V TERRITORY

Territory – Australian external territories – the legal regimes of Ashmore and Cartier Islands, Cocos (Keeling) Islands, Christmas Island, and the Coral Sea Islands – United Nations involvement – applicability of treaties – Parliamentary Report

On 7 March 1991 the Report of the House of Representatives Standing Committee on Legal and Constitutional Affairs entitled "The Legal Regimes of Australia's External Territories and the Jervis Bay Territory" was tabled in Parliament (PP No 47/1991). Part of the Report was as follows:

International Considerations

2.7.9 In considering the proposal to incorporate Ashmore and Cartier into the Northern Territory, the Committee was advised of important international considerations.

2.7.10 The Department of Foreign Affairs and Trade (DFAT) noted that the Territory of Ashmore and Cartier Islands has significance for Australia's foreign relations in the context of bilateral fisheries arrangements with Indonesia and petroleum exploration in the Timor Gap.[23]

2.7.11 Australia and Indonesia have reached understandings which permit Indonesian fishermen using traditional vessels and traditional fishing methods to fish in a defined area of the Australian Fishing Zone. These understandings are contained in a 1974 Memorandum of Understanding and the 1989 Agreed Minutes of Meetings between Officials of Australia and Indonesia on Fisheries.[24]

2.7.12 Under the arrangements agreed between Australia and Indonesia, traditional fishing may be carried out in the three mile territorial sea of the Ashmore and Cartier Islands except in the Ashmore Reef National Nature Reserve.

2.7.13 DFAT also noted that the boundaries of the Zone of Co-operation in the Timor Gap, agreed in negotiations between Australia and Indonesia to be the area of joint administration by them of petroleum activities, overlap slightly with the boundaries of the Territory of the Ashmore and Cartier Islands. It is expected that the Timor Gap Treaty will be implemented by new Commonwealth legislation. The legal arrangements prevailing in the adjacent area of Ashmore and Cartier will in that case not affect arrangements made for the Timor Gap.[25]

2.7.14 DFAT advised, however, that while there are foreign relations implications in the proposal to incorporate Ashmore and Cartier into the Northern Territory, there is no reason from a foreign relations perspective

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23 Evidence, p S1408.

24 Evidence, p S1408.

25 Evidence, p S1409.

why such a proposal should be opposed. It made the proviso, however, that it would not wish any decision taken in relation to the Territory to jeopardise Australia's relations with Indonesia.[26]

2.7.15 DPIE advised that the incorporation of Ashmore and Cartier into the Northern Territory would have an adverse effect on Australia's relations with Indonesia on fishery matters.27

Conclusion

2.7.16 While incorporation of Ashmore and Cartier in the Northern Territory should not of itself affect Australia's international arrangements, the Committee accepts that changes should not be made to the status of Ashmore and Cartier which would in any way prejudice Australia's understandings with Indonesia.

Financial Considerations

2.7.17 In the view of DPIE, implementation of the Northern Territory Government's proposal for Ashmore and Cartier would result in a loss of considerable revenue to the Commonwealth from petroleum and minerals exploitation. Making Ashmore Cartier Adjacent Area part of the Northern Territory Adjacent Area would, according to DPIE, significantly increase Northern Territory revenue at the expense of the Commonwealth.

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3.6 International Considerations

United Nations Treaty

3.6.1 Australia has asserted sovereignty over Christmas Island since it was placed by the Queen under the authority of and accepted by the Commonwealth as a Territory. There are no suggestions, to the Committee's knowledge, that Australian sovereignty is questioned. The Department of Foreign Affairs and Trade (DFAT) has submitted that Australian sovereignty over Christmas Island is soundly based in international law:

> It derives from effective British occupation and administration of the (I)sland, a valid transfer of the Island from Britain to Australia in 1959 by complementary British and Australian legislation, and continuous governmental and judicial activities by Australia ever since.[17]

3.6.2 The primary source of Commonwealth power in relation to Christmas Island, as with the other Territories, is section 122 of the Commonwealth Constitution which empowers the Commonwealth Parliament to make laws for the government of any territory.

