recommendations to Member States and International Conventions covered by the terms of Article IV, paragraph 4, of the Constitution,
> *Having examined* the preliminary study of the Director-General on the desirability of adopting an international instrument for the protection of monuments and sites of universal value (document 16 C/19),
> 1. *Considers it desirable* that international instruments be prepared to this effect;
> 2. *Decides* to entrust the Director-General with drafting an international convention and a recommendation to Member States within the meaning of Article IV, paragraph 4, of the Constitution;
> 3. *Invites* the Director-General to convene the Special Committee provided for in Article 10, paragraph 4, of the above-mentioned Rules of Procedure, which will be entrusted with examining and finalizing the drafts prepared by the Director-General with a view to their submission to the General Conference at its seventeenth session (1972)."

In July 1971 the Director-General of Unesco sent the Member States, as required by the Rules of Procedure, a preliminary report accompanied by a preliminary draft recommendation and a preliminary draft convention for the Protection of Monuments, Groups of Buildings and Sites. In the following January and February two dozen States sent comments. Australia reported general support for both drafts from relevant authorities and advocated more attention to the protection of important or unique natural environment, including underwater sites. The USA, where the running was made by the national parks movement, submitted a draft World Heritage Trust Convention concerning the Preservation and Protection of Natural Areas and Cultural Sites of Universal Value. In the light of the replies received the Secretariat prepared a final report and revised drafts for the Committee of Government Experts which met in Paris between 4 and 22 April 1972. Representatives of 60 Member States took part as well as observers from the International Centre for the Study of the Preservation and Restoration of Cultural Property (Rome Centre) (ICCROM), the International Council of Monuments and Sites (ICOMOS) and the International Union for Conservation of Nature and Natural Resources (IUCN) and from the Secretariat

responsible for preparing the United Nations Conference on the Human Environment, which was to be held in Stockholm two months later. An Australian observer attended the meeting in Paris but did not participate.

On 16 November 1972, at its 17th session, the General Conference adopted the Convention concerning the Protection of the World Cultural and Natural Heritage and the Recommendation concerning the Protection, at National Level, of the Cultural and Natural Heritage. I make the point that these instruments were the culmination of a process in which Australia had been engaged in Unesco and to which Australians had had the opportunity to contribute since the mid-1950s.

The Convention was adopted after the campaign had commenced for the House of Representatives elections due to be held on 2 December. In a statement to the House of Representatives on 24 May 1972 on "Environment: Commonwealth Policy and Achievements", the Minister for Environment, Aborigines and the Arts had made no reference to the pending Convention. After the elections a new Department of Environment and Conservation was established and for the first time Federal initiatives were taken on environmental matters. Under the terms of Article IV, paragraph 4 of Unesco's Constitution "each of the Member States shall submit recommendations or conventions to its competent authorities within the period of one year from the close of the session of the General Conference at which they were adopted". I sent the World Heritage Convention to the Premiers in September 1973.

I was soon shown the urgency of proceeding to ratification. On 17 December 1972, having won all five House of Representatives seats in Tasmania, I wrote to Premier Reece about the environmental consequences of the flooding of Lake Pedder. He did not agree to participate in the inquiry which I had foreshadowed in May 1972. On 23 February the government set up a committee of four persons. In June the Committee made an interim report recommending a moratorium of five or three years to assess the feasibility of restoring Lake Pedder, the cost to be borne by the Federal Government. Mr Justice Hope, Chairman of the National Estate Committee of Inquiry which had been established in May, supported the moratorium proposal. The Committee's final report and the Snowy Mountains Engineering Corporation's review of it were tabled on 13 September. On 17 October my Government accepted the moratorium proposal and offered to meet the costs of the moratorium and of further action arising from it. On 14 November the fraternal Government party in Tasmania unanimously rejected the proposal. When that afternoon the Premier — known as "Electric Eric" for his devotion to the Hydro-Electric Commission rather than for any other dynamic qualities — announced the decision in the House of Assembly he was cheered from both sides. My Government had no further constitutional jurisdiction in the matter. In December, however, the USA became the first nation to ratify the Convention. On 22 August 1974 Australia became the seventh party. I was confident that, once the World Heritage Convention secured the 20 ratifications or accessions required to bring it into force, the Federal Parliament

could exercise its jurisdiction over external affairs to preserve sites of outstanding universal value such as Lake Pedder.

The year 1974 represented a landmark in conservation. The Federal Parliament passed the *Seas and Submerged Lands Act, States Grants (Water Resources Assessment) Act, States Grants (Nature Conservation) Act, States Grants (Soil Conservation) Act, River Murray Waters Act* and *Environment Protection (Impact of Proposals) Act.* On 30 October a report was received from the Great Barrier Reef Royal Commission on Petroleum Drilling which had been appointed by the Gorton and Bjelke-Petersen governments in May 1970.

In 1975 the government secured the passage of three Acts to provide the administrative infrastructure required to discharge its obligations under the World Heritage Convention, the *Australian Heritage Commission Act, National Parks and Wildlife Conservation Act* and *Great Barrier Reef Marine Park Act.* It also established inquiries into the Fraser Island mineral sands and Ranger uranium proposals under the *Environment Protection (Impact of Proposals) Act* 1974. Steps were also at last taken for Australia to become a member of the three bodies which have the right to attend meetings of the World Heritage Committee in an advisory capacity. In May 1973 Australia had joined IUCN, which had been established in 1948. In June 1975 Australia joined ICCROM, which had been founded by Unesco in 1959. Mr David Yencken, the first chairman of the Australian Heritage Commission, set up the Australian National Commission of ICOMOS which in 1976 became a member of the parent body, which had been established in 1964.

The World Heritage Convention entered into force on 17 December 1975, three months after the 20 instruments of ratification, acceptance or accession had been deposited — and a month or so after the change of government in Australia. I make the point that by this time all interested Australians and all relevant Australian authorities were well aware of the implications of the convention.

Article 8 of the Convention provides:

> "1. An Intergovernmental Committee for the Protection of the Cultural and Natural Heritage of Outstanding Universal Value, called 'the World Heritage Committee', is hereby established within the United Nations Educational, Scientific and Cultural Organization. It shall be composed of 15 States Parties to the Convention, elected by States Parties to the Convention meeting in general assembly during the ordinary session of the General Conference of the United Nations Educational, Scientific and Cultural Organization. The number of States members of the Committee shall be increased to 21 as from the date of the ordinary session of the General Conference following the entry into force of this Convention for at least 40 States."

