

Petitions Team, Office of  
the High Commissioner for  
Human Rights, United  
Nations Office at Geneva,  
1211 Geneva  
10, Switzerland.  
Fax: +<sup>0015</sup> 41 22 9179022,  
email: tb-petitions.hchr@unog.ch

COMPLAINT OF : Patrick John Coleman

Nationality: Australian Citizen

Date of Birth: 22/11/1972

Place of Birth: Liverpool District Hospital in the State of New South Wales, Australia.

This is the only international remedy that has been begun by the complainant.

Please confirm receipt by mail, also

Email: Patrick.Coleman@jcu.edu.au , or , howardsafreak@hotmail.com

Patrick John Coleman

Signed: *Patrick Coleman*

Date: *14/1/2003*

Amendment 0 "The Nature of the  
Complaint", where it says "has been  
wrongfully infringed" delete "has", insert  
"have" after the word "been" insert "violated  
and" wrongfully infringed.

In 5(8) "Conclusion", where it says in  
5(1) "have been derogated from",  
after "been" insert "violated and" "derogate  
from. PK 15/1/2003

**IN THE UNITED NATIONS HUMAN RIGHTS COMMITTEE**

**BETWEEN**

**Patrick John Coleman**

**(Australian Citizen, Resident of Townsville in The State of Queensland,  
Australia)**

**And**

**Sergeant Nicholas Sellars (Of The Queensland Police Service)**

**First Respondent**

**And**

**The Townsville City Council (In the State of Queensland)**

**Second Respondent**

**And**

**The State of Queensland (In the Commonwealth of Australia)**

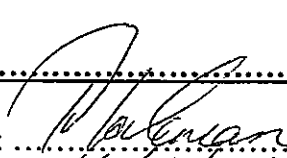
**Third Respondent**

**And**

**The Commonwealth of Australia (State Party, Member of The United Nations,  
Signatory to The International Covenant on Civil And Political Rights, and to  
The First Optional Protocol to that Covenant)**

**Fourth Respondent**

.....  
Filed by Patrick John Coleman.  
Address, 15 Ethel st Hyde Park 4812  
Queensland, Australia

Signed:   
Date: 14/1/2003


**(1) NATURE OF THE COMPLAINT**

- (1) The complainant, complains that his rights to freedom of speech and expression and assembly under articles 19 and 21 of the International Covenant on Civil and Political Rights, and, his right not to be convicted of something that was not an offence under national or international law at the time, under article 15 of the same covenant, has been wrongfully infringed by the respondents. The complainant also asserts that the alleged law under which he was convicted is an infringement of Article 9(1) of the same covenant and leaves him subject to further charges. The complainant asks for a remedy.
- (2) The preferred remedy is that the state party implement its obligations under the said covenant on a national basis, and also that the burden of the conviction (*Convicted 3/3/1999*) for an "Unlawful Public Address" on 20/12/1998 (*under s8 (2)(e) of Chapter 39 of the Townsville City Council By Laws*) be removed from my record, and compensation be granted (pursuant to Article 9(5)) for having being subjected to the prosecution, appeals, and, for the effect on my reputation.
- (3) The complainant also asks for the removal of a conviction he gained (*Convicted 6/12/1999*) for obstructing police (*under s120 of the Police Powers and Responsibilities Act 1997, Queensland Legislation*) on 29/8/1999, when he was arrested on a warrant, as a result of refusing to pay a \$300 fine, which, was a result of the conviction for giving the speech. The complainant passively sat on the ground in protest during that arrest. The complainant seeks compensation for 5 days imprisonment that resulted from the warrant.

**(2) JURISDICTION AND ADMISSABILITY**

- (1) The State Party, Australia, ratified the International Covenant on Civil and Political Rights on the 13<sup>th</sup> of August 1980, and the First Optional Protocol to the covenant on the 25<sup>th</sup> of December 1991.
- (2) Chapter 39 of the Townsville City Council By Laws (Pedestrian Malls), was a law made pursuant to an "Order in Council" given by The Governor of Queensland on the 13<sup>th</sup> of July 1981 stating that the Western End Of Flinders st Townsville (*Between Stokes and Stanley streets, which was separate to the Eastern end, see page 5, line 40, and page 8, line 30, and page 85, line 20 and 21 of the Magistrates Court Transcript*) -was a permanent Pedestrian Mall, and making regulations (not including s8 (2)(e) or any other restrictions on protest) that came into effect on 18<sup>th</sup> August 1981.
- (3) Chapter 39 of the Townsville City Council By Laws derived its history from that proclamation, s8 (2)(e) came some time later, however, the second respondent only relied on the proclamation, which came into effect on the 18<sup>th</sup> August 1981 as a law. The event of my prosecution occurred after the assent by Australia to the 1<sup>st</sup> Optional Protocol. I submit that my complaint is admissible.

.....  
Filed by Patrick John Coleman.  
Address, 15 Ethel st Hyde Park 4812  
Queensland, Australia

Signed:   
Date: 14/11/2003

- (4) s(8)(2)(e) of Chapter 39 , is not a law which predated the ratification by Australia, of the International Covenant on Civil and Political rights (see *The Queensland Court of Appeal decision -Coleman v Sellars [2000] QCA 465 par [53] which says it was 1982 when s(8)(2)(e) came into effect* ) .
- (5) Having appealed to the High Court of Australia, which denied my appeal and upheld the conviction, my domestic remedies have been exhausted.

**(3) The Relevant Provisions Of Chapter 39 of Townsville City Council By Laws (Pedestrian Malls) states –**

8(1) *This By-law does not apply to the setting up and use of booth for religious, charitable, educational or political purposes or of a booth to be used at or near a polling booth, for, or for a meeting in connection with, an election in respect of either House of the Commonwealth Parliament, the Legislative Assembly or a Local Authority.*

(2) *No person shall –*

- (a) *sell or offer for sale any goods;*
- (b) *display any goods for sale;*
- (c) *carry on any business;*
- (d) *perform any form of entertainment;*
- (e) ***take part in any public demonstration or any public address;***
- (f) *use or permit or suffer to be used any megaphone, sound amplifier, radio, loud speaker, gramophone (sic) or the like or any other means of mechanically, electrically or artificially increasing or reproducing sound; or*
- (g) *take or have or to be in control of anything whatsoever whether animate or inanimate used or which is apparently designed or capable of being used for or in connection with any of the purposes enumerated in paragraphs (a) to (f) (both inclusive) of this Clause of this By-law, in or upon a pedestrian mall without a permit in writing from the Council.*

(3) *A person who desires to obtain a permit for the purposes of this By-law shall make application in writing therefore in the prescribed form. The application shall be lodged with the Council and shall be accompanied by the prescribed fee and such other information as the Council may require.*

(4) *Upon application made to it under this By-law the council may:-*

- (a) *grant a permit; or*
- (b) *refuse a permit; or*
- (c) *grant a permit subject to such conditions as the Council shall think fit.*

(5) *A permit issued under this By-law shall be in writing.*

(6) *It shall be a condition of every permit issued under this Bylaw on breach whereof the permit may be revoked by the Council: -*

.....  
 Filed by Patrick John Coleman.  
 Address, 15 Ethel st Hyde Park 4812  
 Queensland, Australia

Signed: *Patrick John Coleman*  
 Date: *14/1/2003*

(a) that the holder of the permit will at all times obey the provisions of this Chapter, the Order in Council and the conditions, if any, subject to which the permit was granted; and

(b) that the permit in writing shall be produce (sic) to an Authorised Person (Pedestrian Mall) forthwith upon request made by the Authorised Person (Pedestrian Mall) in that behalf.

(7) Unless sooner revoked a permit issued under this By-law shall remain in force from the date of issue up to and including the expiry date written on the face of the permit or if no expiry date is so written up to and including the thirtieth day of June next following the date of the issuing of the permit.

#### (5) The Facts

- (1) On Sunday the 20<sup>th</sup> of December 1998, I gave a speech in the Western End of the Flinders Pedestrian Mall, standing variously on a fountain, and cement table that were not in use.
- (2) I spoke for around 15 minutes reading out the Universal Declaration of Human Rights, criticising the Australian Governments treatment of Australian Aboriginal People and also criticising the Townsville City Council. Before this I had been petitioning people and handing out leaflets (page 22 and 65 court transcripts). At no stage did I make any racist statements (ibid 62). I was carrying a large red flag over my shoulder with the pole being 2.8 metres long and the flag being 2 metres by 1 metre.
- (3) At all times I was being video taped by the police who had a station in the eastern end. The police did not approach or stop me.
- (4) After I finished speaking, I stopped to talk to various people before leaving the mall and going home.
- (5) On the 23<sup>rd</sup> of December, I was in gaol, having had to surrender myself because I had accidentally turned up to a court appearance for another matter on the wrong day (1 day late). A Police officer, the then Constable Nicholas Sellars, told me that I was not going to like what he was about to do. He charged me under the by law for what I had done on Sunday the 20<sup>th</sup> (page 68 of the court transcripts).
- (6) I decided to plead not guilty and defend this matter. A trial took place presided over by an acting magistrate (Mr McFadden) on the 3<sup>rd</sup> of March 1999 in the Magistrates Court Townsville. The Townsville City Council prosecuted the matter, and although the police officer had charged me, he did not give evidence.

.....  
Filed by Patrick John Coleman.  
Address, 15 Ethel st Hyde Park 4812  
Queensland, Australia

Signed: .....  
Date: ..... 14/1/2003

- (1) The Evidence of the witnesses, especially the council workers, was that I was there with a red flag and giving a speech, that I had engaged in this sort of activity maybe 20-30 times (*ibid, page 13*), the council argued that this was not relevant to this charge (*ibid page 22, 24*). The evidence of all witnesses is that I was peaceful at all times, and the Townsville City Council was at pains to point out that this was irrelevant to the charge (*ibid page 24,25,26,27,84*).
- (2) I attempted to argue in the court that my actions were protected by the right of assembly, the universal declaration of human rights and the international covenant on civil and political rights, where they protect freedom of speech (*ibid page 71,80,81*).
- (3) I was convicted because the magistrate held that one person was not an assembly and therefore I was not protected by The Peaceful Assembly Act. The magistrate also held that the markets were advertised for people to assemble and purchase items not for political purposes. He was scathing of references to human rights saying that he accorded the material with the respect it deserved. I was ordered to pay a \$300 fine or get 10 days in gaol and \$3035 in costs or 101 days in gaol, which I later refused to pay and got gaoled for not paying the fine.
- (4) I appealed the matter to the District Court and the magistrate's decision was upheld, on the grounds that 1 person is not protected by the peaceful assembly act. The Judge was similarly disposed towards human rights matters calling them "philosophical analogies".
- (5) On Sunday 29<sup>th</sup> of August 1999, whilst I was giving another speech in the mall, at the same spot, I was approached by 2 police officers, who said they had a warrant for my arrest, because, I refused to pay the fine ordered on 3/3/1999. I refused to go willingly , and sat on the ground, making them carry me. I was charged with obstructing police for that dissent. I was taken to the Townsville Police Watch house where I was imprisoned. I began an immediate hunger strike. I was kept at the watch house for 5 days then transferred to Stuart Prison (Townsville), where, although I had 5 days to go, I was released that same day because of a policy of all fine defaulters not having to complete the last 7 days of any imprisonment. I was taken back to town and released in the street where I ended my hunger strike.
- (6) As I could not obtain legal assistance, I appealed the s(8)(2) (e) matter again (out of time) myself to the Queensland Court of Appeal. At the hearing were it was decided to grant leave to appeal, the Chief justice said that an argument based on the peaceful assembly act would not be successful. I was given leave to appeal and subsequently obtained legal aid. I was represented by an appointed barrister and solicitor, appointed by the state. My argument was not followed by the barrister in the way it was supposed to be. I had argued that my conduct was protected by our constitutional common law which is supposed to protect peaceful political communication (if there are no safety considerations) and that the by-law was bad because it allowed the council an unlimited discretion to consent to or refuse a permit in an arbitrary manner.

.....  
Filed by Patrick John Coleman.  
Address, 15 Ethel st Hyde Park 4812  
Queensland, Australia

Signed: .....  
Date:..... 14/11/2003 .....