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26 Evidence, pp S1408–S1409.

17 Evidence, pp S1406–S1407.

3.6.3 Similarly, the Commonwealth attracts obligations under international law with respect to the territories in the same way as with the rest of the Commonwealth.

3.6.4 Obligations under international law with respect to Christmas Island may for instance flow from Chapter XI of the United Nations Charter and subsequent practice regarding non-self governing territories.

3.6.5 In this regard the Centre for Comparative Constitutional Studies notes that Christmas Island has never been considered by Australia as a non-self governing territory within the terms of Chapter XI and thus necessitating a report to the United Nations under Article 73(e).[18] Classification as a non-self governing territory would involve international scrutiny of conditions in the Territory, as occurred in the case of the Territory of Cocos (Keeling) Islands, which was so classified.

3.6.6 The criteria for determining whether a Territory could be considered non-self governing are derived from Article 73 of the United Nations Charter which refers to 'territories whose peoples have not yet attained a full measure of self-government' and the Annex to General Assembly Resolution 1541 which establishes the criteria of geographical separateness, ethnic and/or cultural distinctiveness, and a position of subordination due to historical, administrative, political and/or economic elements.

3.6.7 Christmas Island is certainly geographically separate. It is a moot point whether it meets any of the remaining criteria.

3.6.8 The Centre for Comparative Constitutional Studies makes a case for the proposition that "at this point in time, Christmas Island might arguably have the status of a non-self-governing Territory".

3.6.9 The Centre's argument was presented in the following terms:

> **Christmas Island**, along with the Cocos (Keeling) Islands, was reported on prior to 1958 as part of the Colony of Singapore, which was accepted by Britain to be non-self-governing territory. When the Cocos (Keeling) Islands were transferred to Australia in 1955, the Australian government assumed reporting obligations. When Christmas Island was transferred in 1958, however, Australia did not continue the British practice of reporting. The Australian government's position was that Christmas Island could not be considered a non-self-governing territory as it did not have a permanent indigenous population (Senate Select Committee on Foreign Affairs and Defence, **United Nations Involvement with Australia's Territories**, Canberra, 1973, 64).
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> ... The Christmas Island population ... was largely composed of phosphate mine employees recruited from Malaysia, Singapore and

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18 Evidence, p S259.

the Cocos (Keeling) Islands, some of whom resided there permanently, but many of whom were there for the duration of their (renewable) contracts and still had families in Singapore or Malaysia.

In so far as the other criteria were concerned, however, Christmas Island had certainly not "attained a full measure of self-government", and was quite definitely in a position of subordination due to historical, administrative and economic elements – namely the hegemonic control exerted by the Christmas Island Phosphate Commission, a joint authority of the Australian and New Zealand governments concerned primarily with exploitation of the Island's resources and only secondarily with the welfare of its workers.

In its 1973 report on **United Nations Involvement with Australia's Territories**, a Senate Select Committee on Foreign Affairs and Defence agreed with the Australian government's assessment that Christmas Island was not a non-self-governing territory, but considered it possible that the Committee of 24 might become interested in the Territory. To minimise the risk of this occurring, it recommended that appropriate steps be taken to consolidate the relationship between Australia and Christmas Island (p 111).

Thus, in 1981, the Australia-New Zealand Christmas Island Phosphate Commission was replaced by the wholly-Australian government-owned Phosphate Mining Company of Christmas Island. In 1984, the Company was divested of its non-mining functions, which were split between Commonwealth Departments or the Administration and the newly-established Christmas Island Services Corporation (CISC); and a number of the Commonwealth Acts which were as part of that Territory's integration package extended to the Cocos (Keeling) Islands were also extended to Christmas Island. The representative Christmas Island Assembly, which is empowered to direct the CISC in the performance of its functions, was established in 1985. These, and other measures, were designed to "bring the Island and its community into the mainstream of Australian life" (Minister for Territories, second reading speech on Christmas Island Administration (Miscellaneous Amendments) Bill 1984, *Commonwealth Parliamentary Debates*, House of Representatives Vol 138 (1984), 664).

