

RESPONSE OF THE AUSTRALIAN GOVERNMENT
TO THE VIEWS OF THE COMMITTEE IN
COMMUNICATION NO. 1157/2003 COLEMAN V AUSTRALIA

1. The Australian Government presents its compliments to the members of the Human Rights Committee.
2. The Australian Government has given careful consideration to the views of the Committee adopted on 17 July 2006 concerning Communication No 1157/2003 Coleman v Australia, which have been published by the Australian Government. The Australian Government provides the following information in response to the Committee's views.

Articles 9(1), 9(5), 15 and 21

3. Australia welcomes the Committee's finding that the author's allegations of a contravention by Australia of article 9 paragraph 5, article 15 and article 21 of the International Covenant on Civil and Political Rights ('Covenant') were not sufficiently substantiated, and the Committee's finding that it was not necessary to address the author's claim in relation to article 9, paragraph 1.

Article 19(2) – Freedom of Expression

4. The Australian Government does not accept the Committee's view that the reaction to the author's conduct amounted to a breach by Australia of article 19(2) of the Covenant. The Australian Government reiterates its submission that section 8(2)(e) of *Townsville City Council Local Law No 39* ('the Council By-Law') is a restriction on freedom of expression which is provided by law and necessary for the protection of public order and therefore permitted by article 19(3)(b) of the Covenant.
5. The Australian Government does not dispute that the author has the right to freedom of expression under article 19(2) and that the application to him of the Council By-Law amounted to a restriction of that right. However the Covenant does allow restrictions on the right to freedom of expression which comply with article 19(3). The critical issue in this case is therefore whether the restriction

imposed on the author by the Council By-Law was permissible under article 19(3).

Legality of a Permit System

6. The Australian Government agrees with the statement contained in the concurring opinion of Committee members Mr. Nisuke Ando, Mr. Michael O'Flaherty and Mr. Walter Kälin that it is wholly consistent with the Covenant to have in place a permit system to strike appropriate balances between freedom of expression and countervailing interests. The Council By-Law, which attempts to regulate the use of the Flinders Pedestrian Mall in Townsville, Queensland, for public speeches or demonstrations, represents such a permit system.
7. Such a permit system is designed to balance the rights of individuals to exercise their freedom of expression and the legitimate countervailing interests of the community generally, and in particular other users of the pedestrian mall. Examples of interests of others which would be adversely affected by an unrestricted right for individuals to stage public addresses or demonstrations in a pedestrian mall include:
 - interests of the public in having a shopping environment which is free from undue noise or interference;
 - interests of traders and shop owners in ensuring that potential customers have access to their shops and a pleasant environment in the mall is maintained;
 - interests of other individuals or groups who may wish to legitimately use the public space for other activities such as public markets, public entertainment, community groups, special events, fundraising campaigns, information booths for charity organisations etc; or
 - interests of other individuals who may also wish to exercise their freedom of expression (i.e. preventing one individual from monopolising use of a particular space or curtailing other persons with differing views from presenting their message).
8. It may in some circumstances be necessary to regulate the exercise of individuals' rights to freedom of expression within a pedestrian mall to protect these interests in order to respect the legitimate rights of other users of the

pedestrian mall and to maintain public order within the pedestrian mall. Therefore the Australian Government submits that the existence of a permit system, although amounting to a restriction on freedom of expression within the pedestrian mall, is permitted under article 19(3).

Legality of Townsville City Council By-Law

9. The Australian Government acknowledges that the mere existence of some permit systems which are of extremely broad application may amount to an unacceptable restriction on freedom of expression.¹ By contrast, the Council By-Law only requires a permit in a relatively small public area and leaves other areas of the city available for public speeches. The Council By-Law also allows a political speech such as the one given by the author to be given within the pedestrian mall without a permit, provided the speech is given from a booth set up for political purposes.²
10. The permit system established by the Council By-Law is not therefore a permit system which is so broad that its mere existence constitutes an infringement of freedom of expression. In other communications the Committee has held that the right to freedom of expression, although including the author's freedom to choose the medium of expression, does not guarantee an unfettered right to use a particular premises or area.³ Similarly in *Auli Kivenmaa v Finland*,⁴ which the author relied upon in his submissions, the Committee noted that a requirement to provide prior notification of a demonstration would not necessarily result in a violation of the freedom of opinion in article 21 of the Covenant and may be compatible with the Covenant.
11. The Australian Government therefore agrees with the comments of the Committee members in the concurring opinion that the establishment of a permit system is wholly consistent with the Covenant.

Legality of the Application of the Permit System to the author's case

12. In determining whether the restriction on the author's right to freedom of expression constituted a breach of article 19(2), the Australian Government believes that the critical issue is not whether the requirement to obtain a permit

¹ See for example the case of *Lovell v. City of Griffin*, 303 US 444 (1938), which prohibited distribution of 'literature of any kind' anywhere within the city without a permit.

² By-law 8 clause (1) of the *Townsville City Council Local Law No 39*

³ *Ernst Zündel v. Canada* – Communication No. 953/2000, Canada, 29/7/03, UN Doc CCPR/C/78/D/953/2000

⁴ Communication No. 412/1990, Finland. 10/06/94, UN Doc CCPR/C/50/D/412/1990

was permitted under article 19(3), but whether the application of the permit system by the authorities to the particular circumstances of the author's case was permissible under article 19(3).