- (7) My appeal was dismissed on the grounds that the council had argued at that late stage (*Coleman v Sellars* [2001] QCA 465 at [22], [44],) that I could have exercised my rights anywhere else but the Flinders Mall, the court followed some American cases (*ibid par* [13]-[16], [65]) which also said that. The court denied the appeal and upheld the conviction but overturned the costs order.
- (8) I appealed to the High Court of Australia (*High Court of Australia, Coleman v Sellars and anor, B14/2001, given 26 June 2002*), and was represented by a pro Bono lawyer as I was refused legal aid. Through my lawyer I argued that what the council said, about there being ample places other than the mall to give speeches without a permit, and in an unregulated manner, was not correct, and pointed the court to the council's other by-law Ch15, which makes it illegal in any park or reserve, to sing, speak, carry a sign, meet, hand out leaflets etc without a permit with the same sanctions. The High Court refused to grant me special leave to appeal on the grounds (*Following the decision of Justice Muir in the court of appeal decision par* [41]) that s8 (1) of Ch 39 allowed me to give a speech, in the mall, without a permit, as long as I had a "booth" which could have been just a milk crate to stand on with an umbrella, Justice Muir said "a table and possibly a chair" (*Coleman v Sellars* [2000] QCA 465 *par* [36]). The conviction for giving a speech without a permit was upheld because I did not have these items.
- (9) I then knew I had a right to seek a remedy through the United Nations Human Rights Committee, but did not know how to do this, nor whether there were set forms and applications etc. That was the cause of the delay in bringing this complaint.

**(6)ARTICLES 9(1) and (5) , 15(1), 19 AND 21 OF THE ICCPR**

(1) Article 9 of The International Covenant on Civil and Political Rights states in part-


*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.*

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

(2)Article15 (1) of The International Covenant on Civil and Political Rights states in part

*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.*

.....  
 Filed by Patrick John Coleman.  
 Address, 15 Ethel st Hyde Park 4812  
 Queensland, Australia

Signed:  .....  
 Date: 14/1/2003 .....

(3)Article 19 of the same instrument states –

*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.*

(4)Article 21 of the same instrument states –

*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.*

**(7)MY ARGUMENT TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE**

- (1) I submit to the committee that this case is in line with the facts of those in the case of Auli Kivenmaa v Finland, Communication No. 412/1990: Finland. 10/06/94. (CCPR/C/50/D/412/1990. (Jurisprudence)).

There, in that case, the state party had called an assembly to welcome a visiting head of state. Ms Kivenmaa and her friends turned up and hoisted a banner and engaged in other expressive conduct. She was charged with doing so without a permit. This committee held in that case –

*“[9.2] .... A requirement to pre-notify a demonstration would normally be for reasons of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. Consequently, the application of Finnish legislation on demonstrations to such a gathering cannot be considered as an application of a restriction permitted by article 21 of the Covenant.*

.....  
Filed by Patrick John Coleman.  
Address, 15 Ethel st Hyde Park 4812  
Queensland, Australia

Signed: .....  
Date:.....



9.3 *The right for an individual to express his political opinions, including obviously his opinions on the question of human rights, forms part of the freedom of expression guaranteed by article 19 of the Covenant. In this particular case, the author of the communication exercised this right by raising a banner. It is true that article 19 authorizes the restriction by the law of freedom of expression in certain circumstances. However, in this specific case, the State party has neither referred to a law allowing this freedom to be restricted nor established how the restriction applied to Ms. Kivenmaa was necessary to safeguard the rights and national imperatives set forth in article 19, paragraphs 2 (a) and (b) of the Covenant.*" [(3)(a) and (b)- typo]

I submit firstly that because the Council advertised that people can come to the open air, publicly owned, pedestrian mall to take part in the traditional Sunday markets, that I had a right to assemble with those people, my fellow citizens. It is just that I chose to give a speech.

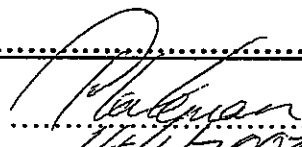
I also had a right to freedom of speech and freedom of expression and to exercise that right by imparting information orally (*article 19(2) ICCPR*). I spoke on the issue of human rights by simply reading out the universal declaration (which also protects free speech).

All of the witnesses in the court proceedings gave evidence that I was peaceful. I did not interfere with any persons business nor did I obstruct the passage of any persons. The police video taped me and did not intervene. No doubt they would have if there were a threat to public order or the right and freedoms of others. The Council argued that threats to public order were not an element of the charge or the evidence against me. Simply, that I did not ask them for permission to speak.

The by-law gives the council and arbitrary power to refuse a permit for no reason; this sort of law is not a reasonably justifiable law to have in a democratic society, as persons could be refused a permit on the basis of their political views. A person could also be made to wait for an unlimited time before the application is refused. I take the committee to the Canadian authority of *Re Ontario Film and Video Appreciation Society v Ontario Board of Censors (1983) O.R (2d) 583at 585-592*, and submit that it should also be followed. It states in part –

*“ any limits placed on freedom of expression cannot be left at the whim of an official; such limits must be articulated with some precision or they cannot be considered to be law”*

.....  
Filed by Patrick John Coleman.  
Address, 15 Ethel st Hyde Park 4812  
Queensland, Australia

Signed:   
Date: 14/1/2003

Further –

*“These sections in so far as they purport to prohibit or to allow censorship of films, may be said to be “of no force or effect”, but they may be rendered operable by .....the enactment of statutory amendments imposing reasonable limits and standards”*

This decision was upheld on appeal with the Canadian Supreme Court ((1984) 45 O.R. 80 at 80-81-82-83) there holding that it would go further than the lower court, -

*“The subsection allows for the complete denial or prohibition of the freedom of expression in this particular area and sets no limits on the Ontario Board of Censors .It clearly sets no limits, reasonable or otherwise, on which an argument can be mounted”*

The decisions upheld that the alleged law could not be said to be “prescribed by law” because it was bad. I submit to the committee, that the word “established” in article 9(1) may be interchangeable with “prescribed”.

The council by-law states that a permit may be granted or refused, subject to any conditions the council may see fit, and if it is granted, it can be revoked for no reason. This can leave a person subject to an arbitrary whim of an official, which can lead to an arrest under s16 of Ch39 by a police officer. This may be so, regardless of whether or not an arrest, or restriction of the right to freedom of expression is needed for the reasons articulated in article 19(3). That is, whether or not it is justified. There is just no way of knowing.

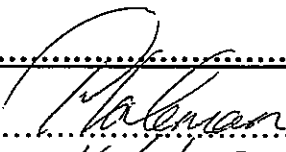
There are no grounds or procedure for refusal to grant, nor for revocation. It is not a good law. It, s8 (2), itself is inconsistent with article 9 (1).

I further submit-

The Townsville City Council at no stage provided evidence that the prosecution was necessary for any of the reasons provided for in article 19(3) of the ICCPR.

I also take the committee to the English, American and Australian authorities concerning breach of the peace *see R v Howell [1982] QB 416; Cohen v. California, 403 U.S. 15 (1971), Texas v Johnson (1989) 491 US 397 at 343,354,355,356,357,364, Watson v Trennery (1998) 122 NTR 1 at p 6, 8, 12,14 Per Angel and Mildren JJ.*

.....  
Filed by Patrick John Coleman.  
Address, 15 Ethel st Hyde Park 4812  
Queensland, Australia

Signed:   
Date: 14/1/2003

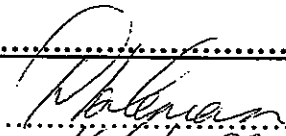
I would draw the committee's attention to footnote 11 of Texas v Johnson, (Johnson was prosecuted for burning the American flag) where it states –

*“THE CHIEF JUSTICE'S dissent appears to believe that Johnson's conduct may be prohibited and, indeed, criminally sanctioned, because "his act . . . conveyed nothing that could not have been conveyed and was not conveyed just as forcefully in a dozen different ways." Post, at 431. Not only does this assertion sit uneasily next to the dissent's quite correct reminder that the flag occupies a unique position in our society - which demonstrates that messages conveyed without use of the flag are not "just as forcefu[l]" as those conveyed with it - but it also ignores the fact that, in Spence, supra, we "rejected summarily" this very claim. See 418 U.S., at 411 “*

I would also invite the committee to adopt the reasoning of Justice Angel in *Watson v Trennery* at page 6 , where it was held –

*“The peaceable combination of people in public places for the purposes of expressing opinions and of protest against political decisions is but the exercise of the ordinary civil freedoms of opinion, of speech, of assembly and of association. These freedoms reflect the importance our society places on open discussion and the search for truth, the need for diversified opinions to be known and for the strengths and weaknesses of those opinions to be identified, the right to criticise, the value of tolerance of the opinions of others, and the social commitment to the value of individual autonomy, all vital to the health of any democratic system of open government. A peaceful demonstration or protest, whether by assembly or procession in a street is nowadays accepted by members of the community as a safety valve for the community and potentially at least as an agent for change and for the good. An ordinary incident of any assembly or procession through the streets is some inconvenience to others. Protests test tolerance of difference and of inconvenience. There may be some noise. Members of the public may witness and hear messages they did not wish to see and to hear. They may consider such messages to be anathema.*

.....  
Filed by Patrick John Coleman.  
Address, 15 Ethel st Hyde Park 4812  
Queensland, Australia

Signed:   
Date: 14/1/2003

*There may be a gross affront to some sensibilities. Nonetheless peaceable protests are to be tolerated in the recognition of the freedom of others to hold different opinions, to speak, to assemble, and to associate. As Bray CJ said extra-curially on one occasion, "Diversity is the protectress of freedom.", (1971) 45 ALJ 586. In short, peaceful demonstrations and protests (whether by way of procession or assembly) are the lawful exercise of freedoms which, whilst necessarily imposing on others, are tolerated in the absence of associated unlawful acts."*

The American, English and Australian authorities state that there must be an actual breach of the peace, and that there must be something sufficiently serious enough to warrant the interference with the criminal law before a person should be prosecuted.

This is consistent throughout, it seems, the common law world.

I would ask the committee to find the decisions of *R v Howell* at 387(f) and (g), 388(b), *Turner v Patterson* (1908) NZLR 207 at 210, and *Wornes v Rankmore* (1976) QR 85 as being persuasive of the international common law recognition of certain principles.

In *R v Howell* at 387 Lord Watkins applied *Stones Justice Manual* (3<sup>rd</sup> Edn, 1845,p15)- (quoted in part)

*" A private person may apprehend without a warrant, on view of a breach of the peace, and before an affray is over.....and a constable without a warrant.....a party who has been guilty of a breach of the peace , if there are reasonable grounds for apprehending its continuance or immediate renewal , but not otherwise"*

And, at 388 -9 it was stated (and now applied in Australia) -

*"...even in these days when affrays and riotous behaviour and other disturbances happen all too frequently , we cannot accept that there can be a breach of the peace unless there has been an act done which actually harms a person , or in his presence his property , or is likely to cause such harm , or which puts someone in such fear of harm being done"*

*"....we think, the word 'disturbance' when used in isolation cannot constitute a breach of the peace."*

I submit that those statements, and those of the American Supreme court in *Cohen and Johnson* are consistent with article 19(3), further-

.....  
Filed by Patrick John Coleman.  
Address, 15 Ethel st Hyde Park 4812  
Queensland, Australia

Signed: .....  
Date:.....

In *Wornes v. Rankmore, ex parte Rankmore* (1976) QR 85, per Williams J, at pages 104 and 105, which was applied by a Townsville Magistrate, Mr Verra, (19 October 2000, *Constable Power v Coleman*) acquitting me of disorderly behaviour and of obstructing police, where he wrote

*"Whilst circumstances necessarily have required the legislature to cut down or extinguish some of the basic rights of the individual for the betterment of the public generally and so have provided for numerous occasions upon which police officers may arrest without warrant, it is helpful to examine the circumstances where under at common law a peace officer (a term which included a sheriff, coroner, constable or Justice of the Peace) might arrest without warrant".*

*His Honour referred to the 12th edition of Russell on Crime at page 660 and the final paragraph of the passage to which he refers states:*

*"He may arrest any person who, in his presence, commits a misdemeanor or breach of the peace if the arrest is effected at the time when or immediately after the offence is committed or while there is danger of its renewal, but not after the breach or danger of its renewal has ceased".*

*His Honour then noted;*

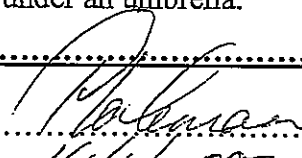
*"The above passage is interesting in relation to the necessity for the arrest to be almost contemporaneous with the offence or whilst there is a danger of its renewal".*

It was 3 days after I gave a speech peacefully, that I was unjustifiably charged.

My argument under article 15 is put in this way, if, I had read out my speech and another person was with me, and that person was also involved, then, as the courts would have it, I would have been protected by the right to assemble under s5 (1) of the Peaceful Assembly Act 1992 of Queensland (which was enacted to conform with the ICCPR), because it would have been found to have repealed the council by law. The right to impart information orally is a necessary concomitant to the right of assembly. It is also ironic that the high court found that I could have given the speech, even without a permit, if I had simply stood on a soapbox under an umbrella.

