



Torture and Ill-treatment in Australia

Submission to the UN Committee on the issues to be included in
Australia's List of Issues prior to Reporting

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About the Human Rights Law Centre

The Human Rights Law Centre is an independent, non-profit, non-government organisation which protects and promotes human rights.

We contribute to the protection of human dignity, the alleviation of disadvantage, and the attainment of equality through a strategic combination of research, advocacy, litigation and education.

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1. Introduction

This submission by the Human Rights Law Centre, a leading Australian human rights advocacy organisation, sets out a number of issues which the Committee Against Torture (the **Committee**) should consider in its development of a List of Issues Prior to Reporting (**List of Issues**) in respect of Australia's compliance with the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the **Convention**).

This submission builds on the Committee's 2014 Concluding Observations with respect to Australia's combined fourth and fifth periodic reports. The submission also refers to the 2014 NGO report to the Committee coordinated by the Human Rights Law Centre and endorsed by 77 Australian NGOs.¹

As a preliminary point, we consider that the Committee should explicitly request that Australia's response to the Committee's List of Issues provide a candid, constructive and comprehensive account of human rights issues arising under the Convention. Given that the focus of a periodic review is to enhance implementation of, and compliance with, human rights obligations on the ground, we consider that Australia's response must do more than provide generic information on Australia's legal framework and funding and program initiatives. The response should provide relevant disaggregated data and details as to practical human rights outcomes.

2. Legislative and Institutional Protection of Rights

Human rights are not given comprehensive or consistent legal protection in Australia. There is no Bill of Rights and few Constitutional Protections. Many basic rights remain unprotected and others are haphazardly covered by an assortment of laws. There are numerous examples of violations which fall through the gaps in the current regime. The state of human rights for many disadvantaged groups in Australia remains precarious.

Australia's Parliamentary Joint Committee on Human Rights is tasked with reviewing the human rights compatibility of proposed legislation. However, its recommendations are unenforceable and are routinely ignored.

3. Implementation of Treaty Body Views

Successive Australian Governments have disregarded the authority of views issued by UN treaty bodies. Since 1994, Australia has been found to be in breach of its international obligations with respect to 34 individual communications to various human rights treaty bodies (the UN Human Rights Committee, the UN Committee on the Elimination of Racial Discrimination and CAT). In only six of these 34 cases (18 per cent) has the author been fully remedied in accordance with the final views of the relevant Committee.²

¹ Available at: <http://hrlc.org.au/wp-content/uploads/2014/10/CAT_NGO_Report_Australia_2014.pdf>.

² Remedy Australia, 'Follow-up Report on violations by Australia of ICERD, ICCPR & CAT in individual communications (1994-2014)' (11 April 2014).

4. Optional Protocol to CAT

Australia signed OPCAT on 19 May 2009. Since that time, progress on ratification and implementation has been slow, despite considerable investment in negotiations between the state and territory governments and the Australian Government to arrive at a model bill for implementation of detention monitoring and oversight obligations.

The Attorney-General's Department produced a 'National Interest Analysis' Report on OPCAT which recommended ratification and implementation of OPCAT in 2012 (**NIA Report**).³ On 21 June 2012, the federal parliament Joint Standing Committee on Treaties released its report on OPCAT (**JSCOT Report**) which recommended that Australia take 'binding treaty action'.⁴ The Australian Government announced it would ratify with a declaration under Article 24 of the treaty stating it would postpone obligations under Part IV of OPCAT to establish a National Preventive Mechanism for 3 years.

National model legislation has been developed to establish the necessary legislative arrangements in each jurisdiction to allow for inspection of places of detention in Australia, following ratification of OPCAT. This legislation was developed by an inter-jurisdictional working group led by NSW and overseen by the Standing Council of Law and Justice.⁵ To date, implementing Bills have been introduced in Tasmania, the Northern Territory and the ACT.⁶ As a large amount of consultative and preparatory work has been completed to ensure that Australia will be compliant with OPCAT, the Australian Government should complete the last steps in the process by ratifying OPCAT and providing leadership on necessary implementing legislation in each jurisdiction.