The "integration" of Christmas Island with Australia, although it occurred unasked, would seem to have gone some way towards reducing the possibility of United Nations involvement in the Territory. Two new factors must be taken into account, however. Firstly, with the cessation of Australian government schemes to encourage Christmas Islanders to leave the Territory (either through repatriation or resettlement on the mainland) Christmas Island Annual Report 1984-85, pp 472/1985, p 10), a permanently settled population with a distinct ethnic and cultural identity is likely to develop.

> Secondly, the fact that the functions of the Christmas Island Assembly have been performed for long periods not by a representative body but by a person appointed as the Acting Assembly, would seem to tip the balance back towards political subordination.
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> Thus, at this point in time, Christmas Island might arguably have the status of a non-self-governing territory. If Australia does not wish to accept the international obligations that go with this status, then further measures would seem to be called for to ensure that the residents of the Territory enjoy a meaningful form of self-government.[19]

3.6.10 The Attorney-General's Department (AG's) and the Department of Foreign Affairs and Trade (DFAT) do not, however, accept the Centre's conclusions. AG's disagreement is based on its view that 'Christmas Island has no indigenous population and therefore cannot be regarded as being distinct ethnically and/or culturally from Australia.[20] AG's also placed significant weight on the assumption that Christmas Island had not at any time been the subject of a report to the United Nations, an assumption which is at apparent odds with the British practice in relation to Christmas Island prior to its transfer to Australia, as reported by the Senate Select Committee on Foreign Affairs, Defence and Trade in its Report, "United Nations Involvement with Australia's Territories".[21]

3.6.11 DFAT has advised that the Centre's suggestion raises a number of difficulties, principally in determining whether a distinctive ethnic and cultural identity exists or is likely to develop on Christmas Island that has the status of "political subordination".[22]

3.6.12 DFAT has also advised that:

> The suggestion contained in the Centre's submission also raises legal considerations. The question arises, for instance, how much weight may be given to the criteria contained in the Annex to UNGA Resolution 1541 (XV). Australia's traditional view has been that resolutions of the General Assembly are not binding under international law. Moreover, Australia and all other administering powers abstained or voted against the resolution. There can be no guarantees, however, that inscription of Christmas Island on the UN list of NSG territories will not be sought, if there is a political will on the part of other members of the UN to do so; the inscription of New Caledonia on the UN list is a recent case in point. We are unaware of any current proposal to that effect.[23]

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19 Evidence, pp S260-S262.

20 Evidence, p S1419.

21 Evidence, p S260.

22 Evidence, p S1407.

23 Evidence, p S1407.

Conclusion

3.6.13 The Committee believes that the possibility raised by the Centre for Comparative Constitutional Studies about the status of Christmas Island is, at the very least, arguable. It notes, however, the comments of DFAT in this regard, particularly those relating to the benefits to be derived from hastening the process of legal, administrative and political reform:

> The case for listing Christmas Island as a non-self-governing territory would clearly stand a better chance of being maintained as long as local political institutions are absent and other disparities between treatment of Islanders and other Australians persist. On the other hand, hastening the process of legal, administrative and political reform to bring Christmas Island into the Australian mainstream would help dispel any possible moves in the UN to that end.[24]

International Covenant on Civil and Political Rights (ICCPR) and Human Rights

3.6.14 Australian practice in relation to its treaty obligations was described to the Committee by Senator the Hon Gareth Evans, Minister for Foreign Affairs and Trade in the following terms:

> Although the focus of the terms of reference is on rights and duties under domestic law my Department has an interest arising from the implementation of Australian treaty obligations. Prior to 1972, treaties to which Australia became party were applicable to the external territories only if there was an express provision to that effect in the body of the treaty or a declaration was made at the time of depositing the instrument of ratification or accession. Current Australian practice is that, in the absence of a provision to the contrary, a treaty will automatically apply to the whole territory for which Australia is responsible internationally. This practice is supported by Article 29 of the Vienna Convention on the Law of Treaties which, in dealing with the territorial scope of treaties, provides that:
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> "Unless a different intention appears from the Treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory."
>
> Thus in cases where domestic legislation is required to enable Australia to implement its treaty obligations upon becoming a party, such legislation includes equally the laws of the Australian states and territories.
>
> If the law of an external territory is not in conformity with a multilateral treaty which allows parties to declare that it will apply only to certain parts of their territory, and if it appears likely that there will be a long delay before that law can be amended, Australia may

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24 Evidence, p S1407.

> make a declaration that the treaty does not apply to that territory. It is usually understood, however, that the declaration will be removed as soon as the territory's law has been amended.[25]

3.6.15 The International Covenant on Civil and Political Rights (ICCPR) is a case of an international obligation accepted by Australia, which requires it to ensure rights recognised in the Covenant are available to all individuals within the territory and subject to its jurisdiction without distinction. Article 50 requires that the Covenant "shall extend to all parts of Federal States without any ... exceptions".

3.6.16 Human Rights Australia, in a submission to the Committee, drew attention to a number of areas of the law of Christmas Island which were in its view clearly inconsistent with the ICCPR.

3.6.17 It noted, for example, that the continued availability under inherited Singapore law of punishment by whipping as a sentencing option is clearly a violation of the basic human rights which the Commission administers. The Commission views with similar seriousness the absence of an appropriate range of sentencing options and the continued sentence of mandatory life imprisonment for murder.[26]

3.6.18 Human Rights Australia also notes the lack of a formal arrangement for legal aid for residents of Christmas Island and concludes that residents of the Island are denied effective and equal enjoyment of their rights to equality before the law, and equal protection of the law, guaranteed by articles 14 and 26 of the ICCPR.[27]

3.6.19 Human Rights Australia has condemned Australia's performance in fulfilling its human rights and international obligations to the residents of Christmas Island. It has done so in the most unambiguous terms in stating:

> We must emphasise that we regard these breaches of the obligation Australia has undertaken under the ICCPR as extremely serious violations of basic human rights which cannot be permitted to continue.[28]

3.6.20 In similar vein and in a specific reference to the absence of formal arrangements for the provision of legal aid to the residents of Christmas Island the Legal Aid Commission of Western Australia (LACWA) said:

> That Covenant (by which the Commonwealth is bound by international treaty...) does not seem to convince the Commonwealth

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25 Evidence, p S1411.

26 Evidence, p S1273.

27 Evidence, p S1275.

28 Evidence, p S1274.

> that it has a bounden moral duty, if not legal, to supply or to facilitate to the Islanders a reasonable legal service either from this Commission or elsewhere.[29]

3.6.21 The Committee concurs with the conclusion of LACWA that the question of the provision of legal aid, as with many of the other obvious deficiencies in the law of Christmas Island:

> ... begs the question as to why the Commonwealth needs to justify a service to one of its own Territories relying upon an International Treaty. Surely its own responsibilities for the special needs of those residents is more than enough.[30]

Conclusion

3.6.22 The Committee shares the concern of the Human Rights Commission that Australia meet its international obligations to the residents of Christmas Island. The trenchant criticisms of the Commission and its insistence that the Commonwealth is responsible for denying certain basic human rights to the residents of the Territory demand an appropriate and immediate response by the Commonwealth.

