

RESPONSE OF THE AUSTRALIAN GOVERNMENT
TO THE VIEWS OF THE COMMITTEE IN
COMMUNICATION NO. 1885/2009, HORVATH v AUSTRALIA

20 October 2014

1. The Australian Government presents its compliments to the members of the Human Rights Committee (the Committee).

2. The Australian Government wishes to advise the Committee that the responsible authorities in the State of Victoria have taken the following steps to remedy the circumstances represented in Ms Horvath's complaint by:

- compensating the author, and
- amending the relevant legislation.

3. However, the Australian Government would like to register its disagreement with the Committee's interpretation of article 2(3) of the Covenant, as represented in its Views in this matter.

Adequate compensation

4. Government agencies of the State of Victoria have apologised to the author and paid her compensation taking into account:

- the compensatory damages awarded by domestic courts
- the amounts the author has already received
- the passage of time, and
- the circumstances of the case.

Legislative reform

5. At paragraph 10 of the Views, the Committee recommended that:

... the State party should review its legislation to ensure its conformity with the requirements of the Covenant.

6. The State of Victoria has changed laws to provide an effective remedy for all torts committed by police including assault, battery, false imprisonment and malicious prosecution. On 1 July 2014 sections 72-81 of the *Victoria Police Act 2013* (Vic) replaced section 123 of the *Police Regulation Act 1958* (Vic) with a statutory model of State liability for police conduct in Victoria.

7. The new scheme ensures that victims of tortious police misconduct are compensated, whilst ensuring that police do not avoid consequences for abuse of office. Police may still be personally liable for serious and wilful misconduct in the purported course of duties. However, if the victim cannot recover compensation from the police officer responsible for the misconduct, the State must pay compensation (section 79).

Article 2(3) of the Covenant: Right to an effective remedy

8. In light of the Committee's finding that 'the facts before it reveal a violation of article 2, paragraph 3 in connection with articles 7; 9, paragraph 1; and 17 of the Covenant', the Committee stated that it would:

not consider whether the circumstances of the case constitute a separate violation of articles 7; 9, paragraphs 1; and 17. Neither will it consider whether there was a violation of article 10, paragraph 1, on its own and read together with article 2 paragraph 3, and of article 9, paragraph 5.¹

¹ Human Rights Committee, Views concerning Communication No. 1885/2009 (*Horvath v Australia*), CCPR/C/110/D/1885/2009, 27 March 2014, paragraph 8.8 (Views).

9. The Australian Government notes the Committee's reliance at paragraph 7.3 on 'the acknowledgement by domestic courts of the civil responsibility of State agents for domestic law violations, which are covered by articles 7; 9, paragraph 1; and 17 of the Covenant'.

10. The Australian Government refers to the individual opinion of Committee member Ms Anja Seibert-Fohr, joined by Mr Walter Kälin and Mr Yuji Iwasawa, and notes with agreement its statement that article 2(3) 'does not provide for an independent free-standing right'.² It also refers to the statement at paragraph 8 of General Comment No. 31 that the need to provide effective remedies arises 'in the event of breach' under article 2(3).³

11. The Australian Government considers that, to be consistent with the terms of the Covenant, it was necessary for the Committee to find a primary violation of the substantive rights of the Covenant claimed by the author prior to considering the right to an effective remedy under article 2(3). The Australian Government respectfully notes its position that the right to an effective remedy cannot be found in the absence of any consideration of a substantive violation of the Covenant.

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

² Views, page 19.

³ Human Rights Committee, *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 29 March 2004, paragraph 8.