The term of office of States members of the Committee extends from the end of the ordinary session of the General Conference during which they are elected until the end of its third subsequent ordinary session, that is six years. The first General Assembly took place during the 19th General Conference in

November 1976. At the first election States members had to be chosen by lot to serve for two, four and six years. Australia was chosen to serve till the end of the 22nd session, which was due to be held in 1982 but was postponed till 1983.

The High Court handed down its judgment in the *Tasmanian Dams Case* on 1 July 1983, when there were 74 States Parties to the Convention. In the same month I went to Paris as Australia's permanent delegate to Unesco. I was urged to promote membership of the Convention, which at that time had no member closer to Australia than India. The Convention has since been joined by Bangladesh in 1983, New Zealand in 1984, Philippines and China in 1985, Maldives in 1986, Laos, Thailand and Viet Nam in 1987, Republic of Korea and Malaysia in 1988 and Indonesia in 1989. It now has 111 States Parties, including USA and UK, which have left Unesco. The World Heritage List now includes 315 properties; 20 per cent of them are natural heritage properties, including eight from Australia. At the end of 1983 Australia was elected for a further term on the World Heritage Committee. When that term comes to an end during the General Conference this year, Australia will have been the only State to have served continuously on the Committee, half of its term being under the Fraser Government and the other under the Hawke Government. I make the point that no country has had more experience in the operation of the World Heritage Convention.

The Committee meets at the end of each calendar year and elects a chairman, five vice-chairmen and a rapporteur. These office-bearers, known as the Bureau, meet in the middle of every year. I must explain the workings of the Committee, since some elected and appointed persons and their legal advisers have not shown the capacity or diligence to understand them. Professor Ralph Slatyer, now Chief Scientist, Department of the Prime Minister and Cabinet, was elected chairman in 1981 and re-elected in 1982. He has chaired more sessions of the Committee and Bureau than any other person. The Bureau considers nominations of natural and cultural sites and recommends to the Committee that they be inscribed on the World Heritage list or be modified, deferred or rejected. Australia is the only country whose nominations have always been recommended as complying with the criteria for determining outstanding universal value. Even when the Australian nominations have been extremely complex, as the broken coastlines in northern New South Wales and northern Queensland dictated, they have been highly commended by IUCN and the Bureau.

The first Australian inscriptions were made at the fifth session of the Committee, held in Sydney in October 1981 and opened by Prime Minister Fraser. To quote from the Committee's report:

Kakadu National Park
"The Committee noted that the Australian Government intended to proclaim additional areas in the Alligator River Region as part of Kakadu National Park and recommended that such areas be included in the site inscribed on the World Heritage List and that in the Region the environmental protection measures specified in the relevant legislation continue to be enforced."

The Great Barrier Reef
"The Committee noted that only a small proportion of the area nominated for the World Heritage List had been proclaimed within the Great Barrier Reef Region as defined in the *Great Barrier Reef Marine Park Act* 1975, and the Committee requested the Australian Government to take steps to ensure that the whole area is proclaimed under relevant legislation as soon as possible and that the necessary environmental protection measures are taken."

Willandra Lakes Region
"The Committee would like to see a management plan rapidly established for the whole area."

The meeting was informed that the Australian Government had withdrawn the nomination of the "Sydney Opera House in its setting" and that it hoped to submit a revised nomination in due course.

The next Australian inscriptions were made at the sixth session of the Committee, held in Paris in December 1982:

Western Tasmania Wilderness National Parks
"The Committee is seriously concerned at the likely effect of dam construction in the area on those natural and cultural characteristics which make the property of outstanding universal value. In particular, it considers that flooding of parts of the river valleys would destroy a number of cultural and natural features of great significance, as identified in the ICOMOS and IUCN reports. The Committee therefore recommends that the Australian authorities take all possible measures to protect the integrity of the property. The Committee suggests that the Australian authorities should ask the Committee to place the property on the List of World Heritage in Danger until the question of dam construction is resolved."

Lord Howe Island Group
"In view of the importance of Lord Howe Island as a World Heritage site, the World Heritage Committee suggests that steps be taken to replace the telecommunications towers as soon as satellite communications are available."

The report of the tenth session of the Committee, held in Paris in November 1986, has the following reference to Australian properties:

Australian East Coast Temperate and Sub-Tropical Rainforest Parks
"The Australian authorities, by letter of 9 October 1986 to the Secretariat, agreed to the two conditions recommended by the Bureau for the inscription of the property on the World Heritage List. The first of these was to exclude the Mt Dromedary Flora Reserve from the nominated areas and the second concerned the changing of the name of this property. The name given above and suggested by the Australian authorities was considered appropriate by the Committee. In relation to the Bureau's suggestion regarding the desirability to extend this property to include contiguous rainforests in the state of Queensland, the Australian authorities informed the Committee, through the Secretariat, that they do not anticipate making any immediate proposals to this effect. IUCN noted that this suggestion of the Bureau was not a prerequisite for the inscription of this property on the World Heritage List. The World Heritage Committee, while inscribing this property on the World Heritage List, noted the IUCN observation that

future modifications to the boundaries of this natural property to include other small patches of rainforests might be possible."

Kakadu National Park (Stage II)

"The leader of the Australian Delegation requested permission to put before the World Heritage Committee an order of the Federal Court of Australia. He read this in full to the Committee and then made it available to delegates. The Australian Delegation then requested the World Heritage Committee to defer, until further notice, the consideration of Stage II of the Kakadu National Park as part of the Kakadu World Heritage Property already inscribed on the World Heritage List in 1981. The Committee agreed. The representative of IUCN noted that the 1981 review had indicated that the existing area of the nomination would be inadequate and the hope that Kakadu Stage II would be added. He said this would increase the viability and integrity of the nomination. Having now seen the new management plan he considered the whole nomination would be a superb area and commended the Australian Government for proposing to add it to the list. He had seen officials in Canberra last January and asked for more information on the extension, noting that this was not a new nomination. The boundary extension was quite extensive but this had been foreseen in 1981. The main question now concerned the mining which would affect the integrity of the Park. He had seen the Australian Prime Minister's statements questioning mining and would need further information from officials."

