**Submission of the Australian Government**

**Draft General Comment No. 36 on**

**Article 6 of the International Covenant on Civil and Political Rights:**

**Right to life**

1. The Australian Government (Australia) presents its compliments to the United Nations Human  Rights Committee (the Committee) and has the honour to refer to the Committee’s invitation for written submissions on draft General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the right to life (the draft General Comment).[[1]](#footnote-1) Australia thanks the Committee for the opportunity to provide a written submission and looks forward to engaging further on the General Comment as the draft progresses.
2. Australia is a longstanding party to the International Covenant on Civil and Political Rights (the Covenant) and its two Optional Protocols. Australia is firmly committed to upholding its obligations under these instruments.
3. Australia appreciates the Committee’s diligent work in preparing this comprehensive draft. In Australia’s view, General Comments provide valuable guidance as to the provisions of the Covenant, and are of the most assistance when they are based on the text of those provisions and the practice of States Parties to the Covenant. While the current draft of the General Comment provides useful guidance on the content of Article 6, it is in many respects too broad, and could more clearly reflect the scope of States Parties’ obligations under Article 6 of the Covenant. To this end, Australia makes the following observations on the draft General Comment:
4. As with all human rights obligations, Australia considers that the obligations contained in Article 6 must be interpreted consistently with the widely accepted principles of treaty interpretation reflected in the 1969 Vienna Convention on the Law of Treaties.[[2]](#footnote-2) Australia considers that conduct or measures will only engage the right to life in Article 6 where they constitute arbitrary deprivation of life or a failure to protect the right to life by law. An overly broad interpretation of the obligations of States Parties is not supported by the text of Article 6.
5. Australia considers that some of the assertions in the draft General Comment do not reflect the legal obligations contained in the text of Article 6 of the Covenant and, in some cases, extend the obligations of States Parties beyond the law of State responsibility. In Australia’s view, such statements do not reflect the current state of international law, for example:
	* ‘The right to life is a right which should not be interpreted narrowly’[[3]](#footnote-3)
	* ‘The obligation of States parties to respect and ensure the right to life extends to all threats that can result in loss of life’[[4]](#footnote-4)
	* ‘States should take adequate measures, without violating their other Covenant obligations, to prevent suicides, especially among individuals in particularly vulnerable situations’[[5]](#footnote-5)
	* the reference to ‘foreseeable threats’, and not reasonably foreseeable threats, in paragraph 22 of the draft General Comment
	* ‘States parties should take appropriate measures to address the general conditions in society that may eventually give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity’,[[6]](#footnote-6) and
	* the reference to a ‘presumption of arbitrary deprivation of life’ in paragraph 33 of the draft General Comment.
6. In Australia’s view, the draft General Comment draws overly broad connections between compliance with Article 6 of the Covenant and other human rights obligations.[[7]](#footnote-7) Australia considers that not all human rights violations are connected to the right to life. Rather, each provision of the Covenant should be interpreted and applied independently.
7. Many paragraphs of the draft General Comment relate to obligations that are the subject of a separate, specific treaty or a specific area of international law. Australia respectfully submits that these matters should be dealt with in the context of those treaties and those areas of international law. For example, rights or obligations which arise under:
	* the International Covenant on Economic, Social and Cultural Rights, including issues related to ‘extreme poverty and homelessness’ and ‘health-care’, which Australia considers fall within the scope of that Covenant[[8]](#footnote-8)
	* international humanitarian law,[[9]](#footnote-9) and
	* international environmental law.[[10]](#footnote-10)
8. Even where Australia agrees with certain general propositions in the draft General Comment, Australia notes that these are sometimes illustrated by examples of conduct in the draft General Comment that do not contain sufficient factual context to support the general propositions. While, from a policy perspective, certain examples may be relevant to particular States Parties, Australia is concerned about the framing of some examples in mandatory terms. Australia notes, for example, the statement that ‘[t]he duty to protect the lives of women against the health risks associated with unsafe abortions requires States parties to ensure access for women and men, and, in particular, adolescents, to information and education about reproductive options’.[[11]](#footnote-11)
9. Australia also submits that confusion may be created by the use of vague terms in the draft General Comment which are unnecessary and do not assist in the implementation of Article 6 at international law, for example:
	* the use of ‘heightened’ in the draft General Comment to qualify the term ‘obligation’ or ‘duty’,[[12]](#footnote-12) and
	* using the term ‘full reparation’, which Australia submits may not accurately reflect the obligation to provide an effective ‘remedy’ in Article 2(3) of the Covenant.[[13]](#footnote-13)
10. Further, Australia considers that it is unhelpful to extrapolate general statements as to the scope of States Parties’ obligations under the Covenant from examples of the application of Article 6 in individual communications. In Australia’s view, such an approach does not allow the particular facts and contexts of each individual communication to be taken into account. Australia refers, for example, to the use of individual communications at paragraph 60 of the draft General Comment.
11. Finally, Australia does not agree with the characterisation of Article 6 as ‘the supreme right’.[[14]](#footnote-14) Australia’s position is that there is no hierarchy of rights; all human rights are universal, indivisible and interdependent, and must be implemented as a matter of international law.[[15]](#footnote-15)
12. Australia reiterates its support for the work of the Committee and avails itself of this opportunity to renew to the Committee the assurances of its highest consideration.
1. Human Rights Committee, ‘General comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life’, adopted on First Reading during the 120th Session (draft General Comment). [↑](#footnote-ref-1)
2. *Vienna Convention on the Law of Treaties*, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980). [↑](#footnote-ref-2)
3. Paragraph 3 of the draft General Comment. [↑](#footnote-ref-3)
4. Paragraph 7 of the draft General Comment. [↑](#footnote-ref-4)
5. Paragraph 10 of the draft General Comment. [↑](#footnote-ref-5)
6. Paragraph 30 of the draft General Comment. [↑](#footnote-ref-6)
7. Paragraphs 30 and 56 of the draft General Comment. [↑](#footnote-ref-7)
8. *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 November 1976); paragraphs 9 and 30 of the draft General Comment. [↑](#footnote-ref-8)
9. Paragraph 67 of the draft General Comment. [↑](#footnote-ref-9)
10. Paragraph 65 of the draft General Comment. [↑](#footnote-ref-10)
11. Paragraph 9 of the draft General Comment. [↑](#footnote-ref-11)
12. Paragraphs 29 and 33 of the draft General Comment. [↑](#footnote-ref-12)
13. Paragraphs 8, 23 and 32 of the draft General Comment. [↑](#footnote-ref-13)
14. Paragraph 2 of the draft General Comment. [↑](#footnote-ref-14)
15. See, for example, *Vienna Declaration and Programme of Action*, adopted by the World Conference on Human Rights in Vienna on 25 June 1993, paragraph 5. [↑](#footnote-ref-15)