5. Treatment of People Seeking Asylum

Mandatory detention and offshore processing

Any asylum seeker arriving in Australia by boat is subject to mandatory, indefinite and non-reviewable immigration detention.⁷ Australian law requires that they remain in detention until they are either granted a visa or removed from the country.⁸ The possibility of release by a court is expressly excluded.⁹ The average time currently spent in immigration detention is 454 days.¹⁰

³ Attorney-General's Department, *National Interest Analysis [2012] ATNIA 6 with attachment on consultation, Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment done at New York on 18 December 2002, [2009] ATNIF 10* (2012) Commonwealth of Australia <www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=jsct/28february2012/treaties/torture_nia.pdf>.

⁴ Joint Standing Committee on Treaties, Parliament of Australia, *Review into Treaties tabled on 7 and 28 February 2012* (2012) ch 6.

⁵ Tasmania, *Parliamentary Debates*, Legislative Council, 24 September 2014, part 2 pages 36-92 (Brian Wightman).

⁶ Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2013 (Tas); Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) (National Uniform Legislation) Bill 2013 (NT); Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2013 (ACT).

⁷ *Migration Act 1958* (Cth) s 189.

⁸ *Ibid* s 196.

⁹ *Ibid* s 196(3).

¹⁰ Of the 1679 people in immigration detention as at 31 March 2016, 189 had been detained for more than three months, 319 for more than six months, and 728 for more than one year:

<<https://www.border.gov.au/ReportsandPublications/Documents/statistics/immigration-detention-statistics-31-mar-2016.pdf>>.

Asylum seekers arriving before 19 July 2013 are detained in Australia whilst those arriving after that date are subject to mandatory removal to facilities on Nauru or Manus Island, Papua New Guinea.¹¹ Both offshore facilities are funded and effectively controlled by Australia.

Apart from the personal, non-compellable and non-reviewable discretion of the Immigration Minister, there are no exceptions to the mandatory detention and removal provisions. Gay men have been removed to Papua New Guinea (which criminalises consensual sex between men)¹² and to Nauru (which had similar laws until recently).¹³ Unaccompanied children have been sent to detention on Nauru.¹⁴

The UNHCR has described the conditions in the centres as unsafe, falling short of international standards and as producing a 'return-orientated environment'.¹⁵ One asylum seeker has been murdered inside the Manus centre and 77 others have received serious injuries due to attacks by staff and guards employed there.¹⁶ Refugee women on Nauru face a high risk of sexual assault,¹⁷ and one refugee man has died after self-immolating.¹⁸

Refoulement

Australia has introduced 'fast-tracking' for asylum seekers arriving by boat between 13 August 2012 and 1 January 2014. Fast tracking limits, and in some circumstances completely excludes, rights to appeal against refusals of refugee status and introduces a range of administrative shortcuts into the refugee assessment process. The new fast-track process reduces fairness and oversight of the refugee status determination process and creates a heightened risk of refoulement.¹⁹

Australia is also placing asylum seekers at risk of harm by intercepting them at sea and returning them without any fair or thorough assessment of their protection claims. In July 2014, 41 Sri Lankan asylum seekers were intercepted by Australia and handed over to the Sri Lankan Navy after reportedly being asked only four questions over Skype and without being given the opportunity to speak with a

¹¹ *Migration Act 1958* (Cth) s 198AD.

¹² Olivia Laughland, 'Gay asylum seekers on Manus Island write of fear of persecution in PNG', *The Guardian* (online) 24 September 2014 <<http://www.theguardian.com/world/2014/sep/24/gay-asylum-seekers-manus-island-fear-persecution-png>>.

¹³ Sout Boxall, 'Victims of love: life as a gay refugee on Nauru', *The Saturday Paper* (online) 21 May 2016 <<https://www.thesaturdaypaper.com.au/news/politics/2016/05/21/victims-love-life-gay-refugee-nauru/14637528003272>>.

¹⁴ Ben Doherty, 'Unaccompanied child refugees on Nauru report beatings, death threats', *The Guardian* (online) 28 October 2014 <<http://www.theguardian.com/australia-news/2014/oct/28/child-refugees-australia-sent-to-nauru-report-beatings-and-death-threats>>.

¹⁵ See, eg, UNHCR, Report of Monitoring Visit to the Republic of Nauru on 7-9 October 2013: <<http://unhcr.org.au/unhcr/images/2013-11-26%20Report%20of%20UNHCR%20Visit%20to%20Nauru%20of%207-9%20October%202013.pdf>>.

¹⁶ Australian Associated Press, 'Reza Barati was 'knocked down stairs and then beaten to death'', *The Guardian* (online) 21 March 2014 <<http://www.theguardian.com/world/2014/mar/21/reza-barati-was-knocked-down-stairs-and-then-beaten-to-death>>.