Kakadu was extended and Uluru inscribed at the eleventh session of the Committee, held in Paris in December 1987:

Kakadu National Park
(extension to include Stage II)

"The Committee recalled that at its fifth session held in Sydney (Australia) in 1981, while inscribing Kakadu National Park on the World Heritage List, it had noted that the Australian Government intended to proclaim additional areas in the Alligator River Region as part of Kakadu National Park and had recommended that such areas be included in the site inscribed on the World Heritage List. The Committee therefore welcomed the extension of the site to include such areas, which had been favourably reviewed by ICOMOS and IUCN. The Committee accordingly decided to include Stage II in the site inscribed on the World Heritage List. The Committee commended the Australian authorities for having taken appropriate legislative measures to prohibit mineral exploration and mining and for their efforts to restore the natural ecosystems of the site. It also encouraged the Australian authorities to consider further extending the World Heritage site to include Stage III of the National Park and to modify the boundaries of Stages I and II in order to protect the entire catchment area, and to include the cultural values to the East of the present National Park.

Finally, the Committee requested the Australian authorities to provide further information on the possible impact of proposed military training activities in areas adjacent to the World Heritage site."

Uluru National Park

"The Committee commended the Australian authorities on the manner in which the management of this property gave an appropriate blend of the cultural and natural characteristics of this property. The Committee expressed the view that the site could be extended to include areas which would give a more complete representation of the arid zone and encouraged

the Australian authorities to continue their efforts to reintroduce previously occurring native species."

The Wet Tropics of Queensland were inscribed at the twelfth session, held in Brasilia in December 1988, in the following terms:

"In accordance with the wishes of the Bureau at its last meeting in June 1988, the Committee noted that the Bureau had re-examined this nomination taking into account the revised evaluation of IUCN and additional information provided by Australia, as requested by the Bureau. Following this re-examination, the Committee decided to inscribe this property on the World Heritage List. It recommended that an appropriate management regime be established. The Committee furthermore recommended that IUCN continue to monitor the status of conservation of this property and report back to the Committee in the next two to three years."

It will be noted that the Committee's observations have been judicious and helpful. Its deliberations compare favourably with those of parliamentary committees. Some State ministers and officials have spread the idea that the Committee has been unfair in denying them a hearing. There is a general principle that only national governments can become members of international organizations, and that only governments which have become members of international organizations can take part in their deliberations.

The position of non-Member States before the World Heritage Committee was determined at its first and only extraordinary session, held in Paris in September 1981. The session had been called to examine the proposal by Jordan for the inscription of "The Old City of Jerusalem and its walls" on the World Heritage List. The chairman elected at the fourth session of the Committee in September 1980 felt that he could no longer act because he had subsequently been elected president of ICOMOS. Accordingly, he was replaced by Professor Slatyer, since Australia was the first in alphabetical order among the States from which the vice-chairman had been elected. He ruled that under the Rules of Procedure Israel could not be invited to participate in the session, since it was not a State Party to the Convention.

The position of non-governmental organizations was determined at the fifth session. To quote from the report of the meeting:

"The Chairman informed the Committee that he had received a letter from an Australian non-governmental organization asking to address the Committee on one nomination and to provide material to the Committee concerning the Australian site in question. On the recommendation of the Bureau, the Committee decided that such groups would not be authorized to address the Committee direct nor to circulate material in the meeting room and that they should be requested to contact their national delegations."

Professor Slatyer again brought the issue before the sixth session:

"The Chairman informed the Committee of requests he had received from organizations which did not have an official status of observer to meetings of the Committee that they should be allowed to address the Committee. The Secretariat explained the decisions which the Committee had taken at previous sessions when similar requests had been received, namely that

such groups would not be authorized to address the Committee direct nor to circulate material in the meeting room and that they should be requested to contact their national delegations; since the meeting of the Committee was public, these groups could however attend as members of the general public. The Committee confirmed its previous decisions."

Before the eleventh session the chairman was asked by representatives of the Northern Territory Administration to allow them to take part in the Committee's proceedings. Prior to the twelfth session of the Bureau held in Paris in June 1988 and the twelfth session of the Committee, representatives of the Queensland Government made the same request. In each case the chairman pointed out that it was not possible for them to participate since they were not Member States; by the same token it is possible for the national governments of the United States, Canada, India and the Federal Republic of Germany to participate but not the constituent States, Provinces and Länder. The Northern Territory and Queensland representatives were allowed to have three persons sit in the room to follow proceedings.

Some State ministers and officials have spread disinformation that some members of the Committee could determine questions of land use in Australia. They have picked on Libya, which became the 41st State Party in 1978 and was a member of the Committee from 1980 to 1987. The Committee has in fact inscribed five Libyan properties on the World Heritage List, including such outstanding classical sites as Sabratha, Leptis Magna and Cyrene. Some other Libyan nominations have not succeeded. Recommendations by the Bureau and decisions by the Committee on World Heritage sites are taken by consensus. Old Jerusalem is the only site upon which a vote has been taken, first, to inscribe it on the World Heritage List at the extraordinary session and, secondly, to inscribe it on the List of World Heritage in Danger at the sixth session; in each case the decision was made by 14 votes for, 1 against and 5 abstentions. It should not be assumed that the States Parties show any particular bias in electing the States members of the Committee; in October 1987 the USA and UK were no longer attending the General Conference of Unesco but in the election of seven members of the World Heritage Committee, at the session of the General Assembly in the same building, USA came first and UK eighth.

Having experienced Queensland's intemperate lobbying before and outside the sessions of the Bureau and the Committee as a delegate last year, I had the great satisfaction, as a vice-president, of taking part in June 1989 in a recommendation that the Tasmanian property, with the agreement of the Tasmanian Government and under the new name of Tasmanian Wilderness, should be enlarged by 34 per cent. Indeed, on the last day of the session I had the further satisfaction of reporting that the High Court had not only dismissed the latest challenge to Federal action under the *World Heritage Properties Conservation Act* 1983 but had done so unanimously[3] and that a new government in Tasmania, supported by Greens, was likely to add the "hole in the doughnut" to the enlarged property.