---

Filed by Patrick John Coleman.  
Address, 15 Ethel st Hyde Park 4812  
Queensland, Australia

Signed:   
Date: 14/1/2003

In the Exchange between my counsel and Her Honour Justice Gaudron , the following was said –

*GAUDRON J: Do you not have to come to grips with the fact, Mr Horler, that by-law 8(1) does, in fact, provide for political speech, albeit that it requires, as your submissions say, a milk crate and an umbrella?*

*MR HORLER: If he had done that he would not have had to make the application, which could have been capriciously refused to him, as the by-law requires.*

*GAUDRON J: Do you not have to come to grips with the fact that if he had done that there would have been no restriction at all on speech of the kind protected by the Constitution?*

Further-

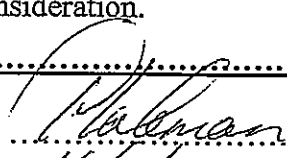
*GAUDRON J: The applicant seeks to challenge the validity of by-law 8(2)(e) of Chapter 39 of the by-laws of the Townsville City Council on the ground that it infringes the implied right of communication with respect to political matters recognised by this Court in *Nationwide News Pty Limited v Wills*, (1992) 177 CLR 1 and *Australian Capital Television Pty Limited v Commonwealth*, (1992) 177 CLR 106.*

*No error of principle is to be discerned in the approach of the Court of Appeal to the question whether that right is infringed by by-law 8(2)(e). Moreover, given the terms of by-law 8(1), the decision of the majority that by-law 8(2)(e) is not invalid is not attended with sufficient doubt to justify the grant of special leave.*

Thus, I submit, it can be said that to actually give a speech without a permit was not in itself a crime against national law at the time. It is also not against international law; in fact it is protected by it. Being restricted to a “booth” can also detract from freedom of movement, which is also a concomitant to freedom of expression and assembly, because a demonstration may be animated or need to move, especially in the case of street theatre.

There was no justification, in this particular case, in the terms expressed by article 19(3) of the ICCPR for my prosecution; there was no danger to national security, health, morals, nor indeed to public order. No evidence was given nor alleged to that effect and it was argued that it was an irrelevant consideration.

.....  
Filed by Patrick John Coleman.  
Address, 15 Ethel st Hyde Park 4812  
Queensland, Australia

Signed:   
Date: 14/1/2003

## **(8) CONCLUSION**

- (1) I Submit that, this complaint falls within the jurisdiction of the committee, and that this committee is able to find that my rights under articles 9(1) and (5), 15(1), 19 and 21 of the International Covenant on Civil and Political Rights have been derogated from by the respondents.
- (2) I submit that the committee can also find that it can ask the respondents to provide me with a remedy for the reasons I have argued.

## **DOCUMENTS TO BE PROVIDED TO THE COMMITTEE:**

- (1) The appeal book from the Queensland Court of Appeal, which contains
  - (a) The charge sheet
  - (b) A Copy of the "Order in Council" relied on by the prosecution and the police video (which I would ask to be returned when it is no longer needed).
  - (c) The transcript of proceedings of the Townsville Magistrates Court held 3/3/99 and the decision of the magistrate
  - (d) The transcript of proceedings of the appeal to the District Court Townsville Qld held 27 April 1999 and the documents that relate to that appeal and the decision of the district court judge
- (2) The transcripts of the application for leave to appeal to the court of appeal of Queensland, heard in Brisbane
- (3) A copy of the "Application Book" to the High Court of Australia containing –
  - (a) Documents relating to the appeal
  - (b) The decision of the Court of Appeal *Coleman v Sellars* [200] QCA 465
- (4) Copy of the decision of the High Court of Australia *Coleman v Sellars* B/14 of 2001 handed down 26 June 2002.
- (5) A Copy of the front page of the "Townsville Bulletin" showing how my reputation has been attacked by the Townsville City Council Mayor, with an accompanying threat of being bankrupted.
- (6) A Copy of –
  - (a) Chapter 1, of the Townsville City Council By laws (Penalty Provisions)
  - (b) Chapter 39, of the Townsville City Council By laws (Pedestrian Malls)
  - (c) Chapter 15, of the Townsville City Council By laws (Parks and Reserves)
  - (d) The Peaceful Assembly Act 1992 (Queensland Legislation)

## **LAW CASES TO BE RELIED ON**

- (1) *Auli Kivenmaa v Finland*, Communication No. 412/1990: Finland. 10/06/94. (CCPR/C/50/D/412/1990. (Jurisprudence)).
- (2) *Re Ontario Film and Video Appreciation Society v Ontario Board of Censors* (1983) O.R (2d), (1984) 45 O.R. 80
- (3) *R v Howell* [1982] QB 416
- (4) *Cohen v. California*, 403 U.S. 15 (1971)
- (5) *Texas v Johnson* (1989) 491 US 397
- (6) *Watson v Trennery* (1998) 122 NTR 1

- (7) Power v Coleman, decision of the Magistrates Court Townsville 19/10/2000
- (8) Wornes v. Rankmore, ex parte Rankmore (1976) QR 85
- (9) Turner v Patterson (1908) NZLR 207

### **INTERNATIONAL HUMAN RIGHTS INSTRUMENTS TO BE RELIED ON**

- (1) The Universal Declaration of Human Rights 1948
- (2) The International Covenant on Civil and Political Rights 1966

### **WEBLINKS**

#### **Chapter 1 of the Townsville City Council By-laws**

[http://www1.dlgp.qld.gov.au/LocalLaw/General%20Sets/TOWN/01\\_Preliminary%20LL\\_res19-01-80.pdf](http://www1.dlgp.qld.gov.au/LocalLaw/General%20Sets/TOWN/01_Preliminary%20LL_res19-01-80.pdf)

#### **Chapter 15 of the Townsville City Council By-laws- Parks and Reserves**

[http://www1.dlgp.qld.gov.au/LocalLaw/General%20Sets/TOWN/15\\_Parks%20and%20Reserves%20LL\\_res24-06-89.pdf](http://www1.dlgp.qld.gov.au/LocalLaw/General%20Sets/TOWN/15_Parks%20and%20Reserves%20LL_res24-06-89.pdf)

#### **Chapter 39 of the Townsville City Council By-laws- Pedestrian Malls**

[http://www1.dlgp.qld.gov.au/LocalLaw/General%20Sets/TOWN/39\\_Pedestrian%20Malls%20LL\\_res24-06-89.pdf](http://www1.dlgp.qld.gov.au/LocalLaw/General%20Sets/TOWN/39_Pedestrian%20Malls%20LL_res24-06-89.pdf)

#### **The decision of the Queensland Court of Appeal Coleman v Sellars [2001] QCA 465 –**

<http://www.courts.qld.gov.au/qjudgment/QCA%202000/101-/ca00-465.pdf#xml=http://courts.qld.gov.au/master.com/tehis/master/search/mysite.txt?q=COLEMAN&order=r&id=1841085a2c3d28f1&cmd=xml>

#### **The decision of the High Court of Australia in Coleman v Sellars B/14 of 2001, 26 June 2002**

<http://www.austlii.edu.au/au/other/hca/transcripts/2001/B14/1.html>

#### **The Peaceful Assembly Act 1992 Queensland.**

[http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/P/PeacefulAssA92\\_01A.pdf](http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/P/PeacefulAssA92_01A.pdf)



**The Police Powers and Responsibilities Act 1997 (for s120- obstruct Police – Repealed- renumbered s484)**

[http://www.legislation.qld.gov.au/LEGISLTN/REPEALED/P/PolicePowers\\_RespA97\\_01A\\_.pdf](http://www.legislation.qld.gov.au/LEGISLTN/REPEALED/P/PolicePowers_RespA97_01A_.pdf)

**Auli Kivenmaa v Finland Communication No. 412/1990: Finland. 10/06/94. (CCPR/C/50/D/412/1990. (Jurisprudence)).**

<http://www.unhchr.ch/tbs/doc.nsf/385c2add1632f4a8c12565a9004dc311/25b1f8136dfb035580256724005a0ca0?OpenDocument>

**Cohen v. California, 403 U.S. 15 (1971)**

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=403&invol=15>

**Texas v Johnson (1989) 491 US 397**

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/491/397.html>

**The Universal Declaration of Human Rights 1948 (United Nations)**

<http://www.un.org/Overview/rights.html>

**The International Covenant on Civil and Political Rights 1966 (United Nations)**

<http://www.austlii.edu.au/cgi-bin/disp.pl/au/other/dfat/treaties/1980/23.html?query=%7e+civil+and+political+right>

**ADDRESSES FOR SERVICE FOR THE RESPONDENTS**

(1) Solicitors for the 1<sup>st</sup> Respondent:

Sgt. Nicholas Sellars (Qld Police Service)  
C/o  
Queensland Police Service Solicitor  
Police Headquarters  
200 Roma St Brisbane, 4000  
Australia

(2) Solicitors for the 2<sup>nd</sup> Respondent:

Townsville City Council  
C/O  
King & Co Solicitors  
GPO Box 758  
BRISBANE QLD 4001  
Australia

(3) Solicitors for the 3<sup>rd</sup> Respondent:

The Hon Attorney General of The State of Queensland  
C/O  
C.W. Lohe  
Crown Solicitor For the State of Queensland  
11<sup>th</sup> Floor State Law Building  
50 ANN st Brisbane 4000  
Australia

(4) The Solicitors for the 4<sup>th</sup> Respondent being the State Party:

The Attorney General of The Commonwealth of Australia  
C/O  
The Australian Government Solicitor  
50 Blackall Street  
BARTON ACT 2600  
General Enquiries  
Telephone: +612 6253 7000  
Fax: +612 6253 7333  
E-mail: [ags@ags.gov.au](mailto:ags@ags.gov.au)

1300362162

NATIONS UNIES  
HAUT COMMISSARIAT AUX DROITS DE L'HOMME



UNITED NATIONS  
HIGH COMMISSIONER FOR HUMAN RIGHTS



Téléfax: (41-22)-9179022  
Télégrammes: UNATIONS, GENEVE  
Téléx: 41 29 62  
Téléphone: 0711 (41-22) 917 9237  
Internet: www.unhchr.ch  
E-mail: poertly@ohchr.org

Address:  
Palais des Nations  
CH-1211 GENEVE 10

REFERENCE: G/SO 215/51 AUSTL (52)  
11572003

3 June 2004

Dear Mr. Coleman,

I have the honour to enclose herewith a copy of the State party's submissions, dated 21 May 2004, on the admissibility and merits of the communication addressed by you to the Human Rights Committee for consideration under the Optional Protocol of the International Covenant on Civil and Political Rights, registered before the Committee as case No. 1157/2003.

You are kindly requested to supply your comments on these submissions within two months of today's date, that is to say, no later than 3 August 2004.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Maria Francisca Ize-Charrin'.

Maria Francisca Ize-Charrin  
Chief

Treaties & Commission Branch

Mr. Patrick Coleman  
15 Ethel St  
Hyde Park 4182  
Queensland  
AUSTRALIA

**Communication No 1157/2003**  
**Submitted by Mr Patrick John Coleman under the Optional Protocol to the International Covenant on**  
**Civil and Political Rights**

**AUSTRALIAN GOVERNMENT SUBMISSION**  
**ON ADMISSIBILITY AND MERITS**  
**TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE**

**Office of International Law**  
**Attorney-General's Department**  
**Canberra**  
**May 2004**

## CONTENTS

Introduction.....	4
Summary of Allegations and Responses .....	5
Chronology .....	9
Submissions on Admissibility.....	9
No Jurisdiction .....	10
Applicant not a Victim.....	11
Allegations not Substantiated .....	13
Allegations Incompatible with the Covenant.....	18
Merits Submissions on Individual Articles .....	22
Article 9.....	22
Australian Government Response.....	24
Article 15.....	28
Australian Government Response.....	29
Article 19.....	30
Australian Government Response.....	32
Article 21.....	35
Australian Government Response.....	36

### Schedule:

1. Townsville City Council Local Law No 39
2. *Nicholas Andrew Sellars v Patrick John Coleman*, decision of Magistrates Court, 3 March 1999
3. *Coleman v Constable Nicholas Sellars (Townsville Police) and the Townsville City Council*, Pack DCJ, District Court of Queensland, 7 June 1999
4. Decision of Magistrates Court, 6 December 1999
5. *Sellars v Coleman* [2000] QCA 465, decision of Supreme Court of Queensland, 21 November 2000

6. *Coleman v Sellars & Anor* B14/2001, decision of High Court of Australia,  
26 June 2002

## INTRODUCTION

1. By letter dated 14 February 2003 the Secretary-General of the United Nations conveyed to the Permanent Representative of Australia to the United Nations at Geneva the text of Communication No 1157/2003 concerning Australia. Communication No 1157/2003 was submitted to the Human Rights Committee (the Committee) by Mr Patrick John Coleman under the Optional Protocol to the International Covenant on Civil and Political Rights (the Optional Protocol).
2. The Committee requested, under Rule 91, paragraph 2 of the Committee's Rules of Procedures, that Australia provide information and observations relevant in respect of both the admissibility and the merits of the author's allegations.
3. To assist the Committee, documents relevant to Australia's arguments are contained in a schedule.
4. Having given careful consideration to each of the author's allegations, Australia submits that they are inadmissible and that the Committee should dismiss them without consideration of their merits. In the alternative, should the Committee be of the view that the allegations are admissible, Australia submits that each of the allegations should be dismissed as unmeritorious.

