Supplementary Remarks by Senator Andrew Murray

September 2007

Senate Standing Committee on Finance and Public Administration: Inquiry into Commonwealth Electoral Amendment (Democratic Plebiscites) Bill 2007

1.1 The Australian Democrats support the Commonwealth Electoral Amendment (Democratic Plebiscites) Bill 2007 (the Bill).

1.2 While I support the Report as a whole, there are issues raised by the Inquiry that I wish to expand on.

A remarkable bill

1.3 The Bill is a remarkable bill in two respects – it promotes direct democracy, and it makes explicit inalienable civil and political rights in Australian law. The Bill will therefore represent a milestone for Australia.

1.4 The people of Australia regularly express their democratic will through elections, and on rarer occasions through constitutional referenda, but for the first time in its 106 year history the federal government is supporting direct democracy initiated by the people.

1.5 The Bill allows for plebiscites – the direct vote of qualified electors to some important public question[1] - to occur under the aegis of the Australian Electoral Commission (AEC), and no state or territory law can gainsay it.

1.6 While the purpose of the Bill is to allow the AEC "to undertake any plebiscite on the amalgamation of any local government in any part of Australia"[2], the Bill appears to be open-ended in that it is for "the purposes of conducting an activity (such as a plebiscite) under an arrangement".[3]

1.7 Who knows what that could imply for future questions considered important by groups of citizens. After all, direct democracy means 'initiated by the people', and their initiatives could surprise many.

1.8 That the conservative Howard government should be so democratically innovative is a surprise to most. Long term it matters not a jot that the Coalition's

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1 The Macquarie Concise Dictionary 2nd Edition.

2 Explanatory Memorandum, Commonwealth Electoral Amendment (Democratic Plebiscites) Bill 2007.

3 Schedule 1, Item 1, Commonwealth Electoral Amendment (Democratic Plebiscites) Bill 2007.

motive is immediate and self-interested. They seek to make mischief between Labor leaders Beattie and Rudd over the Queensland Premier's poorly-timed desire to force through large-scale local council amalgamations. The resistance to this state Labor move is believed to threaten federal Labor's campaign to win Coalition seats in that State.

1.9 No, what matters long term is that the precedent and process for the formal direct expression of popular will has arrived in Australia.

1.10 The second area of welcome democratic innovation is with respect to the International Covenant on Civil and Political Rights (ICCPR) – see Appendix A.[4] The ICCPR was ratified by Australia and came into force for Australia in 1980.[5]

1.11 It is gratifying that the Bill itself refers to the inalienable rights enshrined in the ICCPR in respect of Article 19[6] and Article 25(a).[7] Article 19 provides "that people should have the right to hold opinions without interference and the right to freedom of expression"; and paragraph (a) of Article 25 states "that every citizen shall have the right and opportunity, without unreasonable restrictions, to take part in the conduct of public affairs, directly or through freely chosen representatives."

1.12 This explicit reliance on rights comes from a Coalition Government whose resistance to a bill or charter of rights is legendary.

1.13 Although there has been many a campaign for a Bill of Rights in Australia, there is stronger support for a legislated Charter of Political Rights and Freedoms. The Australian Capital Territory is the only Australian legislature to act on this front so far. It would be better if there were one Australian standard in this vital area.

1.14 Unlike a number of other countries, Australians do not have their rights and responsibilities reflected in the Constitution, nor (mostly) in legislation, which is why

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4 International Covenant on Civil and Political Rights (New York, 16 December 1966): Entry into force generally (except Article 41): 23 March 1976. Article 41 came into force generally on 28 March 1979.

5 Entry into force for Australia (except Article 41): 13 November 1980. Article 41 came into force for Australia on 28 January 1993.

6 Article 19 – 1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.

7 Article 25 – Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives.

we have seen indigenous Australians, women and homosexual Australians compelled to seek international help in addressing unjust treatment and discrimination.

1.15 Anti-terrorism security concerns in the USA resulted in the Patriot Act, which restricts a number of rights and liberties. However that legislation sits amongst United States Constitutional guarantees of the Bill of Rights. These guarantees ensure that all citizens shall be secure in their persons and protects them against unreasonable search and seizure. The USA Constitution provides Americans with a right to due process and the right to a fair and speedy public trial, among other things.

1.16 These Constitutional guarantees known as the US Bill of Rights provide the background against which legislation like the Patriot Act is interpreted.

1.17 In the United Kingdom the Human Rights Act 1998 acts as a control measure against which the Courts can interpret legislation. Australia has no Human Rights Act to provide an equivalent safeguard.

1.18 If Australia is going to enact legislation which impacts stringently on its citizens' human rights, as it presently does, it is essential that it either makes it constitutionally clear, or legislatively clear, that there is an overriding safeguard and respect for those human rights.