[3] *Queensland v. The Commonwealth* (1989) 167 C.L.R. 237.

The first time I raised the question of Unesco conventions in the Parliament was nearly 30 years ago when R.G. Casey told me that "the question of Australian accession to the 1950 Florence Agreement on the Importation of Educational, Scientific and Cultural Materials is under examination". On 31 May 1986 Mr Hayden gave a written answer that "no steps have been taken by Australia to become a Party to the Agreement". Australia has still not acceded. It must be conceded that in such matters I have shown both prescience and patience.

Federal Governments have shown resolution and consistency in accepting their obligations under Unesco's 1972 World Heritage Convention. They have not shown these qualities in relation to another Unesco cultural property convention, the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The Hope Report, tabled in September 1974, recommended ratification as part of a concentrated effort to secure this element of the National Estate for future Australians. The Pigott Report on Museums and National Collections, tabled on 5 November 1975, strongly recommended that "the necessary legislative action be taken to enable Australia to implement the undertakings required by the Convention". On the agenda of the cabinet meeting scheduled for 12 November 1975 there was an item recommending that Australia ratify the Convention as soon as possible.

During its first five years in office the Fraser Government took no action on the convention. It then set up an interdepartmental working group of seven departments, a Hydra-headed monster which miscarried as soon as it went into labour. It lacked sufficient sensitivity or agility to adapt to the election of the Hawke Government and sufficient candour to recall the intentions of my own. The new minister, Mr Barry Cohen was not impressed with its insipid conclusion that "there appeared insufficient practical advantages for Australia to ratify it". Other Ministers collaborated with him in approving ratification. On 27 October 1983 Senator Susan Ryan, Minister for Education, announced the decision to the General Conference of Unesco. To permit ratification Mr Cohen introduced on 27 November 1985 the Protection of Movable Cultural Heritage Bill. Nobody voted or spoke against the Bill in either House. It received assent on 13 May 1986.

Until Australia ratifies this Convention it can at best arrest and imprison persons who illicitly export cultural property, such as Aboriginal artefacts. Once Australia becomes a State Party it can take steps to secure the return of artefacts if they have found their way to another State Party. The situation was highlighted during the 1984 Federal election campaign when it was claimed that the artefacts entrusted to the late Professor Strehlow of Adelaide University had been taken out of the country. This action was advocated by the leader of the National Party Senate team in South Australia; he may be remembered because his name was John Bannon. Even the interdepartmental working group could now have seen some practical advantages in ratification. USA, which is the most likely destination of illicitly exported cultural property, especially Aboriginal artefacts, accepted the Convention on 2 September 1983. In November 1975 there were 25 States Parties; there are now 65.

No blame for the delay in Australia's accession can attach to the Opposition, nor the Senate, nor the anti-Labor State Governments. My research assistant has just commenced a law course. I propose to take this opportunity to ensure that at the outset of his career he is noted in learned journals, in this case *Monash University Law Review*. He has drawn my attention to a question which Senator Evans addressed to his predecessor on the Senate Notice Paper on 19 August 1982:

> "When will Australia ratify the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property which entered into force on 24 April 1972? Why has it not been ratified to date?"

The Senate will not be sitting on the seventh anniversary of Senator Evans' question but it will be sitting on the eve. It would be an exquisite exercise for another senator to seek from him an answer to his own question.

If, as on previous occasions, I have criticised the Fraser Government's delays, I can scarcely overlook the Hawke Government's delays, which are approaching the same duration. Public criticism stiffened the Government on World Heritage properties, and public support is now assured. Public apathy has lulled the Government on movable cultural property, but a new Strehlow case would incense the public. Let me reassure you; Senator Richardson aims to have the instruments deposited with Unesco before the sixth anniversary of Senator Ryan's announcement.

In recent times there have been such frequent changes of governments, ministers, departmental heads and officials that it is difficult to complete action on any international agreements. Intervening crises cause delays. Newcomers have no memory. There is no continuity. Ministers and officials are only too eager to attend the conferences which draw up the instruments. They are only too lethargic in bringing the instruments into operation. If Australia has expended skill, time and money in attending conferences which have drafted a convention it seems a reasonable assumption that Australia should ratify that convention or accede to it. If we become a party to a convention we can raise our voice on its implications and operations. If we are not going to follow through, we should avoid the expectations and false hopes involved in attending the drafting and signing conferences.

It is worth noting in passing that there is constant haggling over Australia's representation at the regular sessions of IUCN, ICCROM and ICOMOS and, in the case of the 1970 Convention, the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restoration in Case of Illicit Appropriation. Departments argue till the last moment not just about who should represent Australia but about whether anyone should. Australia's representative at ICCROM has been the principal lecturer in the Cultural Heritage Science Division of the Canberra College of Advanced Education. Last week the CCAE consummated its affiliation with Monash and I opened its National Centre for Cultural Heritage Science Studies which the Pigott Report had recommended. I ventured to suggest that

one consequence of affiliation would be to put Australia's representation at ICCROM beyond doubt.

Citizens,

I pass now to human rights conventions. The instruments deposited with the UN Secretary-General, together with the number of States Parties as at 1 January 1989 and the dates on which Australia became a party (S signed, R ratified, A acceded), are as follows:

1926 Slavery Convention (67) **R 18 June 1927**

1948 Convention on the Prevention and Punishment of the Crime of Genocide (97) **R 8 July 1949**

1950 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (59)

1951 Convention relating to the Status of Refugees (100) **A 22 April 1954**

1952 Convention on the Political Rights of Women (94) **A 10 December 1974**

1953 Protocol amending the 1926 Slavery Convention (52) **S 9 December 1953**

1954 Convention relating to the Status of Stateless Persons (34) **A 13 December 1973**

1955 Slavery Convention as amended by the Protocol (85) **R 6 January 1958**

1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (102) **R 6 January 1958**

1957 Convention on the Nationality of Married Women (55) **A 14 March 1961**

1961 Convention on the Reduction of Statelessness (14) **A 13 December 1973**

1962 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (35)