## SUMMARY OF ALLEGATIONS AND RESPONSES

### SUMMARY OF ALLEGATIONS

5. The author alleges that Australia has violated certain obligations under articles 9, 15, 19 and 21 of the International Covenant on Civil and Political Rights (the Covenant).
6. The communication contains a number of allegations which the author asserts amount to violations of the articles listed above. However, the author has not attempted to link the allegations to the specific articles or to explain the nature of the alleged violations. As the Committee will be aware, a number of the articles listed comprise a number of paragraphs and/or establish more than one right. Where this is the case, the author has not explained which paragraph or right established by a particular article he is alleging to have been violated.  
Nor has the author attempted to explain how each of the alleged violations of the Covenant relates to each of the allegations.

### SUMMARY OF AUSTRALIA'S RESPONSES

7. Australia submits that the allegations made by the author are inadmissible or, in the alternative, without merit.
8. Due to the lack of explanation in the communication, Australia has had to make assumptions about the exact nature of the alleged violations, based on the allegations contained in the communication. These assumptions are set out in Australia's submissions on individual articles. However, in relation to some of the articles allegedly violated, there is not enough information in the communication to make an assumption of the exact nature of the alleged violation. In such cases Australia has addressed the alleged violation generally but reserves the right to make further submissions should the need arise. Furthermore, the fact that Australia has had to make assumptions in order to address the communication should not in any way be taken to be an admission that the relevant article is applicable in the circumstances.

### ADMISSIBILITY

#### *No jurisdiction*

9. The communication alleges that the Covenant has been breached by Sergeant Nicholas Sellars (of the Queensland Police Service), Townsville City Council (in the State of Queensland), the State of Queensland (in the Commonwealth of Australia) and the Commonwealth of Australia (State Party, member of the United Nations, signatory to the International Covenant on Civil and Political Rights, and to the First Optional Protocol to that Covenant).<sup>1</sup>
10. Australia submits that the communication is inadmissible in so far as it is lodged against Sergeant Nicholas Sellars, Townsville City Council and the State of Queensland as they are not States Parties to the Covenant.

#### *Applicant not a victim*

11. Mr Coleman is not a victim under articles 9 and 15. His allegations under these articles are therefore inadmissible.

---

<sup>1</sup> Communication No 1157/2003, page 2.



***Non-substantiation of allegations***

12. Australia submits that the allegations under articles 9, 15, 19 and 21 are inadmissible because the author has not provided sufficient evidence in substantiation of his claims. For a claim to be admissible, it cannot just be an allegation, it must be an allegation supported by substantiating evidence.

***Incompatible with Covenant***

13. Australia submits that all of the allegations in the communication are inadmissible on the basis that they are incompatible with the Covenant as the facts alleged, if proven, could not amount to a violation of the Covenant.

## MERITS

14. Should the Committee be satisfied that any of the claims made by the author are admissible, Australia submits that the claims are without merit.
15. Australia submits that the author has provided insufficient evidence of a pertinent nature to permit an examination of the merits of the alleged violations and/or that the facts alleged do not constitute a breach of the Covenant.

## CHRONOLOGY

- 20 December 1998 The author delivers a public address at the Flinders Pedestrian Mall, Townsville.
- 23 December 1998 The author is charged under section 8(2)(e) of *Townsville City Council Local Law No 39* (the Council By-Law) for taking part in a public address in a pedestrian mall without a permit in writing from the Townsville City Council.
- 3 March 1999 The author is convicted in relation to the charge for delivering an unlawful public address and ordered to pay a fine of \$300 with 10 days of imprisonment on default, plus legal costs.
- 7 June 1999 The District Court of Queensland dismisses an appeal by the author against the conviction.
- 29 August 1999 The author delivers a speech at the Flinders Pedestrian Mall, Townsville. The author is arrested pursuant to a warrant for non-payment of the fine and is charged with obstructing police under section 120(1) of the *Police Powers and Responsibilities Act 1997* (Qld).
- 2 September 1999 The author is received into Townsville Correctional Centre. The General Manager at the Centre exercises his delegated authority under section 81 of the *Corrective Services Act 1988*, to approve five days early discharge for the author, which results in his release the same day.
- 6 December 1999 The author is convicted and fined in relation to charge of obstructing police.
- 21 November 2000 The Queensland Court of Appeal dismisses an appeal lodged by the author against the conviction relating to section 8(2)(e) of the Council By-Law, and overturns the costs order.
- 26 June 2002 The High Court of Australia denies the author special leave to appeal.

## SUBMISSIONS ON ADMISSIBILITY

### INTRODUCTION

16. Australia believes that the communication submitted by the author is inadmissible for a number of reasons. Some reasons concern the general nature of the communication. However, other reasons concern the specific allegations made against certain articles of the Covenant.
17. Each submission on admissibility is to be considered severally and in the alternative. Articles relevant to the admissibility requirements are set out below.

### RELEVANT LAW

18. Article 1 of the Optional Protocol provides that:

A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol.

19. Article 2 of the Optional Protocol provides:

Subject to the provisions of article 1, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.

20. Article 3 of the Optional Protocol provides:

The Committee shall consider inadmissible any communication under the present Protocol which is anonymous, or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the Covenant.

21. Rule 90 of the Committee's Rules of Procedure provides:

With a view to reaching a decision on the admissibility of a communication, the Committee, or a working group established under rule 89, paragraph 1, shall ascertain:

- (a) That the communication is not anonymous and that it emanates from an individual, or individuals, subject to the jurisdiction of a State party to the Protocol;
- (b) That the individual claims, in a manner sufficiently substantiated, to be a victim of a violation by that State party of any of the rights set forth in the Covenant. Normally, the communication should be submitted by the individual personally or by the individual's representative; a communication submitted on behalf of an alleged victim may, however, be accepted where it appears that the individual in question is unable to submit the communication personally;
- (c) That the communication does not constitute an abuse of the right of the submission;
- (d) That the communication is not incompatible with the provisions of the Covenant;
- (e) That the same matter is not being examined under another procedure of international investigation or settlement;
- (f) That the individual has exhausted all available domestic remedies.

## NO JURISDICTION

22. The communication alleges that the Covenant has been breached by Sergeant Nicholas Sellars (of the Queensland Police Service), Townsville City Council (in the State of Queensland), the State of Queensland (in the Commonwealth of Australia) and the Commonwealth of Australia (State Party, member of the United Nations, signatory to the International Covenant on Civil and Political Rights, and to the First Optional Protocol to that Covenant).<sup>2</sup>
23. Australia submits that the communication is inadmissible in so far as it is lodged against Sergeant Nicholas Sellars, Townsville City Council and the State of Queensland.
24. Pursuant to article 1 of the Optional Protocol to the Covenant, the Committee is competent to receive and consider communications from individuals who claim to be victims of a violation by a State Party who is a party to both the Covenant and Optional Protocol.
25. While Australia is a State Party to the Covenant and Optional Protocol, Sergeant Nicholas Sellars, Townsville City Council and the State of Queensland are not a State<sup>3</sup>. On this basis, it is submitted that the communication is inadmissible against each party except Australia.

## APPLICANT NOT A VICTIM

26. Australia submits that the author cannot be considered a 'victim' for the purposes of article 1 of the Optional Protocol and rule 90(b) of the Committee's Rules of Procedure in relation to certain of the alleged violations of the Covenant.
27. Pursuant to article 1 of the Optional Protocol the Committee can receive and consider communications from individuals who claim to be the victim of a violation of any of the rights set forth in the Covenant.
28. Australia notes the recent jurisprudence of the Committee in the matter of *Young v Australia*, where the Committee noted the author of a communication is a victim if 'he/she is personally adversely affected by an act or omission of the State party'.<sup>4</sup>
29. In the *Mauritian Women's Case (Communication No 35/1978, Aumeeruddy-Cziffra et al v Mauritius, Views adopted on 9 April 1981)*, the Committee stated:

A person can only claim to be a victim in the sense of article 1 of the Optional Protocol if he or she is actually affected. It is a matter of degree how concretely this requirement should be taken. However, no individual can in the abstract, by way of an *actio popularis*, challenge a law or practice claimed to be contrary to the Covenant. If the law or practice has not been concretely applied to the detriment of that individual, it must in any event be applicable in such a way that the alleged victim's risk of being affected is more than a theoretical possibility.
30. Australia's submissions as to why the author is not a victim are addressed below in relation to specific articles.

## Applicant not a victim - article 9(5)

---

<sup>2</sup> Communication No 1157/2003, page 2.

<sup>3</sup> For a discussion of the legal criteria of Statehood see: R Jennings and A Watts (eds), *Oppenheim's International Law*, 9<sup>th</sup> Edition, Harlow, Essex, 1992, Chapter 2.

<sup>4</sup> Communication No 941/2000, paragraph 9.3.

31. Australia submits that the allegation that it has violated article 9(5) is inadmissible on the basis that the author cannot be considered a victim. As set out above, the most recent decisions of the Committee generally consider that the author is a victim if he/she is personally affected by an act or omission of the State Party.
32. The communication does not contain any claims capable of supporting an assertion that the author could not access an effectively enforceable right to claim compensation. In fact the author makes no reference at all to the existence or lack of any enforceable right to compensation for victims of unlawful arrest or detention. The author simply claims an entitlement to compensation as a remedy.
33. In the absence of any reference to an act or omission of the State Party, the author cannot be considered to have been affected in relation to the right provided in article 9(5). As such, the author cannot be considered a victim in relation to article 9(5) for the purposes of article 1 of the Optional Protocol and article 90(b) of the Committee's Rule of Procedure.

#### **Applicant not a victim - article 15**

34. Australia submits that the allegation that it has violated article 15 is inadmissible on the basis that the author cannot be considered a victim. As set out above, the most recent decisions of the Committee state that the author is a victim if he/she is personally affected by an act or omission of the State Party. While it is not always clear in the circumstances whether the author has been personally affected, the jurisprudence from the Mauritian Women's Case states that the risk of being affected must be more than a 'theoretical possibility'.
35. With respect to article 15, the author claims that his actions did not constitute a criminal offence because if he had read out the speech with another person, he would have been protected under section 5(1) of the *Peaceful Assembly Act 1992*. This allegation is entirely irrelevant to article 15. The author makes no assertion that the criminal offence with which he was charged, was not in fact a criminal offence at the time the offence was committed. As such, he cannot have been affected by the application of a retrospective application of criminal laws. Australia therefore submits that the author cannot be considered a victim in relation to article 15 for the purposes of article 1 of the Optional Protocol and paragraph 90(d) of the Committee's Rules of Procedure.

#### **ALLEGATIONS NOT SUBSTANTIATED**

36. Australia submits that the author has failed to substantiate, to the degree required by article 2 of the Optional Protocol and rule 90(b) of the Committee's Rules of Procedure, that any of the articles of the Covenant have been violated. Australia submits that because of this lack of substantiation, the communication is inadmissible. Australia submits that such a finding is consistent with the Committee's jurisprudence on the issue of non-substantiation of allegations.<sup>5</sup>
37. Australia notes the Committee's jurisprudence that, for the purpose of an assessment of admissibility, an author must submit sufficient evidence in substantiation of the allegations to constitute a *prima facie* case.  
The Committee has stated that a 'claim, is therefore, not just an allegation, but an allegation supported

<sup>5</sup> See for example, *Werenbeck v Australia*, Communication No 579/1994; *Drake v New Zealand*, Communication No 601/1994; *Potter v New Zealand*, Communication No 632/1995; *Drobek v Slovakia*, Communication No 643/1999; *Laing v Australia*, Communication No 659/1995; *Sánchez v Spain*, Communication No 698/1996; *Jarman v Australia*, Communication No 700/1996; *Maloney v Germany*, Communication No 755/1997; *MF v Netherlands*, Communication No 173/1984; *Navarro v Spain*, Communication No 758/1997; *OF v Norway*, Communication No 158/1993; *MF v the Netherlands*, Communication No 173/1984; *JDB v the Netherlands*, Communication No 178/1984; and *Angel N Oló Bahamonde v Equatorial Guinea*, Communication No 468/1991.

by a certain amount of substantiating evidence'.<sup>6</sup> Commentators on this requirement have stated that 'one may expect that an author substantiate and convincingly plead his assertion that one of the rights under the Covenant has been violated'.<sup>7</sup>

38. Australia submits that in respect of all allegations, the author has not provided sufficient evidence in substantiation of his claim that Australia has violated the Covenant. In most cases the author has simply claimed without substantiating how the facts as alleged constitute a violation of relevant articles. In addition, the author has not provided sufficient evidence to permit Australia or the Committee to confidently make assumptions as to how the articles of the Covenant are alleged to have been violated or to ascertain that any violation may have occurred.
39. Australia submits, therefore, that the Committee should rule the entire communication to be inadmissible on the basis that the author has failed to substantiate any of the alleged violations of the Covenant to the degree required by article 2 of the Optional Protocol and rule 90(b) of the Committee's Rules of Procedure. If the Committee is of the view that some of the alleged violations of the Covenant have been substantiated for the purposes of a consideration of admissibility, Australia submits that the Committee's consideration should be limited to those particular alleged violations of the Covenant.