¹⁷ Jenna Price, 'Refugee women on Nauru are exposed to horrific trauma every day', *The Age* (online) 7 June 2016, <<http://www.theage.com.au/comment/refugee-women-on-nauru-are-exposed-to-horrific-trauma-every-day-20160606-gpcoy3.html>>.

¹⁸ Nicole Hasham, 'Nauru refugee who set himself alight dies in Brisbane hospital', *The Sydney Morning Herald* (online) 29 April 2016, <<http://www.smh.com.au/federal-politics/political-news/nauru-refugee-who-set-himself-alight-dies-in-brisbane-hospital-20160428-gohpvt.html>>.

¹⁹ Kaldor Centre, 'Fast tracking refugee status determination', University of New South Wales, 13 May 2015, <<http://www.kaldorcentre.unsw.edu.au/publication/%E2%80%98fast-tracking%E2%80%99-refugee-status-determination>>.

lawyer.²⁰ Some of these asylum seekers subsequently fled to Nepal where they were found to be refugees by UNHCR.²¹ Others have also been intercepted, forced to board single-use lifeboats and towed back to just outside Indonesian territorial waters.²²

In total, 28 boats carrying 734 asylum seekers have been intercepted at sea and returned since December 2013.²³ Returning large numbers of asylum seekers without due process creates an absolutely unambiguous risk of refoulement.

Recent changes to Australian law have now given the Australian Government the express power to disregard international human rights law and the rules of natural justice when conducting boat turn-backs and detaining asylum seekers at sea.²⁴ A government intending to comply with international law does not give itself a legislative license to breach it.

Indefinite detention on security grounds

Under current Australian law, non-citizens issued with an 'adverse security assessment' by the Australian Security Intelligence Organisation (ASIO) are ineligible to obtain a visa and are, as a matter of policy, indefinitely detained.

Unlike citizens, non-citizens have no right to seek independent merits review of their adverse security assessment and have no legal entitlement to the reasoning and information on which it is based.²⁵ Consequently, non-citizens can be indefinitely detained on the basis of decisions which they cannot challenge and which are never explained to them.

A non-statutory, non-compellable system for reviewing adverse security assessments for those in immigration detention was established in late 2012.²⁶ However, it cannot lead to binding decisions to release a person or to revoke a negative assessment. Further, the process does not guarantee non-citizens any access to the reasons for their initial negative assessment or the information on which it was based.

²⁰ Jane Wardell, 'All at sea: Is Australia's fast-tracked asylum screening policy fair?', *Reuters* (online) 8 July 2014, <www.reuters.com/article/2014/07/08/us-sri-lanka-australia-screening-idUSKBN0FD0TK20140708>.

²¹ David Corlett, 'Sinhalese asylum seekers' on-water claims accepted by UN', *The Saturday Paper* (online) 31 January 2015: <<http://www.thesaturdaypaper.com.au/news/politics/2015/01/31/sinhalese-asylum-seekers-water-claims-accepted-un/14226228001441>>.

²² Paul Farrell and Nick Evershed, 'Operation Sovereign Borders timeline: every encounter', *The Guardian* (online) 2 July 2014 <www.theguardian.com/news/datablog/interactive/2014/jul/01/operation-sovereign-borders-timeline>.

²³ Prime Minister Malcolm Turnbull, Press Conference, 22 June 2016, <<http://www.malcolmturnbull.com.au/media/doorstop-bungalow-queensland>>.

²⁴ *Maritime Powers Act 2013* (Cth) s 75A.

²⁵ *Australian Security Intelligence Organisation Act 1979* (Cth) s 36(b).

²⁶ Attorney-General's Department, Independent Reviewer of Adverse Security Assessments, Commonwealth of Australia <www.ag.gov.au/NationalSecurity/CounterterrorismLaw/Pages/IndependentReviewofAdverseSecurityAssessments.aspx>.

In August 2013, the UN Human Rights Committee found that Australia's indefinite detention of 46 refugees on the basis of secretive ASIO assessments amounted to cruel, inhuman or degrading treatment.²⁷ Almost two years on, Australia has not implemented the Committee's recommendations.