International Labour Organisation (ILO)

3.6.23 Article 35 of the ILO Constitution obliges Member States to make declarations as soon as possible after a Convention is ratified concerning its application to its external ("non-metropolitan") territories. Declarations may be "applicable", "applicable with modification" or "not applicable" and may be varied from time to time if circumstances within the territory change.[31]

3.6.24 Declarations are required for each territory in relation to the 40 ILO Conventions ratified by Australia, and a further ten Conventions which are appended to Convention No. 83, Labour Standards (Non-Metropolitan Territories), 1947. It is noted, however, that declarations are not required with respect to five Conventions because they are machinery instruments (Nos. 80 and 116), are revised by a later Convention (Nos. 63 and 93), or declarations are made with respect to appended Conventions only (No. 83).[32]

3.6.25 Australia has some non-metropolitan territories for which declarations are required, including Christmas Island.

3.6.26 While the ILO cannot enforce action by a Member State, it does monitor the application of Conventions it has ratified both in the mainland and in the territories by examining reports prepared by Member

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29 Evidence, p S41.

30 Evidence, p S41.

31 Evidence, p S716.

32 Evidence, p S1568.

States, and making public any comments by the ILO Committee of Experts on the Application of Conventions and Recommendations concerning non-compliance.[33]

3.6.27 In a submission to the Committee the Department of Industrial Relations (DIR) advised:

> In light of the issues raised during the Inquiry, we are reviewing as a matter of priority the approach taken to Australia's obligations under the ILO Constitution in relation to its non-metropolitan territories.[34]

3.6.28 The DIR response is a reaction to the fact that in respect of both Cocos (Keeling) Islands and Christmas Island no declarations have been made by Australia and none were made by the United Kingdom prior to the Territories being accepted by the Commonwealth.

3.6.29 DIR indicated that it has, in conjunction with the relevant administering Department, been examining the situation in respect of the non-application of ILO Conventions in these territories since the late 1950s with a view to making suitable declarations.[35]

3.6.30 The reasons advanced by DIR for not progressing with declarations for Christmas Island include:

- the small size of the population likely to be affected by such declarations, given the early stage of industrial development; and
- the lack of pressure from Christmas itself to expedite the declaration process.[36]

3.6.31 DIR has advised the Committee that it proposes to re-open discussions with the Department of the Arts, Sport, the Environment, Tourism and Territories (DASETT) as soon as possible with a view to making appropriate declarations in respect of both Cocos (Keeling) and Christmas Island.[37]

Conclusion

3.6.32 The Committee regards the non-application of the ILO Conventions to Christmas Island as a serious breach of Australia's obligations to the residents of the Territory.

3.6.33 The fact that not a single declaration has been made in respect of Christmas Island in relation to the application of any of the ILO

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33 Evidence, pp S714-S715.

34 Evidence, p S1566.

35 Evidence, pp S1571-1572.

36 Evidence, p S1571.

37 Evidence, pp S408-S409.

Conventions, in the thirty two years that it has been an Australian Territory, raises serious doubts about the Commonwealth's commitment to its obligations under the ILO Convention. The Committee welcomes the announcement by DIR of its intentions to now proceed with declarations for Christmas Island.

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4.6 International Considerations

International Scrutiny

4.6.1 As a non-self-governing territory, the affairs of the Cocos (Keeling) Islands were regularly scrutinised prior to 1984 by the United Nations (UN) under Chapter XI of the UN Charter. After Australia assumed sovereignty over the Islands in 1955, it submitted regular reports as required under Article 73(e) of the UN Charter, and the information was subject to the scrutiny of the UN Committee on Decolonisation, known as the Committee of 24.[26]

4.6.2 The Committee of 24 visited the Islands in 1974 and again in 1980. On both occasions, reservations were expressed, amongst other matters, about the legal system of the islands. Principal concerns included the extent to which Territory laws were being applied on Home Island, the difficulty of determining the laws which were applicable, and the lack of suitable arrangements, in practice, to ensure that Malay usages, customs and traditions were suitably taken into account.[27]

4.6.3 It is of concern to this Committee that many of these concerns, as detailed in section 4.8, remain current in the 1990s.

4.6.4 The UN supervised the Act of Self-Determination of the Cocos Malay community in 1984 by which the community voted for integration with Australia on the basis of complete equality. The Australian Government gave a commitment at that time to bring living standards up to mainland levels by 1994, and steps to ensure this are currently being implemented.[28] A principal mechanism of achieving this is provided by the Commonwealth Grants Commission which, in 1989, presented its Second Report to the Government on the Territory, detailing what had been achieved to this end in the period 1984-89, and what remained to be done in the period to 1994.