1965 International Convention on the Elimination of All Forms of Racial Discrimination (124) **R 30 September 1975**

1966 International Covenant on Economic, Social and Cultural Rights (91) **S 18 December 1972 R 10 December 1975**

1966 International Covenant on Civil and Political Rights (87) **S 18 December 1972 R 13 August 1980**

1966 Optional Protocol to the International Covenant on Civil and Political Rights (40)

1966 Protocol relating to the Status of Refugees (101) **A 13 December 1973**

1970 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (30)

1973 International Convention on the Suppression and Punishment of the Crime of Apartheid (86)

1979 Convention on the Elimination of All Forms of Discrimination against Women (94) **R 28 July 1983**

1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (28) **R 8 August 1989**

1985 International Convention against Apartheid in Sports (26).

The texts of the most crucial conventions are readily available, since they are schedules to the *Racial Discrimination Act* 1975, *Human Rights Commission Act* 1982, *Sex Discrimination Act 1984* and *Human Rights and Equal Opportunity Commission Act 1986*. The most sustained, pervasive and notorious discrimination in Australia has been against Aboriginal Australians. In December 1972 I wrote to Mr Bjelke-Petersen, as he then was, to discuss Queensland's discriminatory laws. Our extensive correspondence was inconclusive. In December 1974 amendments to the Queensland legislation left many forms of discrimination against Aborigines unchanged. My government forthwith secured the passage of the *Aboriginal and Torres Strait Islanders (Queensland Discriminatory Laws) Act*. The Act was clearly within the jurisdiction which the May 1967 referendum had conferred on the Federal Parliament. The government decided to go further by proceeding with the Racial Discrimination Bill to implement the 1965 international convention which, after securing the qualifying number of ratifications, had entered into force in January 1969. In my view this was the ideal international instrument upon which to test the Federal Parliament's jurisdiction under the external affairs paragraph of the Constitution. Justices of the High Court, in my assessment, would find it difficult to invalidate legislation passed to implement that convention, because they would not want to be perceived by their brethren around the world as condoning racist attitudes. Moreover, there could scarcely be a stronger case for holding that an international instrument could justify the exercise of the external affairs power; the convention had already attracted 112 States Parties.

The State challenge took longer and the decision was closer than I had expected. The challenge came from the Bjelke-Petersen Coalition Government of Queensland, the Court Coalition Government of Western Australia and the Thompson Liberal Government of Victoria. The three dissenting justices were able to salve their consciences and uphold Australia's reputation by pointing out that at least as far as Aborigines were concerned the Federal Parliament could have over-ridden the blatant and sustained act of discrimination which came before the Court without having recourse to an international convention. The legislation and the judgment have produced few objections in the Australian community. Most people would be justified in assuming that Mr Koowarta not only won the case in the High Court but secured the property which gave rise to his action. Perhaps, since he has not yet secured satisfaction, I should recall the circumstances of the case.

After the Aboriginal Land Fund Commission was established in May 1975, a group of Aborigines asked it to acquire a pastoral lease for them at Archer River on Cape York Peninsula. The existing lessees were willing to sell the lease and entered into a contract with the Commission in February 1976. Under Queensland law the Minister for Lands has to approve the transfer of leases but in this case he was precluded from doing so by a Cabinet decision of September 1972 against the development of leasehold land by Aborigines. In

prolonged negotiations Mr Al Grassby, Commissioner for Community Relations under the *Racial Discrimination Act* 1975, and successive Federal Ministers could not persuade the Queensland Government to amend its policy. On 11 May 1982 the High Court held that the Queensland Government had acted in breach of the Act. The subsequent history appears from the bland answers which the Minister for Aboriginal Affairs has given in the House of Representatives:

> "Following its refusal to transfer title to Aboriginal interests, the Queensland State Government converted the Archer River Pastoral lease into the Archer Bend National Park in 1977.
> Although the circumstances surrounding the decision were successfully challenged under the provisions of the Commonwealth's *Racial Discrimination Act* 1975, the legality of the proclamation of the national park stands.
> An application by Mr Koowarta for damages is currently before the Queensland courts." — *Hansard*, 18 February 1988.[4]
> "Mr Koowarta's claim for damages in the Supreme Court of Queensland remains extant.
> It seems that the matter has progressed very slowly. There were problems in finalising the costs which were awarded to Mr Koowarta by the High Court. Following resolution of the costs issue, an order for production of documents was sought and obtained by Mr Koowarta against the Crown in the right of the State of Queensland (the Crown), production having been resisted on grounds of Crown Privilege.
> After examination of the documents, Mr Koowarta's legal representatives sought to have the matter set down for trial. The Crown, however, refused to agree. It now appears that it will be necessary for Mr Koowarta to seek an order of the Court that the matter be set down for trial." — *Hansard*, 24 May 1989.[5]

The first international instrument concerning Aborigines was ILO Convention No.107: Indigenous and Tribal Populations, 1957. The Convention had been ratified by a sufficient number of States to come into force in 1959. The ILO's Constitution limits the obligations of its federal States, USA, Canada and Australia, to periodical consultations between the federal and the state and provincial authorities with a view to promoting coordinated action to give effect to its conventions and recommendations. After the 1967 referendum the Federal Parliament had the spontaneous and unilateral power to pass laws to ratify the convention. On the eve of the referendum the Labor Government of South Australia and the Liberal-NCP Government of New South Wales informed the Holt Government that they would agree to ratification. In May 1970 the Victorian Liberal Government agreed. After Mr Justice A.E. Woodward's final report on land rights I wrote to Mr Bjelke-Petersen and Sir Charles Court seeking their agreement to ratification. The latter agreed within a month; the former took three years. By this time the convention was being widely criticised because it proceeded on the basis of integration instead of assimilation. It did, however, have far-sighted and

[4] At p. 318.
[5] At p. 2889.

relevant articles on land rights; I had them incorporated in *Hansard* on 23 February 1972.

The following States have ratified the convention:

Angola	Dominican Republic	Malawi
Argentina	Ecuador	Mexico
Bangladesh	Egypt	Pakistan
Belgium	El Salvador	Panama
Bolivia	Ghana	Paraguay
Brazil	Guinea-Bissau	Peru
Colombia	Haiti	Portugal
Costa Rica	India	Syria
Cuba	Iraq	Tunisia.

Conspicuous absentees are Australia and New Zealand, with distinct indigenous populations, and France and the UK, with the largest colonial empires.