1.19 The Australian Democrats have attempted to establish a comprehensive human rights standard for Australia and introduced the Parliamentary Charter of Rights and Freedoms Bill 2001. The Democrats' proposed Charter of Rights was an implementation of the ICCPR. It sets out certain fundamental rights and freedoms including the right to equal protection under the law, the right to a fair trial, freedom of expression and freedom of religion.

Five issues

1.20 From my perspective five issues arise from the Bill that deserve further discussion

- Whether the ICCPR articles in the Bill suffice for the purpose
- Whether the Bill needs supplementing by appeal measures
- The timing of plebiscites
- A matter arising from the ICCPR
- How to further advance direct democracy

Whether the ICCPR articles in the Bill suffice for the purpose

1.21 The Committee hearings in Queensland made something very clear to me. Although Australia prides itself on a larrikin culture, where there is a tendency to thumb your nose at authority and not to take things lying down, most Australians are very trusting. Most truly believe that their Government would not do anything to impinge on what they regard as their basic rights.

1.22 There was genuine astonishment from people of all political persuasions that the Queensland Labor Government would have the audacity to attempt to remove their basic right to have their say on whether their local council should be amalgamated, and to forbid them to conduct a local plebiscite on the issue.

1.23 Trish and Nick Radge captured that feeling well:

> As a democratic society we have a right to vote for whoever we want, to protest against things we disagree with and to speak out without fear of reprisal.[8]

1.24 It came as a surprise to me that Australians have such a trusting approach to their Governments, State and Federal. The Executives of all governments have been steadily increasing the powers of the state over the people for decades. Those who were surprised by the actions of the present Queensland Labor Government have obviously not been following the trend of the Coalition Federal government as it rides roughshod over civil liberties. Its anti-terrorism and immigration laws enable the authorities to search premises on suspicion, to hold some people indefinitely without charge, and to generally discard other basic rights which Australians have always believed were part of being Australian.

1.25 It is clear that until a law impacts directly on a significant portion of middle Australia (obviously this part of the constituency do not believe that they will ever be caught by the provisions of the anti-terrorism or immigration laws, or by the extensive federal police and customs powers now enshrined in federal legislation), their belief that their rights will be protected and promoted remains.

1.26 It was clear from the evidence at the hearings that the Queensland legislation had shaken this belief, but not unhinged it completely, because the Federal Government was riding to the rescue of their rights. In this instance, they were correct; in so many other laws passed in the last couple of years, that couldn't be further from the truth.

1.27 The Bill does make provision for local and other plebiscites to be conducted by the AEC, but is that right sufficiently buttressed by articles 19 and 25(a) of ICCPR?

1.28 Proposed new subsection 7A(1E) intended to be inserted into the Commonwealth Electoral Act by item 1 of the schedule of the bill provides, in effect, that a state or territory law is nullified if it interferes with the conduct of a plebiscite by the AEC under an agreement with the Commission.

1.29 Proposed new subsection 7A(1F) provides that, if subsection 7A(1E) is beyond the legislative powers of the Commonwealth, articles 19 and 25 of the ICCPR are to be called on to support the validity of the subsection.

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8 Trish and Nick Radge, *Submission 4*, p. 1.

1.30 There is doubt about whether the Commonwealth can validly legislate by adopting a particular interpretation of a particular provision of the Covenant and then selectively apply that interpretation to override particular state laws.

1.31 These doubts rest on passages in the leading High Court judgement in the *Tasmanian Dams* case, particularly the warning by Justice Deane in that judgement that a law cannot be regarded as a law under the external affairs power if it fails to carry into effect the provisions of a treaty or the treaty itself is simply a device to attract domestic legislative power.[9]

1.32 These doubts about the validity of such legislation were raised by eminent authorities on the other occasion on which the Commonwealth selectively invoked a provision of the Covenant to override a particular state law.

1.33 The Commonwealth law in question was the Human Rights (Sexual Conduct) Act 1994, which employed article 17 of the Covenant, relating to the right of privacy, to override Tasmanian laws about homosexual conduct. It was then pointed out that the then Commonwealth government was adopting a particular interpretation of the article, which might not prove to be the correct interpretation, and applying it to override particular state laws which might not be caught by the article on its proper construction. Partly on that basis, as expressed in a dissent by Coalition senators to the report of the Legal and Constitutional Affairs Committee, several members of the Coalition parties voted against the bill. The doubts about the validity of the legislation were not resolved, because it was not litigated.

1.34 As with all questions of constitutional law, there is a corresponding question of constitutional propriety, and, regardless of how the High Court would ultimately resolve the question of law, the question of constitutional propriety remains.

1.35 If the power to enter into treaties is a source of Commonwealth legislative power, and the Commonwealth is to rely on a treaty to override state laws, the constitutionally appropriate course, consistent with the principles of federalism, is for the Commonwealth to put into legislative force the whole of the treaty, and let it fall on state laws where it will according to its tenor.