13. As the concurring opinion points out, the author declined to seek a permit and therefore did not afford the authorities the opportunity to grant or deny a permit. In fact, in proceedings in the District Court of Queensland, where the District Court dismissed an appeal by the author against his conviction against the Council By-Law, as well as in correspondence with various authorities concerning the conviction, the author maintained that he did not or should not be required to obtain a permit. The Townsville City Council ('Council') has advised the Australian Government that as at December 2003, the author had never applied for a permit under the Council By-Law, despite having given a number of public addresses in the pedestrian mall.
14. Additionally, the author states in his response to Australia's submissions to the Committee that during 1998 he had begun a "petitioning campaign" calling for a "trial of free speech, including the setting up of stalls to hand out material and for the council to allow people to speak without permission anytime they want". Correspondence from the Council to the author reveals that the author had previously engaged in activities in the mall as part of his free speech campaign, which were seen by the Council (and allegedly by members of the general public) as disruptive and detracting from the enjoyment of the mall by the general public, particularly during the mall's busiest days, such as days on which the "Cotters Market" were held. The Council had, as a result of Mr Coleman's campaign, agreed to introduce a designated podium to allow persons to give addresses. However, the Council believed it was still necessary to enforce the Council By-Law to protect the interests of other users of the mall.
15. The address giving rise to the author's complaint was given on 20 December 1998, a day when the "Cotters Market" were taking place at the pedestrian mall. The Council has indicated that "Mr Coleman would be likely to receive a permit if he applied for one for a day other than a Cotters Market day, and that Council would be likely to arrange for an alternative venue to the Flinders Mall if Mr Coleman remained committed to making the address on a Cotters Market day".
16. This reveals that the Council's position was not to deny the author's freedom of expression by arbitrarily or capriciously refusing to grant him a permit, or to prevent him from speaking in the mall under any circumstances. On the

contrary the Council did try to accommodate the author's desire to hold public addresses in the mall, but wished to retain some control over these activities in the form of enforcing the Council By-Law and requiring a permit. The author however opposed and resisted any form of restriction or regulation on his right of freedom of expression, and appears to have taken the position that this right allows him to take part in a public address without any restriction or regulation whatsoever. This position is clearly inconsistent with the Covenant and the decisions of the Committee which establish that the right of freedom of expression is not absolute and restrictions on this right are permissible provided they comply with Article 19(3).

17. The Australian Government also notes that the detention of the author which eventually resulted from the offence was not merely a result of the author giving a public address without a permit, but was a result of the author's refusal to pay the fine imposed for this offence by the Queensland Magistrate's Court. In the author's conviction in the Queensland Magistrate's Court, the prosecution submitted that a fine should be imposed due to the contempt with which the author treated the Magistrate's Court proceedings. Nevertheless the Magistrate canvassed a number of alternative sentencing options permitted under Queensland law including probation orders or community service orders. These alternative options were refused by the author, apparently based on his belief that he should be entitled to give public addresses in the mall without requiring a permit. The author had also refused offers from other people to pay the fine on his behalf. The author's failure to pay the fine of \$300 resulted in his arrest on 8 August 1999 for failure to pay the fine. During that arrest for failure to pay the fine he also resisted arrest and was charged with obstructing a police officer.
18. The Australian Government respectfully submits that the Committee did not give sufficient weight to these factors in reaching its decision. The Committee's decision appears to be on the basis that Australia's response to the author's infringement of the Council By-Law was disproportionate. However, the Australian Government submits that consideration should be given to the overall circumstances of the case, including the author's previous history of engaging in public addresses without obtaining a permit (including allegedly in a manner which disrupted public order in the mall), the author's refusal to accept that a permit was required, the author's refusal to cooperate with the Council or the Queensland Police in attempting to accommodate him and provide an appropriate forum for him to exercise his freedom of expression and the author's conduct in refusing to consider non-monetary sanctions.

19. Based on these factors the Australian Government believes that the treatment of the author was not disproportionate. Although the author's right to freedom of expression was restricted by the application of the Council By-Law, the restriction imposed by the Council By-Law was legitimate and necessary to protect public order in the mall and the rights of other users of the mall and the general community. The author's breach of the by-laws ultimately resulted in his arrest, fine and imprisonment for 5 days for failure to pay the fine. A fine of \$300 could not be considered disproportionate, and the decision of Queensland authorities to imprison the author for non-payment of the fine appears to be influenced by the author's repeated history of breaching the Council By-Law both before and after the occasion the subject of the author's complaint, and the author's persistent refusal to accept the legitimacy of any sanctions for his disregard of the Council By-Law. The Australian Government therefore submits that the author's treatment was a proportionate response and was therefore not in violation of Article 19 of the Covenant.
20. In view of the fact that the Australian Government does not accept that it has violated its obligations under any provision of the Covenant, it does not accept the Committee's view that the Australian Government should quash the author's conviction, provide the author with restitution of the fine and court expenses paid by the author or provide compensation for the author's detention.
21. The Australian Government avails itself of this opportunity to renew to the Human Rights Committee the assurances of its highest consideration.