#### **Allegation not substantiated – article 9**

40. Australia submits that the allegations that articles 9(1) and 9(5) have been violated is inadmissible on the basis of the complete lack of substantiation of the allegation in the communication. As set out above, the Committee's jurisprudence on this point is that an author must submit sufficient evidence in substantiation of his allegations to constitute a *prima facie* case. For a claim to be admissible, it cannot just be an allegation, it must be an allegation supported by substantiating evidence.
41. Australia submits that the communication does not contain any claims that are capable of supporting an assertion that article 9(1) has been violated. The author was arrested and detained for failure to pay a \$300 fine imposed by the Townsville Magistrates' Court on 3 March 1999 in relation to the delivery of an unlawful address. The communication does not reveal any facts in substantiation of the author's claim that the procedure for granting a permit under the Council By-Law rendered his detention arbitrary or not in accordance with a procedure established by law. The author makes allegations solely in relation to the procedure for the granting of a permit not in relation to his arrest and detention.
42. Australia submits that the communication does not contain any claims that are capable of supporting an assertion that article 9(5) has been violated. The communication merely claims that the author is entitled to compensation as a remedy if Australia were in breach of Article 9(1). The communication does not even contemplate the existence or lack of any effectively enforceable domestic right to compensation.
43. Australia submits, therefore, that the claim that articles 9(1) and 9(5) have been violated has not been substantiated to the degree required by article 2 of the Optional Protocol and rule 90(b) of the Rules of Procedure and as such, is inadmissible.

#### **Allegation not substantiated – article 15**

44. Australia submits that the allegation that article 15 has been violated is inadmissible on the basis of the complete lack of substantiation of the allegation in the communication. As set out above, the Committee's jurisprudence on this point is that an author must submit sufficient evidence in substantiation of his allegations to constitute a *prima facie* case. For a claim to be admissible, it cannot just be an allegation, it must be an allegation supported by substantiating evidence.

---

<sup>6</sup> See for example, the Reports of the Human Rights Committee in United Nations Documents A/48/40, paragraph 781; A/47/40, paragraph 625; A/46/40, paragraph 679; A/45/40, paragraph 608; A/44/40, paragraph 633; A/43/40, paragraph 654; A/39/40, paragraph 588, A/52/40, paragraph 478; A/51/40, paragraph 388; A/50/40, paragraph 500.

<sup>7</sup> Manfred Nowak, *CCPR Commentary*, NP Engel, Kehl, 1993, p 667.

45. The author essentially argues that had the circumstances been different, he would not have been convicted under the Council By-Law. This does not address an 'act or omission' or raise any allegation that the crime of delivering an unlawful address did not constitute a criminal offence at the time it was committed.
46. Australia submits, therefore, that the claim that article 15 has been violated has not been substantiated to the degree required by article 2 of the Optional Protocol and rule 90(b) of the Rules of Procedure and as such, is inadmissible.

#### **Allegation not substantiated – article 19**

47. Australia submits that the allegation that article 19 has been violated is inadmissible on the basis of the complete lack of substantiation of the allegation in the communication. As set out above, the Committee's jurisprudence on this point is that an author must submit sufficient evidence in substantiation of his allegations to constitute a *prima facie* case. For a claim to be admissible, it cannot just be an allegation, it must be an allegation supported by substantiating evidence.
48. Australia submits that the communication does not contain any claims that are capable of supporting an assertion that article 19 has been violated. The author merely asserts that he had a right to freedom of expression under article 19(2) and that he exercised this right by reading out the 'universal declaration'. There is no evidence provided by the author concerning how this right was alleged to be infringed and there is insufficient evidence to support an assertion that article 19(2) has been violated.
49. In order to substantiate his claim under article 19(3), it is necessary for the author to provide evidence that the conviction under the Council By-Law was not provided by law and was not necessary to achieve one of the aims set out in that paragraph. The author only claims that the Townsville City Council 'at no stage provided evidence that the prosecution was necessary for any of the reasons provided for in article 19(3) of the ICCPR'. No evidence at all is submitted in support of this assertion.
50. Australia submits, therefore, that the claim that article 19 has been violated has not been substantiated to the degree required by article 2 of the Optional Protocol and rule 90(b) of the Rules of Procedure and as such, is inadmissible.

#### **Allegation not substantiated – article 21**

51. Australia submits that the allegation that article 21 has been violated is inadmissible on the basis of the complete lack of substantiation of the allegation in the communication. As set out above, the Committee's jurisprudence on this point is that an author must submit sufficient evidence in substantiation of his allegations to constitute a *prima facie* case. For a claim to be admissible, it cannot just be an allegation, it must be an allegation supported by substantiating evidence. It follows from this that merely asserting that the facts are similar to another communication considered by the Committee cannot be considered as substantiation of allegations.
52. Australia submits that the communication does not contain any claims that are capable of supporting an assertion that article 21 has been violated. The communication merely asserts that the author had a right to assemble and that the facts are similar to those in *Auli Kivenmaa v Finland* (Communication 412/1990).
53. In particular, Australia submits there are no facts that reveal there was an assembly. The generally accepted meaning of 'assembly' in Australia's legal system was considered by the Townsville Magistrates' Court. The Magistrate found:

the Macquarie dictionary states that assembly means a company of persons gathered together for the same purpose, whether religious, political, educational or social.

54. In relation to whether this was an 'assembly' in this case the Townsville Magistrates' Court found:



In the present case it is quite obvious from the testimony of the prosecution witnesses and from the surveillance video itself that there was absolutely no assembly or gathering of persons at any stage. The video clearly depicts the defendant [the author] standing on the edge of a water fountain and again on the table visibly moving his mouth as if he was speaking. This was confirmed by the prosecution witness, Ms Wendt and Mr McCoist. Throughout the video it is evidence [sic] that numerous persons were walking past the defendant, but at no stage could it be in any stretch of the imagination that there was ever a gathering of any persons for any intention for the same purpose. It is also evident from the video that nobody could ever be described as standing and actually listening to what the defendant was saying.<sup>8</sup>

55. The assertion that other people were passing through the mall is not sufficient to establish that there was an assembly for the purposes of article 21.
56. Australia submits, therefore, that the claim that article 21 has been violated has not been substantiated to the degree required by article 2 of the Optional Protocol or rule 90(b) of the Rules of Procedure and as such, is inadmissible.

#### ALLEGATIONS INCOMPATIBLE WITH THE COVENANT

57. Australia submits that the allegations contained in the communication are inadmissible pursuant to article 3 of the Optional Protocol and rule 90(d) of the Committee's Rules of Procedure on the basis that they are incompatible with the provisions of the Covenant.
58. Australia understands that a communication will be held to be inadmissible as incompatible with the provisions of the Covenant where the alleged facts, if proven, could not amount to a violation of the Covenant. Based on the jurisprudence of the Committee, this includes the situation where the communication alleges the violation of a right not recognised by the Covenant<sup>9</sup> and the situation where the article alleged to have been violated is not applicable to the facts as alleged by the author.<sup>10</sup>
59. Australia's submissions as to why the allegations are incompatible with the Covenant are addressed below, in relation to each of the articles allegedly violated.

#### *Allegations incompatible with the Covenant – article 9*

60. Australia submits that the allegations that it has violated articles 9(1) and 9(5) are inadmissible on the basis that the allegations are incompatible with the Covenant.
61. The author's claim in respect of article 9(1) essentially concerns the procedure for granting a permit under the Council By-Law. However, Article 9(1) concerns the law or procedure relating to detention and arrest. Australia submits there is no causal relationship between the grounds on which a permit is granted under the Council By-Law and the enforcement of a sentence imposed by a court of law.
62. In relation to article 9(5) of the Covenant, the author merely claims compensation as a remedy. On page 3 of the Communication, the author states:

The preferred remedy is that the state party implement its obligations under the said covenant on a national basis, and also that the burden of the conviction (*Convicted 3/3/1999*) for an "Unlawful Public Address" on 20/12/1998 (*under s8(2)(e) of Chapter 39*)

<sup>8</sup> Transcript of Proceedings, *Nicholas Andrew Sellars v Patrick John Coleman*, Decision of the Townsville Magistrates Court, 3 March 1999, p 89.

<sup>9</sup> See for example, *KB v Norway*, Communication No 053/1979 (concerning the right to dispose of property); *CE v Canada*, communication 013/1997, (the right to workers' compensation); and *IM v Norway*, Communication No 129/1982 (concerning taxation).

<sup>10</sup> See for example, *AS v Canada*, Communication No 068/1990.

of the Townsville City Council By Laws) be removed from my record, and compensation be granted (pursuant to Article 9(5) for having be[en] subjected to the prosecution, appeals, and, for the effect on my reputation.

63. Article 9(5) concerns the substantive right to claim compensation for unlawful arrest or detention before a domestic authority, not the possibility that the Committee might propose compensation in its views on a communication. Australia believes the allegations are clearly incompatible with the Covenant.
64. In summary, Australia submits that the allegations concerning articles 9(1) and 9(5) are inadmissible on the basis that the allegations are incompatible with the Covenant under article 3 of the Optional Protocol and article 90(d) of the Committee's Rules of Procedure.

#### ***Allegation incompatible with the Covenant – article 15***

65. Australia submits that these allegations do not fall within the scope of application of article 15 and thus should be declared inadmissible *ratione materiae* under article 3 of the Optional Protocol and rule 90(d) of the Rules of Procedure.
66. In essence, the author argues that he would not have been convicted of the criminal offence had the circumstances been different, that is if he was with another person. This is an entirely different proposition to the right protected under article 15. The act of delivering a public address without a permit constituted a criminal offence under the Council By-Law on the date it was committed. This was confirmed on appeal in the District Court. Thus, the assertions do not reveal any allegations of retrospective application of laws.
67. In addition, the author's claim in relation to article 15 does not relate to an 'act or omission'. On the contrary, the allegations concern a hypothetical and speculative set of circumstances.
68. Thus, the communication does not contain any claims that are capable of supporting an assertion that article 15 has been violated. Australia submits that this part of the claim is inadmissible, *ratione materiae*, under article 3 of the Optional Protocol and rule 90(d) of the Committee's Rules of Procedure.

#### ***Allegation incompatible with the Covenant – article 19***

69. Australia submits that these allegations do not fall within the scope of application of article 19 and thus should be declared inadmissible *ratione materiae* under article 3 of the Optional Protocol and rule 90(d) of the Rules of Procedure.
70. Article 19 concerns the right to freedom of expression subject to certain restrictions. In respect of the restrictions pursuant to article 19(3), the communication merely alleges that during the prosecution, the Townsville City Council did not provide any reasons as to why the prosecution was necessary under article 19(3). Australia submits that this allegation, even if accepted, has no bearing on whether the requirement to obtain a permit under the Council By-Law is provided by law and necessary for one of the reasons provided for in the article 19(3). The author's claims are essentially limited to the conduct of the trial.
71. Thus, the communication does not contain any claims that are capable of supporting an assertion that any part of article 19 has been violated. As such, this part of the claim is inadmissible, *ratione materiae*, under article 3 of the Optional Protocol and rule 90(d) of the Committee's Rules of Procedure.