1.36 It appears contrary to constitutional principle for the Commonwealth to selectively apply particular interpretations of selected provisions of a treaty to nullify state laws which the Commonwealth government of the day happens to dislike, while ignoring other laws which may well be contrary to the treaty.

1.37 This principle gains added force when the treaty in question, in this case the ICCPR, is intended to safeguard what I and many others regard as inalienable individual rights, against the power of government, whether state or federal.

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9 *Commonwealth v. Tasmania (The Tasmanian Dam Case)*, (1983) 158 CLR 1.

1.38 If the treaty is to have force in Australia, surely all of the human rights it encapsulates should have force against all of the laws of all governments, and selected bits of rights, as interpreted by one of those governments, should not be selectively applied only to state governments.

Recommendation 1

1.39 That the International Covenant on Civil and Political Rights be introduced in full into Commonwealth law.

Whether the Bill needs supplementing by appeal measures

1.40 During the hearings I had the following interchange with the Hon. Bruce Scott MP, Member for Maranoa:

> Senator MURRAY—…It is the question of a lack of review where a decision has been made on a false premise or in error, which is essentially your submission... My question is this: have you explored with your own Commonwealth government the question of whether rights of review and rights of appeal could be introduced into federal law, as a consequence of either implied or actual constitutional provisions, which allow for Australians to have access to justice in areas where they have been denied it?
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> Mr Bruce Scott—No, I have not explored the avenue of the rights of review or appeal at a federal level for actions of others—in this case, the Labor government here in Queensland. Just in listening to the words that have come from this report of the Southern Downs about structural efficiency, as you suggested, there is no evidence in there that the amalgamations will deliver.
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> Senator MURRAY—Would you like the committee to consider the issue as to whether there is a mechanism by which the Commonwealth could institute a right of appeal to a judicial review body or something of that sort? The reason I ask you this question because, as you know, this is a non-binding mechanism. It is a plebiscite. It is the ability for an opinion to be expressed. It does not have the effect of providing a mechanism for setting aside a decision which has been wrongly made. I am not saying the state government is wrong in everything, by the way. I believe there is bound to be a good case for amalgamations, but individuals should be entitled to have a decision reviewed if it has been made in error. That is why I put that question to you.
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> Mr Bruce Scott—I would be very happy for the Senate committee to review the right of appeal... Because of the parliamentary unicameral system in Queensland, I would think it would be beneficial in relation to the Queensland laws as are enacted by the state government. That does not mean everything they do is wrong.
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> …

> Senator IAN MACDONALD—So that I can follow the line of questioning, do you mean in addition to the Administrative Appeals Tribunal and to the judicial reviews act, which are already there?
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> Mr Bruce Scott—That is what I was going to mention.
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> Senator MURRAY—That is, as you know, for federal law. What we are dealing with here is state law. But the state law precludes appeal on these matters. There may be many instances where it might go to appeal and the appeal would be denied because the government has made the right decision. That is not my point. I do not want to prejudge an appeal. All I say is that the appeal process should exist—because when I read this it should be evidence based; it should say these are the very precise local reasons which you can quantify as to why this amalgamation should occur. It doesn't. Therefore to me there is a case for appeal but there is no process for appeal. If a state government will not provide it, can the federal government provide it? My view is it can…[10]

1.41 Subsection 92(1) of the *Local Government Act 1993 (Qld)* used to provide for referenda/plebiscites to occur, but with respect to these council amalgamations the Queensland government expressly removed any right to appeal any decisions by the Government or the Local Government Reform Commission in relation to a reform matter.

1.42 This is a blatant denial of procedural and natural justice. The Commission makes a decision, which may be in error, on which the Queensland Government relies in good faith, and the people and entities affected by that decision have no right of appeal. If a Commission recommendation for amalgamation is not relevantly evidenced-based, it should surely be open to appeal.[11]

1.43 The question is whether there is any constitutional basis for the Commonwealth enacting a right of appeal or process of review to be available where an error of judgement has been made and no possibility of appeal exists in state law.

1.44 The advice I've had is that this is difficult but not impossible.

1.45 The question of the Commonwealth making such a catch-all provision involves various constitutional areas of law including the section 51 powers, the separation of powers, the complexity of federal and state court/tribunal cross vesting laws, intergovernmental immunities and Chapter 3 considerations (the judicature). There is also the jurisprudence on administrative law involving judicial review on the merits and on questions of law.

1.46 One point of note probably worth bearing in mind is that much of administrative review and appeal law goes to the review or appeal of a 'decision' of a

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10 *Committee Hansard*, 31 August 2007.