I have written elsewhere of my exasperation at the inaction of succeeding governments. The more time one takes to do the right thing, the more reason one finds for never doing it. I suspect that later governments have not wished to give Aborigines another forum. There is great value in having an international body to monitor national performance in human rights. It is impossible to conceive of Aborigines having a majority among the members of any Australian parliament or court; it is not likely that they will have a balance of membership in any of our parliaments or courts. It is altogether likely, however, that they could secure majority support for their claims on the ILO Committee of Experts on the Application of Conventions and Recommendations, the most experienced and effective of UN supervisory bodies.

The whole question has been overtaken by a revised convention which was adopted by the International Labour Conference in June 1989. Mr Ralph Willis, as Minister for Employment and Industrial Relations, assured Senator Bolkus on 3 June 1987 that, once a revised convention had been adopted by the Conference, Australia would give urgent consideration to its ratification. The present Minister for Industrial Relations, Mr Peter Morris, has established in his previous portfolios an unsurpassed record on ratifications.

At this point I might make passing mention of the series of instruments relating to refugees. This is a humanitarian area where multilateral arrangements are clearly required to secure a measure of law, order and justice. Two international conferences have been called in Geneva to cope with the situation of boat people from Viet Nam, one in July 1979 and the other in June 1989. At the 1979 conference China, Japan and the ASEAN countries had not become parties to any of the four instruments. In 1981 and 1982 China, Japan and the Philippines joined the 1951 and 1966 instruments. The list of parties does not give a complete picture; the USA has still ratified only the 1966 Protocol but has not applied it to its Pacific territories, and, while all four instruments have been ratified by France and the UK, all have been applied to the French and none to the British territories in the Pacific and Indian Oceans.

The UN discrimination conventions and the ILO and Unesco conventions against discrimination in employment and education can be regarded as essentially negative. The most comprehensive, contemporary and positive enunciation of human rights is to be found in the International Covenant on Civil and Political Rights. My Government's Bill to enact the Covenant lapsed with the double dissolution in 1974. It was decided to defer further legislation until the Covenant had entered into force; in my view Federal legislation under the external affairs power would be less vulnerable to attacks if based on an international instrument which was already part of international law. Under Article 49 the Covenant was to enter into force three months after the date of the deposit with the Secretary-General of the 35th instrument of ratification or instrument of accession. The qualifying instrument was lodged on 23 December 1975. Australia's ratification of the Covenant was not lodged till August 1980 and even then it was accompanied by more and longer reservations and declarations than the Secretary-General has ever received. The Netherlands formally expressed the general view that the reservations and declarations invalidated the purported ratification, especially in view of Article 50:

> "The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions."

On 6 November 1984, however, Australia withdrew most of the reservations.

Article 14 of the Covenant illustrates a civil right which is not guaranteed to Australians:

> "3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality; . . .
> (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it; . . ."

In Australia, by contrast, a majority of the Full Court of the Supreme Court of Western Australia rejected an appeal by a person who had been convicted of rape in a trial in which he was unrepresented; on the withdrawal of legal aid, his counsel had withdrawn from the case on the day before the trial. The High Court, by four justices to one, refused special leave to appeal.[6] Today, ten years later, only one of the justices who were in the majority is still serving and, with respect, he and a majority of the Court would give a different decision.

Article 25 illustrates a political right which is denied at elections for the Legislative Assembly of Queensland, the Legislative Assembly and Council of Western Australia and the Legislative Council of Tasmania:

[6] *McInnis v. The Queen* (1979) 143 C.L.R. 575.

"Every citizen shall have the right and the opportunity, . . .
"(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage . . ."

Inexplicably, one of Australia's surviving reservations reads:

"The reference in paragraph (b) of Article 25 to 'universal and equal suffrage' is accepted without prejudice to laws which provide that factors such as regional interests may be taken into account in defining electoral divisions".

In an opinion in May 1987, Mr Tony Fitzgerald QC discussed the further modification of this reservation in conjunction with the drafting of suitable legislation for enactment by the Commonwealth Parliament. He concluded that "a Commonwealth equal suffrage law made in implementation of, and properly referable to, Australia's international commitment pursuant to its entry into the Covenant would be a valid exercise of the Commonwealth's constitutional power to legislate with respect to external affairs".

The Covenant spelt out the principles of the 1948 Universal Declaration of Human Rights. It was never intended to be the last word or a complete code. For instance, Article 6, which deals with some aspects of capital punishment, concludes:

"6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant."

The Soviet Union is a State Party to the Covenant, the USA is not; both retain capital punishment. In ASEAN the Philippines is the only State Party to the Covenant. In protesting at the judicial execution of Australian drug-traffickers in neighbouring countries we are often seen as seeking immunity from their criminal laws rather than advocating the abolition of the death penalty in all countries. We should consistently work to extend the scope and the membership of the Covenant.

Ministers and MPs, however well-intentioned, depend on public awareness and support if they are to fulfil the obligations which Australia has undertaken under the human rights conventions. I now give four instances where governments have hesitated to pursue Australia's obligations under the Racial Discrimination Convention and the International Covenant on Civil and Political Rights. They further demonstrate the proposition that the list of parties does not give the full picture. When the Senate deleted some clauses in the Racial Discrimination Bill 1975 I had to make the following reservation in lodging the instrument of ratification on 30 September 1975:

"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)."

On 18 May 1982 the Foreign Minister told Senator Evans that the Government considered that this reservation should be retained. On 4 November 1987 Attorney-General Bowen answered a further question on notice in these terms:

> "The Commonwealth has had the matter under consideration for some time. A number of options have been suggested, including criminal sanctions, civil proceedings and complaint handling procedures similar to those followed by the Human Rights and Equal Opportunity Commission in other areas. The problems in this area are not considered susceptible to a simple solution involving the choice of one or other of these options. A major difficulty lies in striking a suitable balance between freedom of speech and the rights of people to live free from racist abuse. The New South Wales Government has recently announced its intention to establish a working party to consider legislation in that State to provide remedies for racial defamation. It is hoped that the outcome of the New South Wales initiative will be to throw further light on ways in which the objectives of eliminating race hatred and racist propaganda might be best achieved."