***Allegation incompatible with the Covenant – article 21***

72. Australia submits that these allegations do not fall within the scope of application of article 21 and thus should be declared inadmissible *ratione materiae* under article 3 of the Optional Protocol and rule 90(d) of the Rules of Procedure.
73. The communication by the author concerns the delivery of a speech by the author and in no way contemplates an assembly of persons. The Committee is referred to the findings of the Townsville Magistrates' Court in paragraph 59 above. The finding of no assembly was confirmed by the appeal to the District Court. Pack DCJ found that 'the Magistrate correctly concluded that the Appellant's conduct fell well short of a public assembly and was therefore correct in his rejection of the application of the *Public Assemblies Act* to the facts of this matter'.
74. Thus, the communication does not contain any claims that are capable of supporting an assertion that any of article 21 has been violated. As such, this part of the claim is inadmissible, *ratione materiae*, under article 3 of the Optional Protocol and rule 90(d) of the Committee's Rules of Procedure.

## MERITS SUBMISSIONS ON INDIVIDUAL ARTICLES

### 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 procedures as are established by law.*

...

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

### ALLEGATIONS

75. The author alleges that the absence of criteria in the Council By-Law for the issuing and revocation of a permit is arbitrary and could lead to arrest. For this reason, the author argues the Council By-Law violated his right not to be subjected to arbitrary arrest or detention under article 9(1).
76. The author also appears to allege that the lack of criteria in the Council By-Law means it cannot be considered a procedure established by law in accordance with the third sentence of article 9(1).
77. On page 10 of the communication, the author states:

The Council by-law [the *Townsville City Council Local Law No 39*] states that a permit may be granted or refused, subject to any conditions the may council see fit, and if granted, it can be revoked for no reason. This can leave a person subject to an arbitrary whim of an official, which can lead to an arrest under warrant. This may be so, regardless of whether or not an arrest, or restriction of the right to freedom of expression is needed for the reasons articulated in article 19(3). That is, whether or not it is justified. There is just no way of knowing.

There are no grounds or procedure for refusal to grant, nor for revocation. It is not a good law. It, s 8(2), itself is inconsistent with article 9(1).

78. As a consequence, the author alleges that he is entitled to compensation pursuant to article 9(5) for having been unlawfully arrested or detained.

### RELEVANT LAW

#### *Article 9(1)*

79. Article 9(1) establishes the right to liberty, the right to security of person and a prohibition of arbitrariness in relation to arrest or detention.
80. The *travaux preparatoires* indicate that the drafters of the Covenant generally agreed that the notion of 'arbitrary' was intended to mean more than simply 'against the law'.<sup>11</sup>
81. Australia understands that the key elements in determining whether detention is arbitrary are whether the circumstances under which a person is detained are 'reasonable' and 'necessary' in all of the circumstances or otherwise arbitrary in that the detention is inappropriate, unjust or unpredictable. Further, detention will not be arbitrary if it is demonstrated to be proportional to the end that is sought.

---

<sup>11</sup> Marc Bossuyt, *Guide to the "Travaux Preparatoires" of the International Covenant on Civil and Political Rights*, Martinus Nijhoff Publishers, Dordrecht, 1987, p 172; Nowak, *op cit*, p 172.

82. In the matter of *Alphen v The Netherlands*, the Committee considered the meaning of arbitrary and expressed the view that:

This means that remand in custody pursuant to lawful arrest must not only be lawful but reasonable in all the circumstances. Further, remand in custody must be necessary in all the circumstances, for example to prevent flight, interference with evidence, or the recurrence of crime.<sup>12</sup>

83. Ultimately the question of whether detention is 'arbitrary' and in violation of article 9(1) relies on an examination of the particular factors justifying the detention.

#### **Article 9(5)**

84. Article 9(5) provides a right to compensation for persons who have been unlawfully deprived of their liberty. Manfred Nowak explains this refers to the existence of an effectively enforceable right to claim compensation before a domestic authority.<sup>13</sup> Australia understands that article 9(5) does not provide the Committee with the right to order compensation as a remedy.

#### **Townsville City Council By-Law No 39**

85. Copies of all of the provisions mentioned below are contained in the schedule to this Submission.

86. Relevant parts of section 8 of the Council By-Law are reproduced below:

- (1) This by-law does not apply to the setting up and use of a booth for religious, charitable, educational or political purposes or of a booth to be used at or near a polling place for, or for a meeting in connection with, an election in respect of either House of the Commonwealth Parliament, the Legislative Assembly or a Local Authority.
- (2) No person shall -  
...  
(e) take part in any public demonstration or any public address ... without a permit in writing from the Council.

#### **FACTS**

##### ***The author's detention***

87. The Committee is referred to the Chronology for details relevant to the allegations that article 9 has been violated in relation to the author.
88. Copies of all court decisions pertaining to the charge, arrest and detention of the author are contained in the schedule to this Submission.

#### **AUSTRALIAN GOVERNMENT RESPONSE**

89. Should the Committee be of the view that the allegation that article 9 has been violated is admissible, Australia submits that it is without merit on two grounds. Firstly, Australia submits that the evidence provided by the author is insufficient to enable a proper consideration of the merits of the allegation. Secondly, Australia submits that article 9 has not been violated in relation to the author.

---

<sup>12</sup> Communication No 305/1988, paragraph 5.8.

<sup>13</sup> Nowak, *op cit*, p 182.

### **Insufficient evidence**

90. Australia submits that the evidence provided by the author in the communication is not sufficient to enable a proper consideration of the merits of the alleged violation of article 9. For the evidence supplied by the author to be sufficient for a proper consideration of the merits of the communication, it must be of a 'specific, substantial, not of insubstantial nature and of pertinent character.'<sup>14</sup>
91. With respect to article 9(1), Australia submits that the author has not complied with this requirement. None of the allegations contained in the communication are capable of supporting an assertion that Australia has violated article 9(1) in relation to the author. The communication merely asserts that the procedure for granting the permit was arbitrary. Whether the procedure for granting a permit is arbitrary has no impact on the arrest of a person in accordance with the sentence imposed in relation to the Council By-Law. The author has not provided evidence of a specific, substantial and pertinent character to support the alleged violation of article 9(1).
92. Australia believes the author is dissatisfied with the conviction under the Council By-Law but his detention does not, without evidence of capriciousness, unreasonableness and lack of proportionality, mean that the detention contravenes article 9(1). Australia submits that the author has not provided such evidence, but has merely made unfounded assertions about a violation of article 9(1).
93. In respect of article 9(5), Australia submits that there are no allegations in the communication that reveal a violation of the right to claim compensation for unlawful arrest or detention before a domestic authority.

### **The author's arrest and detention were not arbitrary**

94. Should the Committee believe, however, that the author has provided sufficient evidence to support a consideration of the merits of the alleged violation of article 9(1), Australia submits that the Committee should find the allegation to be without merit for the reasons set out below.
95. As discussed above, when considering whether an arrest or detention is arbitrary the determining factor is whether it is justifiable. This includes elements of injustice, unpredictability, unreasonableness, capriciousness and disproportionality.
96. The author was sentenced in relation to a conviction under section 8(2)(e) of the Council By-Law by the Townsville Magistrates' Court on 3 March 1999. In the proceedings, the author indicated that he would not want to undertake community service. As a consequence, the Magistrate fined the author \$300 with 10 days imprisonment on default. The defendant requested 6 months to pay the fine, however the Magistrate imposed a time limit of 3 months.
97. The fine of \$300 was not paid by the author within the period specified. On 13 August 1999 a Warrant of Commitment under the *Penalties and Sentences Act 1992 (Qld)* was issued by the Townsville Magistrates Court. The warrant authorised the detention of the author for the default period of 10 days. The author was arrested and detained by virtue of the Warrant on 29 August 1999.
98. There is nothing to suggest that the arrest was arbitrary or that the sentence imposed was unfair or unjust. The arrest was made in accordance with normal police practice to arrest fine defaulters. With respect to the sentence, the Magistrate had initially suggested community service or a good behaviour bond. Mr Coleman rejected the community service option, stating 'I do not believe I was doing

---

<sup>14</sup> Dominic McGoldrick, *The Human Rights Committee: Its Role in the Development of the International Covenant on Civil and Political Rights*, Clarendon Press, Oxford, 1991, p 146.

anything wrong, so I do not believe I want to work it off.'<sup>15</sup> He also rejected the good behaviour bond: 'I cannot accept it because of my convictions. My personal convictions of what I believe was right, and if I said to you I was going to behave, Your Worship, I would be lying.'<sup>16</sup> The Magistrate imposed the conviction and fine of \$300, with 10 days' imprisonment on default 'in the circumstances.'<sup>17</sup>

99. On appeal, the sentence was considered by the District Court of Queensland. Pack DCJ found that the sentence was appropriate. He stated there was nothing to support a finding that the sentence was 'manifestly excessive, or that the costs order was inappropriate'.<sup>18</sup> Australia notes that the author was released from detention after serving 5 of the 10 days imprisonment.

100. For these reasons, Australia submits that the allegations that it has violated articles 9(1) and 9(5) are without merit.

---

<sup>15</sup> Transcript of Proceedings, *Nicholas Andrew Sellars v Patrick John Coleman*, Decision of the Townsville Magistrates Court, 3 March 1999, p 96.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> *Coleman v Constable Nicholas Sellars (Townsville Police) and the Townsville City Council*, Pack DCJ, District Court of Queensland, 7 June 1999, p 3.

## 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 recognised by the community of nations.*

### ALLEGATION

101. The author alleges that his conviction under the Council By-Law contravenes Article 15 because giving a speech without a permit was not a crime under national or international law.

102. The author states:

My argument under article 15 is put in this way, if, I had read out my speech and another person was with me, and that person was also involved, then, as the courts would have it, I would have been protected by the right to assemble under s 5(1) of the *Peaceful Assembly Act 1992* Queensland (which was enacted to conform with the ICCPR), because it would have been found to have repealed the council by law. The right to impart information orally is a necessary concomitant to the right of assembly.

... Thus, I submit, it can be said that to actually give a speech without a permit was not itself a crime against national law at the time. It is also not against international law; in fact it is protected by it.

### RELEVANT LAW

103. Australia understands that the purpose of article 15 is to prohibit retrospective application of criminal laws and penalties.

### AUSTRALIAN GOVERNMENT RESPONSE

104. Should the Committee find that the allegation that article 15 has been violated is admissible, Australia submits that it lacks merit on the basis that the evidence provided is not sufficient to enable a proper consideration of the merits of the communication.

105. For the evidence supplied by the author to be sufficient for a proper consideration of the merits of the communication, it must be of a 'specific, substantial, not insubstantial nature and of pertinent character'.<sup>19</sup> The author essentially argues that had the circumstances been different, he would not have been convicted under the Council By-Law. This does not address an 'act or omission' or raise any allegation that the crime of delivering an unlawful address did not constitute a criminal offence at the time it was committed.

---

<sup>19</sup> McGoldrick, *op cit*, p 146.



## 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.*

### ALLEGATION

106. The author alleges that his conviction under section 8(2)(e) of the Council By-Law violated his right to freedom of speech and expression under article 19.

107. More specifically, it appears that the author alleges that the application of section 8(2)(e) of the Council By-Law, resulting in a conviction and sentence, constituted a violation of article 19(2) of the Covenant.

108. In relation to article 19(2) the author states:

I also had my right to freedom of speech and freedom of expression and to exercise that right by imparting information orally (article 19(2) ICCPR). I spoke on the issue of human rights by simply reading out the universal declaration (which also protects free speech).

109. In relation to article 19(3) the author states:

The Townsville City Council at no stage provided evidence that the prosecution was necessary for any of the reasons provided for in article 19(3) of the ICCPR.

### RELEVANT LAW

110. Australia acknowledges and respects the right to freedom of expression.

111. Australia notes that article 19(3) expressly acknowledges the special duties and responsibilities that must accompany the exercise of this right. The Committee has stated:

it is for this reason certain restrictions on that right are permitted which may relate either to the interests of other persons or to those of the community as a whole. It is the interplay between the principle of freedom of expression and such limitations and restrictions which determines the actual scope of the individual's right.<sup>20</sup>

---

<sup>20</sup> General Comment 10 [19], 27 July 1983.

112. Article 19(3) requires that any restriction of the freedom of expression must cumulatively meet the following conditions: it must be provided for by law, address one of the aims enumerated in paragraph 3(a) and (b) and be necessary to achieve that legitimate purpose.<sup>21</sup>
113. The requirement of 'provided by law' generally means that any restriction must be 'set down in a general-abstract parliamentary act in the formal sense or an equivalent unwritten norm of common law and adequately specify the permissibility of given interference by enforcement organs'.<sup>22</sup>
114. The limitations permitted by paragraph 3 must have as their aims: respect of the rights or reputations of others and protection of national security or of public order (ordre public) or of public health or morals.
115. The 'protection of public order (ordre public)' has been defined as 'the sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded'.<sup>23</sup>
116. The requirement for the measures to be 'necessary' to achieve the aims in paragraph 3 has been described by Nowak to imply that 'the restriction must be proportional in severity and intensity to the purpose being sought'.<sup>24</sup>

## FACTS

117. The Committee is referred to the domestic legislation set out under the heading 'Facts' in relation to article 9.

## AUSTRALIAN GOVERNMENT RESPONSE

118. Should the Committee be of the view that the allegation that article 19 has been violated is admissible, Australia submits that it is without merit on two grounds. Firstly, Australia submits that the evidence provided by the author is insufficient to enable a proper consideration of the merits of the allegation. Secondly, Australia submits that article 19 has not been violated in relation to the author.