11 See for instance Mr Robert Hayward, *Committee Hansard*, 31 August 2007, p. 21.

decision-maker made under an Act. A recommendation to a decision-maker becomes relevant when review is being sought of a decision, as to whether relevant considerations were taken into account, irrelevant considerations, and error of questions of fact. This means that although the recommendation can be examined in the process, it itself is not 'reviewable'.

1.47 The incidental power, section 51(xxxix) of the Constitution permits laws incidental to Judicial matters, and is the power behind legislation such as the *Judiciary Act 1903*. Chapter 3 of the Constitution governs the High Court and other 'federal courts' that the Parliament creates.

1.48 The Commonwealth has created bodies such as the Administrative Appeals Tribunal and others which exercise federal jurisdiction and which must abide by the principles of *Brandy*, namely the difference between judicial and administrative functions.[12]

1.49 Matters of state and territory law are interpreted by state courts and tribunals. States and territories can refer matters to the Commonwealth under section 52(xxxvii) of the Constitution but usually if there is a high level of co-operation other forms of legislative schemes are preferred. Cross vesting laws were struck down by *Wakim*.[13]

1.50 There is no clear and easy way for the Commonwealth to have a role in or legislative power over matters that are the jurisdiction of state and territory courts and tribunals. The state and territories, and the Commonwealth for that matter, can legislate as to vesting of jurisdiction, appeal and review rights, and the curtailment and limitation of appeals and review rights as well. The 'privative clause' provisions are a good example of this.

Recommendation 2

1.51 That the federal government report to the Parliament prior to 31 December 2008 on ways in which review processes can be guaranteed throughout Australia where they are lacking in state or territory legislation in defined circumstances such as these.

The Timing of Plebiscites

1.52 I said earlier that it is widely believed that the Coalition's motive for this Bill is immediate and self-interested. They seek to make mischief between Labor leaders Beattie and Rudd over the Queensland Premier's poorly-timed desire to force through large-scale local council amalgamations. The resistance to this state Labor move is believed to threaten federal Labor's campaign to win Coalition seats in that state.

12 *Brandy v. Human Rights and Equal Opportunity Commission* (1995) 127 ALR 1.

13 *Re Wakim, Ex parte McNally* (1999) 198 CLR 511.

1.53 This political context for the legislation immediately raises the question of the timing of a local council plebiscite in Queensland. Should it be before a federal election, on the same day as the federal election, or after the federal election?

1.54 These are matters for the AEC, in my view. What there should not be is any prohibition on what day they can be held.

1.55 In any case, it should be noted that the AEC, with respect to this particular proposed plebiscite, not future plebiscites, is anticipating the poll would most likely occur by way of a postal vote, rather than an attendance vote.[14]

1.56 Let me put forward yet again the Democrats' position in relation to simultaneous federal, state (and if necessary) local government elections, referenda and plebiscites. Currently there is a virtual outright ban on elections, referenda or votes of the electors (which covers plebiscites) being held simultaneously.[15] Section 394 (1) reads:

> On the day appointed as polling day for an election of the Senate or a general election of the House of Representatives, no election or referendum or vote of the electors of a State or part of a State shall, without the authority of the Governor-General, be held or taken under a law of the State.

1.57 As I have said previously in my supplementary remarks to the 2004 report of the Joint Standing Committee on Electoral Matters (JSCEM)[16] the Democrats are of the opinion that simultaneous federal/state elections or referenda/plebiscites should not be banned outright – they should at least be at the discretion of the governments concerned. Why shouldn't a federal by-election be able to be held simultaneously - with state or local elections; or a state by-election during a federal election; or a federal referendum during local government or state elections - at the discretion of a government or as agreed between governments?

1.58 Australians are in frequent election mode, with nine governments holding federal, state and territory elections, and local government elections, as well as referenda and plebiscites at all three levels of government. The issue is simply one of cost and convenience. For instance, greater efficiency is achieved in the United States of America where simultaneous elections are a long-standing, regular and unexceptional feature of their election system.

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14 Mr Paul Dacey, *Committee Hansard*, 3 September 2007, p. 63.

15 The word 'virtual' is used as s394 uses the proviso 'without the authority of the Governor-General'.

16 Joint Standing Committee on Electoral Matters, *The 2004 Federal Election: Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related thereto*, September 2005.

1.59 In 1922 the Commonwealth Electoral Act (CEA) was amended to prevent simultaneous federal and state elections. The 1988 Constitutional Commission recommended that this provision be repealed, and the Democrats urge Government to acknowledge this finding by amending the law.

Recommendation 3

1.60 That section 394 of the *Commonwealth Electoral Act 1918* be repealed.

A Matter arising from the ICCPR – the Right to Vote

1.61 In light of the recent High Court decision in Vickie Lee Roach v Electoral Commissioner and the Commonwealth of Australia seems appropriate to revisit my Supplementary Remarks in the JSCEM 2004 report regarding political rights and freedoms, in particular the voting rights of prisoners.