Mr Bowen pointed out that no State Government had introduced legislation. That remains the situation. It does not relieve the Federal Government of the responsibility to devise and introduce legislation to implement its obligations under the Convention, as promised 14 years ago.

My next three instances illustrate the growing practice of attracting the maximum support for human rights instruments by obliging States Parties to observe the most onerous articles only if they make a specific declaration.

Under Article 14 of the Racial Discrimination Convention a State Party can make a declaration recognising the competence of the Committee on the Elimination of Racial Discrimination to receive communications against a State Party by individuals or groups of individuals within its jurisdiction.

Such declarations have been made by:

Costa Rica	Iceland	Peru
Denmark	Italy	Senegal
Ecuador	Netherlands	Sweden
France	Norway	Uruguay.

Article 14 entered into force on 3 December 1982, following the deposit of the tenth declaration. On 18 May 1982 the Foreign Minister had told Senator Evans that the Government was currently not in favour of making a declaration. On 18 November 1987 Mr Bowen gave this written reply:

> "In the Government's view, a declaration would enhance Australia's international human rights reputation by demonstrating readiness to submit our human rights performance to further international scrutiny. Since the co-operation of the States is regarded as necessay for the effective operation of

Article 14 in relation to Australia, the question of making a declaration under Article 14 has been under discussion with the States for some time in the Standing Committee of Attorneys-General. As yet, agreement has not been reached with all States."

The Optional Protocol to the International Covenant on Civil and Political Rights makes a similar provision for individuals to communicate their grievances against their government to the Human Rights Committee established under the Covenant:

Article 1
"A State Party to the Covenant that becomes a party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a party to the present Protocol."

The Optional Protocol became effective in March 1976 and the following States have become States Parties to it:

Argentina	France	Peru
Austria	Gambia	Portugal
Barbados	Hungary	San Marino
Bolivia	Iceland	Senegal
Canada	Italy	Spain
Central African Rep.	Jamaica	Suriname
Colombia	Luxembourg	Sweden
Conga	Madagascar	Togo
Costa Rica	Mauritius	Trinidad and Tobago
Denmark	Netherlands	Cameroon
Dominican Republic	Nicaragua	Uruguay
Ecuador	Niger	Venezuela
Equatorial Guinea	Norway	Zaire
Finland	Panama	Zambia.

On 20 April 1982 the Foreign Minister told Senator Evans that the Government had not given active consideration to ratifying the protocol for several years. On 3 November 1983, however, the Foreign Minister, Mr Hayden, gave this considered reply:

"There are procedures available to individuals and groups to pursue human rights complaints through international channels which do not involve arbitration. For example there are the mechanisms established under the Optional Protocol to the International Covenant on Civil and Political Rights, the provisions of Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination and the confidential 'communications' procedures within the United Nations Commission on Human Rights.

"The Government strongly supports the principle that states should observe conscientiously their international human rights obligations. Against this background, the Government is currently reviewing Australia's position with regard to the Optional Protocol to the ICCPR and the

Article 14 procedures under the International Convention on the Elimination of All Forms of Racial Discrimination."

On 18 February 1988 Mr Hayden stated:

"The Government believes that accession to the Optional Protocol to the International Covenant on Civil and Political Rights and the making of a declaration under Article 14 of the Convention on the Elimination of All Forms of Racial Discrimination would further enhance Australia's international human rights reputation by demonstrating willingness to submit our human rights performance to international scrutiny. Since the co-operation of the States is regarded as necessary for the effective operation of both the Optional Protocol and Article 14, the question of accession to the Protocol and the making of a declaration under Article 14 has been under discussion with the States in the Standing Committee of Attorneys-General. As yet, agreement has not been reached with all States."

This year Mr Bowen was asked:

"On what occasions has the Standing Committee of Attorneys-General discused the questions of (a) making a declaration under Article 14 of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination and (b) acceding to the Optional Protocol to the 1966 International Covenant on Civil and Political Rights."

On 13 April he provided this reply:

"These matters were discussed at meetings of Ministers on Human Rights (which formerly were held as an adjunct to meetings of the Standing Committee of Attorneys-General (SCAG)) on a number of occasions including 14 December 1984, 2 May 1985 and 25 July 1985. Subsequently, human rights issues have formed a separate agenda item for the meetings of SCAG and these matters have been raised as part of that agenda item."

Mr Bowen identified New South Wales, Victoria and South Australia as the States which had agreed to making a declaration under the Article and acceding to the Protocol. They are the only States whose Parliaments are elected in accordance with the provisions of the International Covenant on Civil and Political Rights.

Under Article 14 of the Covenant States Parties may make declarations recognising the competence of the Human Rights Committee to receive communications by one State Party against another. The following States have made such a declaration:

Argentina	Hungary	Philippines
Austria	Iceland	Senegal
Canada	Italy	Spain
Denmark	Luxembourg	Sri Lanka
Ecuador	Netherlands	Sweden
Finland	New Zealand	United Kingdom.
Gambia	Norway	
FRG	Peru	

Article 41 entered into force on 28 March 1979.

It is important to complete all four pieces of unfinished business which I have cited so that we may, as Mr Bowen and Mr Hayden stated, "enhance Australia's international human rights reputation by demonstrating [readiness] willingness to submit our human rights performance to international scrutiny". I have given some reasons in my discussion of ILO Convention No. 107. It would be to our advantage to make our policies and practices available to international scrutiny at the instance of our own citizens and of other countries. We may be justified in claiming that there are no beams in our own eyes, but perhaps we might admit that there are a few motes.

Delay in completing the four pieces of unfinished business and in implementing all the provisions of the International Covenant cannot be justified by the assumption, sometimes the assertion, that many ratifications and declarations are no more than hypocritical formalities. The lists of States Parties which I have incorporated place the onus on the Australian Government to show why it hesitates to lodge such declarations and ratifications as have already been lodged by States whose credentials would be universally acknowledged by Australians. Nor can delay be justified by waiting for all States to co-operate. It is time to discard the threadbare formula that "the co-operation of the States is regarded as necessary for the effective operation" of human rights instruments. The formula is a recipe for inaction. Legislation is not required before Australia can accede to the Optional Protocol and make declarations under Articles 41 and 14. Where legislation is required for the effective operation of a convention, Federal legislation is sufficient. Australia's federal system has ceased to be a credible alibi in the eyes of other countries, especially among our neighbours. The States can pass anti-discrimination laws but only some have done so and none of the laws are the same. Our overlapping and competing corporation, arbitration, compensation and rehabilitation legislation and administration are major factors in our inflation. State public servants are always entrenched and never retrenched in these areas. We scarcely need divergent State laws on human rights. We should not accept State brakes and vetoes on introducing Federal laws to carry out our international obligations, either on the environment or on human rights.