### *Insufficient evidence*

119. Australia submits that the evidence provided by the author in the communication is not sufficient to enable a proper consideration of the merits of the alleged violation of article 19. For the evidence supplied by the author to be sufficient for a proper consideration of the merits of the communication, it must be of a 'specific, substantial, not insubstantial nature and of pertinent character'.<sup>25</sup>
120. With respect to article 19, Australia submits that the author has not complied with this requirement. None of the allegations contained in the communication are capable of supporting an assertion that Australia has violated article 19 in relation to the author. In this connection, the Committee is referred to the submissions in relation to admissibility above. The author has not provided evidence of a specific, substantial and pertinent character to support the alleged violation of article 19.

---

<sup>21</sup> *Ballantyne and Elizabeth Davidson v Canada*, Communication No 359/1989; *Gordon Mc Intyre v Canada*, Communication No 385/1989, paragraph 11.4; *Jong-Kyu-Sohn v Republic of Korea*, Communication No 518/1992, paragraph 10.4.

<sup>22</sup> Nowak, *op cit*, p 351.

<sup>23</sup> UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights*, Annex, United Nations document E/CN.4/1985/4, paragraph 22.

<sup>24</sup> Nowak, *op cit*, p 353.

<sup>25</sup> McGoldrick, *op cit*, p 146.

***The author's conviction under the Council By-Law does not contravene article 19***

121. Should the Committee believe, however, that the author has provided sufficient evidence to support a consideration of the merits of the alleged violation of article 19, Australia submits that the Committee should find the allegation to be without merit for the reasons set out below.
122. Clearly the restriction is provided by law by virtue of being set out in section 8(2)(e) of the Council By-Law.
123. Australia submits that section 8(2)(e) of the Council By-Law is necessary for the protection of public order in accordance with article 19(3)(b) of the Covenant.
124. The Townsville City Council adopted a policy in relation to usage of the Flinders Mall on 24 April 1983. The policy approved the use of Flinders Mall for public forums and was designed to maximise the use of the Flinders Mall for public benefit without unduly affecting the public's enjoyment of the area. The permit system allows the Council to consider whether a proposal is likely to impact on the public amenity enjoyed by mall users (such as undue noise, crowding, impact on commercial activity or safety hazards).
125. Under section 8(2)(e) of the Council By-Law, a permit is required to 'take part in any public demonstration or any public address'. However, this does not apply to:
- the setting up and use of a booth for religious, charitable, educational or political purposes or of a booth to be used at or near a polling place for, or for a meeting in connection with, an election in respect of either House of the Commonwealth Parliament, the Legislative Assembly or a Local Authority.<sup>26</sup>
126. Thus, the requirement is not a blanket restriction on the right to freedom of expression in the area of the Flinders Mall and the restrictions placed by virtue of the permit system are aimed at orderly use of the Mall by the public as a whole.

---

<sup>26</sup> Section 8(1), Townsville City Council Local Law No 39.

## 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.*

### ALLEGATION

127. The author alleges his right to freedom of assembly under article 21 of the Covenant has been violated.

128. The author states:

I submit firstly that because the Council advertised that people can come to the open air, publicly owned, pedestrian mall to take part in the traditional Sunday markets, that I had a right to assemble with those people, my fellow citizens. It is just that I chose to give a speech.<sup>27</sup>

### RELEVANT LAW

129. Article 21 provides a right to peaceful assembly subject to certain limitations.

130. The term 'assembly' necessarily entails the gathering of more than one person. Nowak considers that 'assembly' is not defined but rather presumed. Therefore, it is to be interpreted:

in conformity with the customary, generally accepted meaning in national legal systems, taking into account the object and purpose of this traditional human right. It is beyond doubt that not every assembly of individuals requires special protection. Rather, only intentional, temporary gatherings of several persons for a specific purpose are afforded protection of freedom of assembly.<sup>28</sup>

### FACTS

131. The Committee is referred to the Chronology and the domestic legislation set out under the heading 'Facts' in relation to article 9.

### AUSTRALIAN GOVERNMENT RESPONSE

132. Australia refers the Committee to its general submissions on admissibility outlined above. Should the Committee be of the view that the allegation that article 21 has been violated is admissible, Australia submits that it is without merit.

133. Australia submits that the public address given by Mr Coleman on 20 December 1998 did not amount to an 'assembly'. In the Magistrates' Court proceedings, McFadden ASM considered the definition of 'assembly' and whether this was satisfied in the case of Mr Coleman. In the absence of a definition in the relevant legislation, McFadden ASM referred to the meaning given in the Macquarie dictionary. The definition is 'a company of persons gathered together for the same purpose, whether religious, political, educational or social'. He found in case of Mr Coleman that 'it is

---

<sup>27</sup> Communication No 1157/2003, p 9.

<sup>28</sup> Nowak, *op cit*, pp. 373-374.

quite obvious from the testimony of the prosecution witnesses and from the surveillance video itself that there was absolutely no assembly or gathering of persons at any stage'.<sup>29</sup>

134. On appeal, Pack DCJ in the District Court of Queensland confirmed that Mr Coleman was 'acting alone'.<sup>30</sup> This was confirmed on appeal to the Supreme Court of Queensland who confirmed that even members of a speaker's audience, by passively listening to an address, cannot be considered to be taking part in it.<sup>31</sup>

135. For these reasons, Australia submits that the allegation that it has violated article 21 is without merit.

---

<sup>29</sup> Transcript of Proceedings, *Nicholas Andrew Sellars v Patrick John Coleman*, Decision of the Townsville Magistrates Court, 3 March 1999, p 89.

<sup>30</sup> *Coleman v Constable Nicholas Sellars (Townsville Police) and the Townsville City Council*, Pack DCJ, District Court of Queensland, 7 June 1999, p 1.

<sup>31</sup> *Sellars v Coleman* [2000] QCA 465, p 3.

# TOWNSVILLE CITY COUNCIL

## LOCAL LAW NO. 39

### PEDESTRIAN MALLS

#### *Interpretation*

1. (1) In this Chapter unless the context otherwise indicates or requires, the terms undermentioned shall have the meaning set against each of them respectively, that is to say:

"Approved Vehicle. Label" - means a label issued by the Council in accordance with By-law 4 of this Chapter and which is capable of being affixed to the windscreen or some other conspicuous part of a vehicle;

"Authorised Person (Pedestrian Mall)" means any person appointed by the Council as an Authorised Person (Pedestrian Mall) for the purposes of this Chapter and includes an authorised person for the purposes of paragraph (ix) of subsection (24B) of section 35 of the *Local Government Act 1936-1982*;

"Clerk" means the Clerk of the Council of the City of Townsville;

"Delivery Vehicle" means a motor vehicle approved by the Council in accordance with this Chapter for entry into or upon a pedestrian mall during the prescribed hours for the purposes of delivering goods or picking up goods from premises adjacent to or adjoining a pedestrian mall;

"Essential Services Vehicle" - means a motor vehicle that is in the care or control of any Officer of the Ambulance Brigade, the Fire Brigade, the North Queensland Electricity Board, the Police Force, the State Emergency Service, Telecom Australia or the Council whilst such Officer is *bona fide* carrying out the duties assigned to him;

"Official Sign" - means any sign, signal, marking light or device placed, erected or put up in a pedestrian mall or by the authority of the Council or the Clerk for the purpose of regulating, prohibiting, warning or guiding persons using the pedestrian mall whether with or without vehicles;

"Order in Council" means an Order in Council duly made under the provisions of the *Local Government Act 1936-1982* and published in the Gazette whereby a road or part of a road within the Area of the Council is proclaimed as a pedestrian mall. The term includes an Order in Council whereby any of the provisions subject to or in accordance with which a pedestrian mall operates are altered. When used in respect of a particular pedestrian mall the term shall mean and refer to the Order in Council made in respect of the pedestrian mall in question;

"Owner" when the same is used in respect of a vehicle, means as well a person who is the owner within the meaning assigned to that term by the *Traffic Act 1949-1982* a person in whose name a vehicle is registered under the Regulations made under the *Main Roads Act 1920-1979* or under any corresponding Regulation, Ordinance, Law or By-law of any State or Territory of the Commonwealth of Australia;

"Pedestrian Mall" means a pedestrian mall proclaimed by Order in Council made under the provisions of the *Local Government Act 1936-1982* and published in the Gazette and which is specified in the Schedule to this definition, that is to say:

#### SCHEDULE

1. The Flinders Pedestrian Mall.

"Prescribed Hours" means the hours prescribed by By-laws 20 and 21 of this Chapter in respect of the pedestrian mall in question when delivery vehicles and service vehicles shall subject to the provisions of this Chapter be permitted in or upon the pedestrian mall in question;

"Service Vehicle" means a motor vehicle approved by the Council in accordance with this Chapter for entry onto or upon a pedestrian mall during the prescribed hours for the purposes of providing services to premises adjacent to or adjoining a pedestrian mall;

"Special Vehicle" means a vehicle approved by the Council in accordance with the by-laws for entry into or upon a pedestrian mall for a special purpose during the hours permitted by the Council;

"The Flinders Pedestrian Mall" means the pedestrian mall proclaimed as a pedestrian mall pursuant to subsection (24B) of section 35 of the *Local Government Act 1936-1982* by Order in Council made on the sixteenth day of August, 1979, and published in the Gazette on the eighteenth day of August, 1979, for a trial period of 12 months from the eighteenth day of August, 1979, part of which being that between the north-eastern alignment of Stokes Street and the south-western alignment of Denham Street, Townsville, having been proclaimed by Order in Council made on the seventh day of August, 1980, and published in the Gazette on the ninth day of August, 1980, as a permanent pedestrian mall, the other part of which, being that part between the north-eastern alignment of Stanley Street and the north-eastern alignment of Stokes Street, Townsville (the trial period in respect of the same having been extended by Order in Council made on the seventh day of August, 1980, and published in the Gazette on the ninth day of August, 1980; up to and including the eighteenth day of August, 1981) having been proclaimed by Order in Council made on the thirtieth day of July, 1981 and published in the Gazette on the first day of August, 1981, as a permanent pedestrian mall;

"The Picnic Bay Pedestrian Mall" means the pedestrian mall comprising those parts of the Esplanade and Yule Street, Picnic Bay, Magnetic Island, Townsville proclaimed as a permanent pedestrian mall pursuant to sub-section (24B) of Section 35 of the *Local Government Act 1936-1985*.

"Vehicle" means any description of vehicle drawn or propelled by animal or other motive power other than a velocipede as herein defined.

"Velocipede" means a bicycle, tricycle or other vehicle of similar description. The term does not include a wheelchair when such is being used by a person *bona fide* in need of the same by reason of the condition of his limbs or of his state of health.

- (2) A pedestrian mall shall be known by and may be described for all purposes whatsoever by the name assigned to the pedestrian mall by the Order in Council or by this Chapter.

*Authorised Person (Pedestrian Mall)*

2. (1) The Council may in writing appoint any person who is a permanent officer of the Council to be an Authorised Person (Pedestrian Mall) for the purposes of this Chapter either in respect of all pedestrian malls generally within the Area or in respect of the pedestrian mall or pedestrian malls
- (2) The Council may in writing at any time revoke an appointment made under clause (1) of this by-law.
- (3) A person appointed under clause (1) of this by-law as an Authorised Person (Pedestrian Mall) may resign by giving the Council one month's notice in writing in that behalf.

- (4) An Authorised Person (Pedestrian Mall) appointed under this Chapter shall exercise all the powers and functions and shall perform the duties of an Authorised Person (Pedestrian Mall) conferred upon him by the Council and as may be prescribed by the Local Government Act 1936-1982 and by an Order in Council.
3. (1) Every Authorised Person (Pedestrian Mall) appointed under this Chapter shall be issued with an identity card by the Council wherein shall be specified the name of the Authorised Person (Pedestrian Mall) for the purposes of this Chapter and where the Authorised Person (Pedestrian Mall) is appointed otherwise than in respect of all pedestrian malls generally a description of the pedestrian mall or pedestrian malls to which the appointment relates.
- (2) When exercising his powers and functions under this Chapter an Authorised Person (Pedestrian Mall) shall carry his identity card for the purposes of his identification.
- (3) An Authorised Person (Pedestrian Mall) shall upon ceasing to hold that appointment surrender his identity card to the Council.