4.6.5 As noted above, reservations have been expressed about the legal regime of the Islands. In this context, the Committee is of the view that the goal of bringing living standards up to mainland levels by 1994 will be

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26 Evidence, p S534 and Tahmindjus, op cit, p 186.

27 Evidence, pp S538-S540 and Tahmindjus, op cit, pp 187-188, 191.

28 Evidence, pp S421, S452.

substantially impeded if thorough reform of the Territory's legal regime has not been achieved by that date.

Human Rights

4.6.6 The International Covenant on Civil and Political Rights (ICCPR), ratified by Australia in 1980, contains several Articles of particular relevance to the consideration of the Territory's legal regime. Article 1 of the Covenant affirms the right to self-determination, a right exercised by Territory residents in 1984. Self-determination, however, has not been regarded as being limited to this single action and Australia affirmed this viewpoint to the UN Human Rights Committee when presenting Australia's Second Periodic Report under article 40 of the ICCPR in 1988:

> ... the right (of self-determination) was not exercised fully by a single act of self-determination on gaining independence after a colonial era. Australia interpreted self-determination as the matrix of civil, political and other rights required for the meaningful participation of citizens in the kind of decision-making that enabled them to have a say in their future.[29]

4.6.6 Under Article 2.1 of the Covenant, Australia has guaranteed that it will respect and ensure, for all individuals within its Territory, without distinction, the rights recognised in the Covenant.[30] Article 26 recognises that all people are equal before the law and are entitled, without discrimination, to the equal protection of the law.[31] Consistent with these Articles, it is imperative that the rights secured for most Australians by Commonwealth or state legislative or administrative arrangements are also secured for Territory residents,[32] and that "these rights are enjoyed by Territory residents equally with residents of other parts of Australia".[33]

4.6.8 It has been submitted to the Committee that the unsatisfactory nature of the Territory's legal regime has resulted in continuing breaches of some of Australia's obligations under the ICCPR in respect of Territory residents. Article 7 of the ICCPR, for example, prohibits cruel, inhuman or degrading treatment or punishment, and yet whipping and beating continue to be punishment options available under laws still applying in the Territory.[34] The lack of legal services on Cocos, and the absence of an appropriate range of sentencing options under criminal law are two other concerns in relation to ICCPR Articles 14 and 26 guaranteeing, respectively, rights to equality

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29 Evidence, pp S1269–S1270.

30 Evidence, pp S268, S1271.

31 Evidence, p S1268.

32 Evidence, p S268.

33 Evidence, p S1271.

34 Evidence, pp S1273–S1274.

before the courts, and equality before the law and equal protection of the law.[35]

4.6.9 Of equal concern is the absence of the formal provision of legal aid to Territory residents, contrary to ICCPR Article 14.3. This issue was also raised with the UN Human Rights Committee in 1988. It was admitted at that time that the position was unsatisfactory, and an undertaking was given that the problem would be addressed.[36] Up to this time, however, the question of delivery of legal aid to Territory residents continues to be unresolved.

4.6.10 Clearly, a number of changes need to be made to ensure that Territory residents enjoy the full range of ICCPR protections. In this regard, the Human Rights Commission has advised:

> ... we regard these breaches of the obligations Australia has undertaken under the ICCPR as extremely serious violations of basic human rights which cannot be permitted to continue.[37]

4.6.11 In relation to Human Rights issues, DASETT has submitted that most Commonwealth legislation implementing UN human rights conventions "either extends or will be extended" to Cocos and other external Territories.[38] In this context, Territory residents are currently being consulted about the extension of the Marriage and Family Law Acts.[39] Current provisions are considered outdated and discriminatory in many respects.[40] The Committee notes that, during these consultations, the customs and traditions of the Cocos Malay community must be respected. In addition, the Committee notes that there are particularly important UN Conventions which must also be considered during the consultation process. Chief amongst these are several ICCPR Articles relating to equal status and equal rights of men and women, and the Convention on the Elimination of all forms of Discrimination Against Women.[41]

International Labour Organisation Conventions

4.6.12 Australia has been a member of the International Labour Organisation (ILO) since the establishment of that body in 1919,[42] and has now ratified more than 40 ILO Conventions.[43] Currently, declarations of

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35 Evidence, p S1275.