Social, scientific and commercial pressures are inexorably leading to standardised laws within Australia and co-ordinated laws between Australia and other parts of the world. In this lecture I have concentrated on the World Heritage Convention and Racial Discrimination Convention since they have not only attracted the greatest support around the world but have also produced the most significant acts of parliament and court decisions in Australia. I have documented the operation of both these pioneering conventions. Even the self-contained and self-content parliamentary and judicial systems of England have been upgraded by the European Court of Human Rights, half of whose cases come from Britain. In Australia an informed public and a sensitive profession are required to support our courts and parliaments as they adapt to the new provinces and concepts of law, order and justice.

APPENDIX

Rules of Procedure concerning recommendations to Member States and international conventions covered by the terms of Article IV, paragraph 4, of the Constitution

Adopted by the General Conference at its fifth session, and amended at its seventh and seventeenth sessions.

I. Scope of the present Rules of Procedure

Article 1 These Rules of Procedure cover the preparation and the examination and adoption by the General Conference of:
(a) International conventions for ratification by Member States; and
(b) Recommendations in which the General Conference formulates principles and norms for the international regulation of any particular question and invites Member States to take whatever legislative or other steps may be required — in conformity with the constitutional practice of each State and the nature of the question under consideration — to apply the principles and norms aforesaid within their respective territories.

II. Inclusion in the agenda of the General Conference of proposals for the regulation of any question on an international basis

Article 2 The General Conference shall make no decision on the desirability or on the substance of any proposal for the regulation of a particular question on an international basis by the adoption of an international convention or of a recommendation, unless the proposal has been specifically placed on the provisional agenda of the Conference in accordance with the Rules of Procedure.

Article 3 No new proposal for the regulation on an international basis of any question by the adoption by the General Conference of an international convention or a recommendation to Member States shall be included in the provisional agenda of the General Conference unless:
(a) It is accompanied by a preliminary study of the technical and legal aspects of the problem under consideration; and
(b) It has first been examined by the Executive Board at least ninety days before the opening of the session of the General Conference.

Article 4
1. The Executive Board may communicate to the General Conference any comments it may deem necessary on proposals covered by Article 3.
2. The Board may decide to instruct the Secretariat, one or more experts or a Committee of Experts, to carry out a thorough study of the matters dealt with in the aforementioned proposals, and to prepare a report for communication to the General Conference.

Article 5 When a proposal covered by the terms of Article 3 has been placed on the provisional agenda of the General Conference, the Director-General shall communicate to Member States, at least seventy days before the opening of the session of the Conference, a copy of the preliminary study accompanying the proposal, together with the Executive Board's observations and decisions thereon.

III. Procedure for the first discussion by the General Conference

Article 6 It shall be for the Conference to decide whether the question dealt with in the proposal should be regulated at the international level and, if so, to determine to what extent the question can be regulated and whether the method adopted should be an international convention or, alternatively, a recommendation to Member States.

Article 7
1. The General Conference may, however, decide to defer to a future session the decisions mentioned in Article 6.
2. It may, in this case, instruct the Director-General to submit to a future session a report on the desirability of regulating the question dealt with in the proposal, on an international basis; on the method which should be adopted for that purpose; and on the extent to which the question can be regulated.
3. The Director-General's report shall be communicated to Member States at least one hundred days before the opening of the session of the General Conference.

Article 8 The General Conference shall take the decisions mentioned in Articles 6 and 7 by a simple majority.

Article 9 The General Conference shall not vote on the adoption of a draft convention or recommendation before the ordinary session following that at which it has taken the decisions mentioned in Article 6.

IV. Preparation of drafts to be submitted to the General Conference for consideration and adoption

Article 10
1. When the General Conference has taken decisions under the terms of Article 6, it shall instruct the Director-General to prepare a preliminary report setting forth the position with regard to the problem to be regulated and to the possible scope of the regulating action proposed. The preliminary report may be accompanied by the first draft of a convention or recommendation, as the case may be. Member States shall be asked to make comments and observations on that report.
2. The Director-General's preliminary report shall reach Member States at least fourteen months before the opening of the session of the General Conference. Member States shall forward their comments and observations on the preliminary report, to reach the Director-General at least ten months before the opening of the session mentioned in the preceding paragraph.
3. On the basis of the comments and observations transmitted, the Director-General shall prepare a final report containing one or more draft texts, which shall be communicated to Member States at least seven months before the opening of the session of the General Conference.
4. The Director-General's final report shall be submitted either direct to the General Conference itself or, if the Conference has so decided, to a special committee to be convened at least four months before the opening of the General Conference and consisting of technical and legal experts appointed by Member States.
5. In the latter case, the special committee shall submit a draft which has its approval to Member States, with a view to its discussion at the General Conference, at least seventy days before the opening of the session of the General Conference.

V. Consideration and adoption of drafts by the General Conference

Article 11 The General Conference shall consider and discuss draft texts submitted to it, and any amendments to them which may be proposed.

Article 12 1. A two-thirds majority shall be required for the adoption of a convention.
2. A simple majority shall be sufficient for the adoption of a recommendation.

Article 13 If, on the final vote, a draft convention does not secure the two-thirds majority required in the first paragraph of Article 12, but only a simple majority, the Conference may decide that the draft be converted into a draft recommendation to be submitted for its approval either before the end of the session or at the following session.

Article 14 Two copies of any convention or recommendation adopted by the General Conference shall be authenticated by the signatures of the President of the General Conference and of the Director-General.

Article 15 A certified copy of any convention or recommendation adopted by the General Conference shall be transmitted, as soon as possible, to Member States, in order that they may submit the convention or recommendation to their competent national authorities, in accordance with Article IV, paragraph 4, of the Constitution.