#### *Approval of Vehicles*

4. (1) A person who desires to obtain approval of a vehicle as a delivery vehicle or as the case may be as a service vehicle or approval of a vehicle as a special vehicle for entry upon a pedestrian mall shall make application in writing to the Council in the prescribed form.

The application shall be lodged with the Council and shall be accompanied by the prescribed fee and such other information as the Council may require.

- (2) Without limiting the generality of clause (1) of this by-law, the Council may require an applicant to submit with his application evidence of the fact that he regularly delivers goods or picks up goods from premises adjacent to or adjoining a pedestrian mall or as the case may be that he regularly provides services to premises adjacent to or adjoining a pedestrian mall.
- (3) Upon application made to it under this by-law the Council may-
- (a) grant its approval;
  - (b) refuse to grant its approval;
  - (c) grant its approval subject to such conditions as the Council shall think fit including a limitation as to the pedestrian mall or as the case may be the pedestrian malls to which the approval shall apply.
- (4) An approval issued under this by-law shall be in writing and shall be accompanied by an approved vehicle label.
- (5) It shall be a condition of every approval issued under this by-law on breach whereof the approval may be revoked by the Council-
- (a) that the vehicle the subject of the approval shall whilst in or upon a pedestrian mall be used strictly and only in accordance with the provisions of this Chapter and the Order in Council and the conditions, if any, subject to which the approval was granted; and
  - (b) that at all times whilst in or upon a pedestrian mall the vehicle the subject of the approval shall have affixed to the left hand extremity of its windscreen or if the vehicle is not fitted with a windscreen shall have affixed to the vehicle in a conspicuous position the authorised vehicle label issued by the Council in respect of such vehicle.



- (6) Unless sooner revoked any approval issued under this by-law shall remain in force from the date of issuing up to and including the expiry date written on the face of the approval or if no expiry date is so written up to and including the thirtieth day of June next following the date of the issuing of the approval.

#### *Use of Vehicles in a Pedestrian Mall*

5. (1) Save as is otherwise provided by clause (2) of this by-law a person shall not take, propel, drive, wheel have in control or otherwise use a vehicle, velocipede or a roller skate or roller skates or a skateboard in or upon a pedestrian mall.
- (2) Clause (1) of this by-law shall not apply to the following vehicles-
- (a) Any delivery vehicle or service vehicle during the prescribed hours when such a vehicle shall subject to the provisions of this Chapter be permitted in or upon a pedestrian mall;
  - (b) Any essential services vehicle at such time or times when a need for the same to be in or upon the pedestrian mall has arisen when such a vehicle shall subject to the provisions of this Chapter be permitted in or upon the pedestrian mall in question;
  - (c) A special vehicle during the hours specified by the Council when granting its approval under this Chapter in respect of the special vehicle when such vehicle shall subject to the provisions of this Chapter be permitted in or upon the pedestrian mall specified in the approval.
6. No person shall-
- (a) drive a vehicle in or upon a pedestrian mall at a speed in excess of that indicated by an official sign or if there is no such official sign at a speed in excess of ten kilometres per hour;
  - (b) drive a vehicle into or out of a pedestrian mall at any point other than a designated entry or exit point;
  - (c) stop, stand or park a vehicle in or upon a pedestrian mall so as to hinder the free passage of other vehicles lawfully using the pedestrian mall;
  - (d) on any day Monday to Friday (both days inclusive) cause, suffer or permit a vehicle to be or to remain in or upon a pedestrian mall for a continuous period exceeding one hour without the written approval of the Council having first been obtained.
7. When a vehicle is found in or upon a pedestrian mall in contravention of the provisions of this Chapter for a continuous period in excess of two hours then a separate offence shall be deemed to have been committed at the conclusion of each hour, calculated from the time when the vehicle was first so found during which the vehicle continuously remains in contravention as aforesaid and a penalty may be exacted by way of notice to the offender in respect of each such separate offence or as the case may be proceedings in respect of each such separate offence may be taken accordingly.
8. (1) This by-law does not apply to the setting up and use of a booth for religious, charitable, educational or political purposes or of a booth to be used at or near a polling place for, or for a meeting in connection with, an election in respect of either House of the Commonwealth Parliament, the Legislative Assembly or a Local Authority.

~~(2) No person shall-~~

18. (1) In proceedings as for an offence against the provisions of this Chapter or for the recovery of any expenses payable to the Council under the provisions of this Chapter any certificate or document -

- (a) purporting to be issued pursuant to the Regulations under the *Main Roads Act 1920-1979* or to any corresponding Legislation, Ordinance or Law of any State or Territory of the Commonwealth; or
- (b) purporting to be under the hand of the Secretary of the Commissioner of Main Roads or any person thereunto authorised by the Commissioner of Main Roads or to be under the hand of the person or authority charged with the registration of motor vehicles under any Legislation, Ordinance or Law of any State or Territory of the Commonwealth corresponding to the Regulations under the *Main Roads Act 1920-1979* or any person thereunto authorised by such person or authority, which states that on any date or during any period the vehicle specified in the certificate or document was registered in the name of the person specified therein shall be received in evidence and shall be evidence that the person specified in the certificate or document was the owner of the vehicle specified therein at the time or during the period specified therein and in the absence of evidence in rebuttal thereof shall be conclusive evidence of such ownership.

(2) Any certificate or document referred to in clause (1) of this by-law shall be presumed to have been duly issued or given until the contrary is proved.

19. (1) In any proceedings as for an offence against or for a breach of the provisions of this Chapter or in any proceedings for the recovery of any expenses payable to the Council every allegation or averment contained in the complaint shall be *prima facie* evidence of the matter so alleged or averred.

(2) Without limiting the generality of the provisions of clause (1) of this by-law the allegation or averment in any complaint or in any proceedings, that at the time and date mentioned in the complaint or in the proceedings -

- (a) a vehicle was or was not a delivery vehicle or as the case may be a service vehicle or a special vehicle or an essential services vehicle;
- (b) a person was or was not the holder of a permit granted by the Council;
- (c) a person complied with or failed to comply with a condition to which any approval or permit granted by the Council had been subjected;
- (d) a person was or was not an Authorised Person (Pedestrian Mall);
- (e) a person was or was not the owner or driver or person apparently in charge of a vehicle or other thing found in a pedestrian mall; or
- (f) that any sign, signal, light, marking or other device
  - (i) was or was not an official sign; or
  - (ii) contained or gave or did not contain or give any direction or indication,

- (9) The provisions of this by-law shall not operate to the prejudice of or so as to bar any proceedings as for an offence against the provisions of this Chapter or of the Order in Council.
- (10) Neither the Council nor any Authorised Person (Pedestrian Mall) nor any Officer, servant, agent, or contractor of the Council shall be liable to any person for any damage howsoever done or caused to or for any loss sustained in respect of any property seized and detained, removed, held in custody, sold, disposed of or destroyed pursuant to the provisions of this by-law.

#### *Noise, Signs and Advertisements*

14. (1) No person shall use or permit or suffer to be used any megaphone, sound amplifier, radio, loud speaker, gramophone or the like or any other means of mechanically, electrically or artificially increasing or reproducing sound in any place or premises adjacent to a Pedestrian Mall for the purposes of advertising any goods, wares, merchandise, entertainment, service or other matter or thing whatsoever so as to produce such a volume of sound that the same may be heard by persons in or upon or using the pedestrian mall.
- (2) No person shall use or permit or suffer to be used in a pedestrian mall any device capable of making a noise for the purposes of announcing or drawing attention to any auction, public performance, sale, meeting, matter or thing whatsoever.
- (3) No person shall put up any advertising device in a pedestrian mall save under and in accordance with the provisions of Chapter XIV-Signs and Advertisements-of the By-laws of the Council.

#### *Offences*

15. Any person who contravenes the provisions of this Chapter shall be guilty of an offence.

16. Any member of the Police Force who

- a) finds a person in a pedestrian mall committing an offence against the provisions of this Chapter or of the Order in Council; or
- (b) finds in a pedestrian mall a person whom he suspects on reasonable grounds to have committed an offence against the provisions of this Chapter or of the Order in Council,

may arrest that person or may remove (using such force as is necessary for such purpose) such person from the pedestrian mall.

#### *Mall Manager*

17. (1) The Council may appoint a Mall Manager to carry out such duties relating to the use and operation of a pedestrian mall or any number of pedestrian malls as may be assigned to him.
- (2) The Council hereby delegates to a Mall Manager the powers and functions of the Council under By-law 4 and By-law 8 of this Chapter in so far as they refer to the pedestrian mall or pedestrian malls assigned, to the Mall Manager.
- (3) A Mall Manager shall by virtue of his appointment as such be an Authorised Person (Pedestrian Mall) in respect of the pedestrian mall or pedestrian malls assigned to him.

#### *Evidentiary*

shall be evidence of the matter or matters so alleged or averred and in the absence of evidence in rebuttal thereof shall be conclusive evidence of such matter or matters notwithstanding -

- (A) that evidence in support of such matter or any other matter is given; or
  - (B) that any matter so alleged or averred is a mixed question of law and fact; but in that case the allegation or averment shall be evidence of the fact only.
- (3) Any evidence given in support or rebuttal of allegations or averments to which this by-law applies shall be considered on its merits and the credibility and probative value of such evidence shall be neither increased nor diminished by reason of this by-law.
- (4) This by-law shall not in any way affect any onus of proof otherwise falling on any party to proceedings to which this by-law applies.

#### *Prescribed Hours*

20. The prescribed hours in respect of the Flinders Pedestrian Mall shall be as follows:

- (a) The hours between 6.30 a.m. and 10.45 a.m. each Monday to Friday (both days inclusive); and
- (b) The hours between 6.30 a.m. and 8.30 a.m. Saturday
- (c) The hours between 6.00 a.m. and 8.30 a.m. and between 12.30 p.m. and 2.30 p.m. each day Sunday.

21. The prescribed hours in respect of The Picnic Bay Pedestrian Mall shall be the hours between 10.00 a.m. and 11.00 a.m. each day of the week.

#### THE SCHEDULE

Form 1

#### TOWNSVILLE CITY COUNCIL

To: *(here insert name of owner as known to Council)*

At: *(here insert address of owner as known to Council)*

On the date specified in Item 1 of the Schedule hereto the property described in Item 2 of the said Schedule was seized and detained by an Authorised Person (Pedestrian Mall) pursuant to the provisions of clause (3) of By-law 13 of Chapter XXXIX of the by-laws of the Council in the Pedestrian Mall named in Item 3 of the said Schedule. It appears that you are the owner of the said property within the meaning of the by-laws.

If you wish the said property to be released and delivered up to you, you must satisfy an Authorised Person (Pedestrian Mall) that you are the owner of the said property and you must pay to the Council the costs and expenses of the said seizure and detention together with the assets and expenses of any removal and holding in custody subsequently incurred by it. At the date of this notice the costs and expenses aforesaid amount to the sum shown in Item 4 of the said Schedule but such will continue to accrue until payment has been made.

In the event that the property has not been released and delivered up within seven days from the service of this notice on you, the Council shall be at liberty to sell, dispose of or destroy the property in accordance with the by-laws.

#### THE SCHEDULE

Item 1. (here insert date of seizure)

Item 2. (here insert description of property)

Item 3. (here insert name of pedestrian mall)

Item 4. (here insert amount of costs and expenses to date of notice)

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19

COUNCIL OF THE CITY OF TOWNSVILLE

per \_\_\_\_\_ Authorised Person (Pedestrian Mall).

Form 2

TOWNSVILLE CITY COUNCIL

*Notice preparatory to Sale, Etc., of Property Seized and Detained in a Pedestrian Mall*

On the date specified in Item 1 of the Schedule hereto the property described in Item 2 of the said Schedule was seized and detained by an Authorised Person (Pedestrian Mall) pursuant to By-law 13 of Chapter XXXIX of the By-laws of the Council in the Pedestrian Mall named in Item 3 of the said Schedule.

The owner within the meaning of the by-laws is not known to the Council.

Unless, within Seven days from the date of the publication of this notice a person satisfies an Authorised Person (Pedestrian Mall) that he is the owner within the meaning of the by-laws of the said property and pays to the Council the costs and expenses of such seizure and detention together with any subsequent removal and holding in custody of the said property calculated up to the date of such payment the Council shall be at liberty to sell dispose of, or destroy the said property in accordance with the by-laws.

THE SCHEDULE

Item 1. (here insert date of seizure)

Item 2. (here insert description of property)

Item 3. (here insert name of Pedestrian Mall)

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19

COUNCIL OF THE CITY OF TOWNSVILLE

Per \_\_\_\_\_, Town Clerk"