36 Evidence, pp S1275, S269.

37 Evidence, p S1274.

38 Evidence, p S454.

39 Evidence, p S455.

40 Evidence, p S1271.

41 Evidence, p S1272.

42 Evidence, p S714.

43 Evidence, p S451.

application of ratified ILO Conventions have not been made in respect of Cocos, although discussions have been held with Cocos residents with a view to implementing all appropriate ILO Conventions as progress is made towards achieving mainland conditions by 1994.

4.6.13 The Department of Industrial Relations has also advised that it is now "reviewing, as a matter of priority, the approach taken to Australia's obligations under the ILO Constitution" in respect to Territories such as Cocos.

5.5 International Considerations

5.5.1 The creation of the Coral Sea Islands as an external territory emphasised Australia's claim to sovereignty over the area. It has been suggested to the Committee, however, that the claim needs to be continually bolstered, partly because the Territory – unlike the other Australian external territories – was not at any time formally claimed by the British Crown:

> The effectiveness of Australia's assertion of sovereignty would depend, at international law, upon the existence of any competing claims to the area, and whether such claims were backed by acts of effective occupation ... sufficient to defeat Australia's claim ... Australian action in actually making laws for the Coral Sea Islands Territory, and in administering those laws is a significant element in maintaining sovereignty.

5.5.2 The islands of the Territory have international significance in two other major respects: islands and bays in the area have been used as basepoints in delimitation agreements with Australia's neighbours in the Pacific. They have also extended Australia's maritime jurisdiction considerably.

Territory – Australian external territories – Cocos (Keeling) Islands – integration into Australia – extension of Australian laws and conditions

On 7 March 1991 the Prime Minister, Mr Hawke, and the Minister for the Arts, Tourism and Territories, Mr Simmons, issued the following joint news release:

> A major step has been taken by the people of the Cocos (Keeling) Islands toward achieving full mainland standards and conditions of living with the signing of a Memorandum of Understanding.
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> The Memorandum of Understanding was signed today by the Prime Minister and representatives of the Cocos (Keeling) Community, Haji Wahin bin Bynie OAM, Chairman of the Cocos (Keeling) Islands Council, and Parson bin Yapat OAM, Chairman of the Cocos Co-operative Society Ltd.
>
> The Memorandum of Understanding marks a significant stage in the integration of the Cocos (Keeling) Islands with Australia.
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> When the Cocos community voted for integration in 1984 in a United Nations Act of Self Determination, the Government gave a commitment that

equivalent mainland standards of living would be introduced for the Cocos Islanders within 10 years.

This Memorandum of Understanding now sets out the remaining measures to be taken by each of the parties towards fulfilment of that commitment. When fully implemented, the people of Cocos will have the same rights, benefits and obligations as mainland Australia.

The agreement affirmed by the MOU signing provides for a broad range of reforms, including major law reform, upgrading of government works and services, and the application of mainland employment conditions, taxes and assistance measures.

For their part, the community has agreed to broaden the role and responsibilities of the Cocos (Keeling) Islands Council, in line with the functions carried out by mainland local government, and to restructure the Cocos Co-operative Society along more commercial lines.

The terms of the MOU were developed from the recommendation of the Commonwealth Grant's Commission's Second Report on the Cocos (Keeling) Islands. The Government announced in August last year that it accepted most of the Commission's recommendations, following extensive consultations with the Cocos Community.

In setting appropriate standards for delivering services to the community, the Government has decided to adopt Western Australian models, principles and practices as far as possible.