1.62 The High Court held in the Roach case that the sections of the CEA which disqualified all prisoners from voting were invalid as they were contrary to sections 7 and 24 of the Commonwealth Constitution.

1.63 Although this reverses the unacceptable amendments to the CEA made in 2006, it does not address the reservations I set out in my Supplementary Remarks to the JSCEM in 2004. I will repeat much of what I said there, below.

1.64 We recommended in our 1998 Minority Report that the CEA be amended to give all persons in detention, except those convicted of treason or who are of unsound mind, the right to vote. It is important to understand that, although prisoners are deprived of their liberty whilst in detention, they are not deprived of their citizenry of this nation. As part of their citizenship, convicted persons in detention should be entitled to vote. To deny them this is to impose an additional penalty on top of that judged appropriate by the court.[17]

1.65 Following the 2001 election, restrictions on the rights of prisoners were strengthened by increasing the disqualification criteria from individuals serving 5 years or more to individuals serving 3 years or more. I would note here, my disappointment at the High Court's decision to find that this provision remains valid.

1.66 The JSCEM Report urges the Government to disenfranchise any citizen serving a jail sentence. This is an extra-judicial penalty. If it is considered necessary to add the removal of citizenship rights to the deprivation of liberty, then that too should be a matter for judicial determination.

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17 Joint Standing Committee on Electoral Matters, *The 2004 Federal Election: Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto*, September 2005, p. 404.

1.67 There is no logical connection between the commission of an offence and the right to vote. For example, why should a journalist, who is imprisoned for refusing on principle to provide a Court with the name of a source, be denied the vote?

1.68 To complicate this further, there is no uniformity amongst the states or between the states and the Commonwealth as to what constitutes an offence punishable by imprisonment. In Western Australia, for example, there is a scheme whereby fine defaulters lose their licence rather than go to prison, yet this has not been introduced uniformly in Australia. Why should an Australian citizen in Western Australia who defaults on a fine but is not jailed, retain the right to vote, whilst an Australian citizen in another jurisdiction who is jailed for the same offence loses the right to vote? This is inequitable and unacceptable.

1.69 Australia is a signatory to Article 25 of ICCPR. Article 25, in combination with Article 2, provides that every citizen shall have the right to vote at elections under universal suffrage without a distinction of any kind on the basis of race, sex or other status. The existing law discriminates against convicted persons in detention on the basis of their legal status. This clearly runs contrary to the letter and spirit of the Covenant.

1.70 It seems ironic that the Government is relying on exactly this International Covenant to support its Plebiscites Bill whereas it totally ignores the same Covenant when it comes to prisoners' right to vote – there is a ludicrous inconsistency in this.

1.71 A society should tread very carefully when it deals with the fundamental rights of its citizenry. All citizens of Australia should be entitled to vote except those convicted of treason or who are of unsound mind. It is a right that attaches to citizenship of this country, and should not be removed.

Recommendation 4

1.72 The *Commonwealth Electoral Act 1918* be amended to give all persons in detention, except those convicted of treason or who are of unsound mind, the right to vote.

How to further direct democracy

1.73 The Bill is important, not only for Queenslanders but for everyone in Australia, because it opens up discussions about direct democracy, the use of plebiscites to determine matters of local importance and, indirectly, the issue of Citizen Initiated Referenda (CIR).

1.74 As I remarked earlier, the Bill allows for plebiscites – the direct vote of qualified electors to some important public question - to occur under the aegis of the AEC, and no state or territory law can gainsay it. The Bill allows the AEC 'to undertake any plebiscite on the amalgamation of any local government in any part of Australia' and it appears to be open-ended in that it is for 'the purposes of conducting an activity (such as a plebiscite) under an arrangement'.

1.75 The purpose of the Bill is to restore a right that was taken away – to re-establish the right of councils to conduct a plebiscite on the proposed amalgamation of local government councils in Queensland.

1.76 Dr Graeme Orr, Associate Professor from the University of Queensland warned against holding plebiscites in an ad hoc manner:

> The second and deeper policy issue is that if we are to go down the path of holding plebiscites, we should do so in a less ad hoc way. Why are we having polls in Queensland shires but not, say, in Northern Territory Indigenous communities? Why are our political leaders talking about plebiscites on specific hot issues and not others? Does the electorate realise that such polls have no binding effect, and what cynicism will be generated when they realise that they are no more than expensive opinion polls, however good they are, for participatory democracy? We had a debate about citizens' referenda in the late 1990s. If we want direct democracy, let us consider trialling it in a considered, comprehensive, legally sensible and meaningful way but steer clear of the current obsession of ad hoc plebiscites, which are little more than politicking on single issues... [18]

