RESPONSE OF AUSTRALIA TO THE VIEWS OF THE HUMAN RIGHTS COMMITTEE IN COMMUNICATION NO. 1968/2010 (BLESSINGTON AND ELLIOT V AUSTRALIA)

The Australian Government presents its compliments to members of the Human Rights Committee. The Australian Government has given careful consideration to the Committee's Views in Communication No. 1968/2010 *Blessington and Elliot v Australia,* in consultation with the State of New South Wales (NSW). Australia provides the following comments to the Committee on the sentencing legislation in NSW relevant to the authors.

The available avenues for review of the detention of the authors and prospects of release remain the same as when the Australian Government's submissions were lodged in 2012. After serving at least 30 years of their sentences, the authors will be eligible to apply to the Supreme Court of NSW for the determination of a non-parole period for their sentences. The authors may make one application to the Supreme Court. If the Supreme Court declines to set a non-parole period, the authors will be required to serve their existing life sentences.

In considering an application, under Schedule 1 of the *Crimes Sentencing Procedure Act 1999* (NSW), the Supreme Court must have regard to all of the circumstances surrounding the offence for which the sentence was imposed, and all offences of which an offender has been convicted. In addition, the Supreme Court must:

- Have regard to and give substantial weight to any relevant recommendations, observations and comments made by the sentencing Court when imposing the sentence;
- Give consideration to adopting or giving effect to those recommendations, observations and comments; and
- To the extent that it declines to adopt or give effect to any such recommendations, observations and comments, make a record of its reason for doing so.

If the Supreme Court declines to set a non-parole period, the authors may appeal to the Court of Criminal Appeal. Under section 154A(1) of the *Crimes (Administration of Sentences) Act 1999* (NSW), the State Parole Authority would not be required to consider whether the authors should be released on parole unless they make an application.

Under section 154A(3)(a) of the *Crimes (Administration of Sentences) Act 1999* (NSW), after considering an application, the State Parole Authority could only release the authors on

parole if satisfied on the basis of a report prepared by the Chief Executive Officer of Justice Health, that the authors:

- Are in imminent danger of dying, or are incapacitated to the extent that they no longer have the physical ability to do harm to any person; and
- Have demonstrated that they do not pose a risk to the community.

The State Parole Authority must be satisfied that because of those circumstances, the making of such an order is justified. The Royal Prerogative of mercy remains an avenue for the authors to seek Executive clemency.

The Australian Government avails itself of this opportunity to renew to the Human Rights Committee the assurances of its highest consideration.