This will provide the community with an identifiable mainland model against which to measure their progress in achieving comparable mainland living conditions.

On 12 September 1991 the Minister for the Arts, Tourism and Territories, Mr Simmons, issued a news release announcing the Government's response to the Parliamentary Committee Report, which read in part as follows:

Residents of Australia's Territories will soon have access to modern legal systems and the full range of legal rights and protection that is available to other Australians, according to the Minister for the Arts, Tourism and Territories, David Simmons.

Mr Simmons' comments follow the release of the Government's response to the House of Representatives Standing Committee on Legal and Constitutional Affairs' report "Islands in the Sun". The report examined the adequacy of the Territories' legal regimes.

...

For the Indian Ocean Territories of the Cocos (Keeling) Islands and Christmas Island, the Government has decided that, by 1 July 1992, all Commonwealth laws will extend to the Islands, and their antiquated local ordinances will be replaced with a modern, living body of law based on that of Western Australia.

"This will end once and for all their deficient colonial legal regimes inherited at the time these Islands were transferred from British to Australian control. Application of contemporary laws will ensure the same rights, benefits and responsibilities for Territories' residents as are enjoyed by their fellow Australians. It will provide a sound basis on which the Territories can establish viable economic development and investment opportunities and manage their own local affairs, equivalent to those of comparable mainland communities", Mr Simmons said.

...

In response to the Committee's recommendation that the Territory of Ashmore and Cartier Islands be incorporated into the Northern Territory, the Commonwealth will consider that proposal when Statehood for the Northern territory is under consideration.

Incorporation of the Coral Sea Territory into Queensland, as recommended by the Committee, is an option in any Government consideration of the future Constitutional status of the Territory.

Territory – Australian external territories – Australian Antarctic Territory – Antarctic Mining Prohibition Act 1991

On 6 March 1991 the Minister for the Arts, Tourism and Territories, Mr Simmons, introduced the Antarctic Mining Prohibition Bill 1991 into Parliament, and explained the purpose of the Bill in part as follows (HR Deb 1991, pp 1417–18):

This Bill gives effect to the Government's pledge to work towards prohibiting mining in Antarctica. On 17 August 1990 the Minister for Foreign Affairs and Trade (Senator Evans) and the Minister for the Arts, Sport, the Environment, Tourism and Territories (Mrs Kelly) announced the Government's decision to introduce legislation to ban all mining in Antarctica to the extent of Australia's legal capacity to apply such a ban. This Bill achieves that objective.

This Bill will prohibit minerals activity in the Australian Antarctic Territory, and will prohibit Australian nationals and corporations from undertaking minerals activities elsewhere in the Antarctic region. The Bill is a first key step towards achieving our objective of comprehensive and legally binding protection of the Antarctic environment.

...

This Bill will assist in achieving a prohibition on all mining and related activities in Antarctica by banning mining by Australians and non-Australians alike in the Australian Antarctic Territory. This is some 42 per cent of the Antarctic continent. In addition, the legislation will prohibit Australian nationals and corporations from engaging in mining activity elsewhere in Antarctica.

The Bill recognises the need to allow for activities in support of scientific work. The legislation is targeted at commercial minerals activity and has been drafted so as not to apply to scientific research and building and maintenance activities in support of scientific stations. The Government recognises the importance of Antarctica for scientific research and, for example, will not stand in the way of legitimate geological and geophysical research. Nor does the legislation apply to foreign nationals or corporations of countries which have enacted similar legislation. The reason for this is simple: the Government is seeking to encourage other countries to put in place similar legislation binding on their nationals. It is pleasing to see that a number of other countries have already moved in this direction.

The penalties for contravention of the legislation are, in the case of an individual, a maximum if $100,000 and, for a body corporate, $500,000. Offences are indictable, although provision has been made for proceedings to be heard summarily if it is proper to do so and both the defendant and prosecutor agree. In that case, the maximum penalties are correspondingly reduced.