1.77 Dr Orr elaborated on his comments:

> ...We have already had Premier Beattie threaten to hold plebiscites on issues that the Commonwealth might find uncomfortable. I really think that if we want to go down the path of direct democracy then we need to go back to the debates about binding citizens referenda rather than this kind of adhocery, which is driven in large part by warring political parties.
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> I think we saw in the late nineties that there are some grounds where there is a lot of interest in and support for it, particularly from people who might consider themselves excluded from the mainstream political debate. It really is a difficult question because you are effectively reworking a representative democracy into a direct democracy. I think we would have to go and look at the American model to see some of the issues and problems with that, particularly if you have lobby groups or political parties trying to get initiatives on the ballot really to manipulate the political process. [19]

1.78 In common language, many Australians use 'plebiscite' and 'referendum' interchangeably, which may be true when they are not binding. Some referenda have been ignored because they are not binding. For example in Western Australia, there have been several referenda on introducing daylight saving to the state and all have been rejected by a majority of the population. However an independent member of the Parliament of Western Australia introduced legislation for a trial of daylight saving

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18 Dr Graeme Orr, Associate Professor from the University of Queensland, *Committee Hansard*, 3 September 2007, p. 2.

19 Dr Graeme Orr, Associate Professor from the University of Queensland, *Committee Hansard*, 3 September 2007, p. 8.

that passed, and it has been imposed on the state for the next two years, after which another referendum will be held.

1.79 Plebiscites can not be binding, and need not be initiated by governments, although they generally need governments to carry them out. A plebiscite is, for all intents and purposes, a vote by the electorate to determine public opinion on a question of importance, something like an opinion poll. Although its effect is not binding on the government concerned, it may inform their decision as to how to proceed.

1.80 Only constitution alteration referenda are binding, at federal and state levels. Referenda in Australia are initiated by governments. A referendum is a direct vote in which an entire electorate is asked to either accept or reject a particular proposal proposed or passed by a legislative body.[20] This may be the adoption of a new constitution, a constitutional amendment, a law or a specific government policy. The outcome of a constitutional referendum, under current Australian law, is binding on the Government and Parliament.

1.81 Australia has conducted 44 federal referenda to amend the constitution but only 8 have been successful. Probably the best known is the 1967 referendum which is colloquially viewed as recognising indigenous people as Australian citizens which in turn lead to giving them the right to vote.

1.82 I wholeheartedly agree with the way in which referenda for constitutional change in Australia is framed. Higher law should be difficult to change. It is appropriate that the only way to amend the Australian Constitution is to require a majority of people in the majority of the states to agree to a proposition before it can be changed.

1.83 However it has become clear in recent years that there is disenchantment among the electorate with politics and politicians. There is a sense of powerlessness, that people themselves cannot impact on or effect change or have a voice in relation to the matters which impact directly on them.

1.84 This is not a feeling unique to Australia. The new campaign in the United Kingdom, lead by the Conservative leader David Cameron, is championing direct democracy as a way forward, and a point of difference from the British Labour Government - "I passionately believe we need to localise power, as recommended by the Direct Democracy movement of Conservative activists and MPs" - David Cameron.[21]

1.85 The primary principle espoused by the UK direct democracy movement is that decisions should be taken as closely as possible to the people they affect. This seems a

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20 The Macquarie Concise Dictionary 2nd Edition

21 See http://www.direct-democracy.co.uk/.

common sense approach, but it is easy to find examples in Australia where that is not the case.

1.86 One that springs readily to mind is the proposed pulp mill in the Tamar Valley in Tasmania. There are three levels of government and the community at play in that matter and decision-making is proving very hard.

1.87 Some argue they want to maintain a pristine environment, others argue that the mill is in the wrong place or is of the wrong type, others argue for jobs and security and it is hard to establish what the broad community opinion is. Either way, it is an example where, after obtaining and making available to the community scientific studies of the impact of the mill, a plebiscite would usefully help gauge the local community's feelings on the matter.

1.88 If members of the Liberal and National parties' conservative coalition had ever had any real interest in direct democracy, as members of the Conservative Party in the UK do, then they would have supported the Australian Democrats' decades-long initiatives to introduce CIR in defined circumstances. Or at least they would have pursued versions of it.

1.89 Since inception the Democrats have, as part of their policy platform, championed the concept of direct democracy. In 1980 Democrat Senator Colin Mason introduced the Constitution Alteration (Electors' Initiative) Bill 1980, which was a bill for an act to alter the Constitution so as to vest in the electors the power to propose laws and to approve or disapprove such proposed laws. This bill lapsed with the dissolution of that Parliament, but was reintroduced several times over the years in an altered and improved form. These initiatives failed to gain the support of the major parties and did not proceed.

1.90 The relevant aspects of that and preceding bills are now included in my own omnibus Private Senator's Bill - the Constitution Alteration (Electors' Initiative, Fixed Term Parliaments and Qualifications of Members) Bill 2000.

1.91 Do not be surprised that this bill currently languishes on the Notice Paper. In the 106 years since Federation only 17 private bills have passed. These are 7 Private Member's Bills and 10 Private Senator's Bills including last year's two – the first time Parliament has passed two in the same year. That does not include the five parliament-related acts introduced by Speakers and Presidents, which might be considered a separate category of their own, non-government, but not exactly private.

1.92 The Democrats have always supported direct democracy because it is obvious many people feel disconnected from the democratic process. Not just here, but everywhere. As a result Canada, Italy, New Zealand, Switzerland, 27 states in the USA, Venezuela and Poland all have versions of direct democracy.

1.93 It is clear from the 95 submissions to the Committee on the current Bill that many people feel strongly that they should have the right to 'have their say'.

1.94 Although the Queensland Government conducted two inquiries into council amalgamations, many of the submissions indicated that communities felt they had not been consulted, that their wishes had not been taken into account by the state Government, that they had not been accorded due democratic respect. They particularly resented the Queensland Government foolishly trying to muzzle them by legally prohibiting local plebiscites. Although the Beattie government has scuttled back from that decision, it has had the unexpected bonus of producing the current Bill.

1.95 While recognising that Australia is a representative democracy and supporting what that entails, I support direct democracy in defined circumstances because it promotes popular engagement with the political process on questions of public importance, particularly in matters that affect people immediately and specifically.

1.96 Increasingly we need to recognise that local people are best served when they are able to determine what happens in their own backyard, whether it is the placement of a pulp mill, the location of a nuclear power plant, or the amalgamation of their local council with another.

1.97 This is particularly important when representative governments are at odds with each other. For example the proposed pulp mill in Tasmania has local, state and federal governments in difficulties, and some very agitated citizens groups. People directly affected should be entitled to say whether they want a pulp mill or not, and if they do, whether it should be in Bass' Tamar Valley or in nearby Braddon.

1.98 Non-binding plebiscites have their place. They are an expression of opinion that politicians must then take into account, but the elected politicians must make the decision. Representative democracy requires representatives to make decisions on behalf of voters. It is the bedrock of our system.

1.99 There are circumstances when voters make the final decision, and Australia's constitutional referenda fall into that category.

1.100 Plebiscites that are little more than an opinion poll are likely to have little effect unless they are done on a large scale. There is no doubt that if a plebiscite indicated a majority of people were against council amalgamation, it would give the Queensland Labor Government pause, even though it does not mean that the State government has to take popular opinion into account and change the law accordingly.

1.101 The question is – will the current Bill encourage a further look at CIR?

1.102 CIR has a different effect from a plebiscite as it seeks to require governments and parliaments to act on the opinion of a majority of the voters. It is not just any opinion. CIR is inevitably and rightly constrained to defined circumstances. Without constraint CIR could be an obstacle to effective government if the system permitted too many issues, particularly fringe issues, to be the subject of referenda.

1.103 The fears can be overstated. Even in countries similar to Australia, such as New Zealand, where CIR have been established since 1993, the results have not

necessarily brought about any legislative change, although they have, according to researchers, been the trigger for political parties to amend legislation, or introduce legislation on particular issues.

1.104 However, based on the experience of other countries, there is sufficient research and experience from their direct democracy structures to be able to construct an effective form of it for Australia.

1.105 In the past the Democrats have proposed a strict system that would only allow proposals with widespread community support (determined by either a percentage of voters, or by establishing a numerical base point of signatures on a petition) to get a proposal to the referendum stage. This approach mirrors most other jurisdictions where there is some kind of minimum percentage of voters or petitioners before a citizen initiated referendum can proceed.

1.106 In some jurisdictions CIRs are binding on the legislature. That type of direct democracy can be open to abuse under voluntary voting systems if there is a small voter turnout influenced by powerful sectional interest groups. Australia has the safeguard of a compulsory voting system and therefore a high voter turnout. A further safeguard would be if the vote was binding only when the voter turnout was (say) more than 60 percent and if a clear majority of votes cast were in favour. Below those percentages the result should not be binding and would have advisory status only.

1.107 Another safeguard could be that once the CIR has passed, the resolution would not automatically pass into law until it was approved by the Federal Parliament. This provides an important check on popular referenda backed by powerful sectional interests, ensures full legislative scrutiny and ensures that the final decision rests with the elected representatives.

1.108 Although it has been considered by many that any parliament would be reluctant to oppose any resolution backed by a wide cross-section of the community, the experience in New Zealand, shows that even on CIRs where voter turnout was over 80 percent and a favourable vote of over 80 percent was achieved, the parliament did not necessarily feel obliged to legislate on the matter in line with the result.[22]

1.109 A further possibility exists for direct democracy. Although there may be issues which do not reach the required number of signatures or percentage of voters for the matter to go to referendum, if 0.5 percent of the population petitioned over an issue, then it would automatically be referred to a parliamentary committee, which would determine whether a referendum would be held.

1.110 In the legislation establishing the mechanism for CIRs there would also have to be some sort of limit on the funding of the campaigns for or against, otherwise the opportunity for special interest groups to obtain the requisite signatures and then

22 Caroline Morris, *Lessons in Direct Democracy from New Zealand*, Perspective, Centre for Policy Studies, 2007.

spend vast amounts of money promoting their side of the argument could impact on the effectiveness and fairness of direct democracy and possibly create an imbalance.

1.111 No doubt in the CIR legislation there would be some issues that could not be subject to CIR – these might include taxation, appropriations, matters affecting the court system, questions arising from decisions of a court, or even contentious issues such as immigration.

1.112 It is increasingly clear that Australians are often disenchanted with our political system, and there is a feeling that they are not listened to on many issues. In the past, ordinary Australians used protest and public meetings to make the Government and politicians aware of their dissatisfaction about an issue. When large numbers of people protested against the Vietnam War, the Government took notice and changed direction. The Coalition Government has ignored at least two large protests in the recent past, one against the Iraq War and the other in relation to reconciliation. Those who participated in these lawful protests probably feel that their wishes were ignored.

1.113 Direct democracy has been shown to improve people's engagement with the political process. In 1993 prior to the Citizen Initiated Referenda Act 1993, New Zealanders were asked if they agreed with the statement "Politicians don't care what people think" and 66 percent of those surveyed agreed with that statement. In 2005, that figure had reduced to 44 percent.[23]

1.114 Direct democracy could provide an important mechanism for re-engagement with the political process in Australia. As the UK Conservative leader David Cameron said recently during the 'Stand Up Speak Up' campaign "I want us to end the age of top-down, 'we know best' politics. Politics should be bottom-up and open – driven by the passions and priorities of the public."

1.115 All Australian political parties have declining membership. The age of the masses being signed up political party members has gone. Ways need to be found to re-engage Australians in our democracy so that voters feel empowered when they need to be. Much greater active participation in democracy is a model which Australia should embrace.

1.116 Possibly the federal Government's call for plebiscites on issues like council amalgamations and the location of nuclear power plants will be the starting point.

1.117 Cr Berwick, Mayor Douglas Shire Council expressed his views on direct democracy, referring to 'participatory democracy':

> I think it is time for Australia to take a look at participatory democracy, and I will explain my understanding of that. Representative democracy is where you get a board elected and they make decisions on behalf of the

23 Caroline Morris, *Lessons in Direct Democracy from New Zealand*, August 2007, Appendix.

community. That is what we are all used to. Participatory democracy is a process, such as a planning scheme where the process says, 'You must consult with the community before you can do this.' Maybe we need a bit more participatory democracy where you get a skills based board and processes that you have to go through to do things. This may well give the community a better outcome than the downside of representative democracy, which has its own problems, such as poor standards of skills on local councils, which you see all over the place. People get elected but do not really understand their roles and responsibilities, which have become very complex. They are expected to deal with everything under the sun and they lob onto a local council without the sorts of skills that you would need in order to deal with really complex issues. It is not a criticism; it is just a reality.

If you have participatory democracy you say that before you can change this planning scheme you must go through a process of community engagement which puts the issues on the table, you must make sure you build some understanding in the community about the pros and cons and then you either survey by a statistical survey or you have plebiscites or whatever to gauge community opinions. So what you are doing there is empowering the community, not through a representational democracy but through a participatory democracy.

I think other countries do this better than Australia, but it is a good way to go to give small communities such as ours some control over our own future so that we are not swallowed up by big agendas, big societies, big developers or big whatever. Part of Australia's heritage is regional and rural communities. Let's look after them. Let's keep them empowered. They have their own character; they are all different. Once you start joining us all together into big governments we start to lose our identity—and we are upset about it. Every state has done this badly. It is about 'big is better', but big is not necessarily better. You want to keep character and diversity. They are not all the same as Douglas's; they might be completely different in different places. It does not matter. It is diverse. If there is any way this process can help keep that diversity in place in Australia I think it is good for all of us. And I think that diversity is about empowering local communities.[24]

Recommendation 5

1.118 That the Senate refer the question of ways in which direct democracy can be advanced in Australia to a committee for report by 31 December 2008.

Senator Andrew Murray

24 Cr Berwick, Mayor, Douglas Shire Council, *Committee Hansard*, 3 September 2007, p. 8.

APPENDIX A

(Note: attachment below excludes Part 1V – which is the 'machinery' part of the Covenant)

International Covenant on Civil and Political Rights
Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966
entry into force 23 March 1976, in accordance with Article 49

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

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.

Article 7

1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3.

(a) No one shall be required to perform forced or compulsory labour;

(b)Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2.

(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication. 3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a)To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(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;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.