6. Prisoners' Rights and Conditions of Detention

The following aspects of Australia's law, policy and practice in respect of prisoners and conditions of detention continue to raise issues in respect of Australia's compliance with the Convention:

- Unacceptable conditions of detention in some places of detention, including police cells, court custody centres, youth detention facilities and prisons.²⁸ This includes the continued existence of hanging points in some police cells; the holding of people for lengthy period of time in court cells only intended for day use; and inadequate access to outdoor areas in some places of detention.
- Increasing imprisonment rates and resultant overcrowding remains a particularly acute issue, resulting in increased likelihood of prisoners being physically or sexually assaulted or self-harming; long periods of lock down; and reduced access to rehabilitation and treatment programs.²⁹
- The over-use of solitary confinement as a behaviour management tool, including in youth detention facilities; and the continued use of routine-based rather than risk-based strip-searches, including in women's prisons and youth detention facilities.
- The significant over-representation of persons with cognitive disability and mental illness in detention facilities,³⁰ and the inadequacy of mental health care facilities and disability services.³¹ Further, the imprisonment of persons who are mentally impaired or unfit to be tried, including

²⁷ *FKAG et al v Australia*, UN Doc CCPR/R/108/D/2094/2011 (23 August 2013).

²⁸ See, eg, Ombudsman Victoria, *Conditions for Persons in Custody* (2006); Greg Skelton, 'Overcrowding Pressures Prisons', *The Advertiser* (Adelaide) 17 February 2008; 'Juvenile Prisoners Sharing One-Person Cells', *ABC News Online* (online) 7 April 2008; Steve Butcher, 'Notorious Melbourne Custody Centre 'seething' as state prison system nears capacity', *The Age* (Melbourne) 13 September 2013; Bronwyn Naylor, *Prisons, overcrowding and rights* (2014).

²⁹ See, eg, 'Victoria's dangerous prisons overcrowded, underfunded: ombudsman's report', *ABC News* (online) 26 March 2014: <<http://www.abc.net.au/news/2014-03-26/victoria27s-27dangerous27-prisons-overcrowded2c-underfunded/5346040>>; 'Prison overcrowding causes SA budget blowout for Correctional Services', *ABC News* (online) 18 May 2015: <<http://www.abc.net.au/news/2015-05-18/prisons-overcrowding-budget-blowout-correctional-services/6477572>>; 'Overcrowding at NSW jails: Guards refusing new inmates', *ABC News* (online) 3 July 2014: <<http://www.abc.net.au/news/2014-07-03/guards-refuse-new-prisoners-for-overcrowded-nsw-jails/5568490>>.

³⁰ Prison entrants are 2.5 times more likely than the general population to have a mental health disorder. Australian Institute of Health and Welfare, 'The mental health of prison entrants in Australia 2010' (Bulletin No 104, Australian Institute of Health and Welfare, June 2012) 2.

³¹ Anand Grover, *Report of the Special Rapporteur on the Right of Everyone to the Highest Attainable Standard of Physical and Mental Health*, Anand Grover: *Mission to Australia*, UN Doc A/HRC/14/20/Add.4 (3 June 2010), [69]-[72].

beyond their nominal sentence, due to inadequate forensic facilities and services in the community, remains a concern.³²

- The high rates of young people being held in pre-trial detention. Over 50 per cent of the youth detention population in Australia are on remand, with little to no access to treatment or rehabilitation programs. Australia's age of criminal responsibility is 10 years – below the international standard of 12 years – and there are instances of children under 12 being held in detention.
- Youth detention facilities without adequate age and competence appropriate education facilities.
- The gross over-representation of Indigenous persons in detention,³³ and the continued deaths of Indigenous persons in custody (Indigenous people are nationally 13 times more likely to be imprisoned than non-Indigenous people).³⁴ This is despite the recommendations of the Royal Commission into Aboriginal Deaths in Custody close to 25 years ago, many of which have still not been implemented.³⁵
- The serious impact that this overrepresentation of Indigenous people in prisons has on Indigenous young people (who constitute over half the youth detention population, yet are only close to two per cent of the general population); and on Indigenous women (who are the fastest growing prisoner demographic in Australia and represent over 30 per cent of the women's prison population).
- The lack of adequately funded legal assistance services, particularly for Indigenous people, resulting in unequal access to justice.³⁶
- The effects of mandatory sentencing policies, particularly on Indigenous people.
- High rates of blood borne virus transmission and sexually transmitted diseases, together with an absence of adequate harm minimisation strategies, including condoms and needle and syringe exchange programmes.³⁷

³² See, eg, *R v White* [2007] VSC 142; 'Judge "Forced" to Keep Mentally Ill Man in Jail', *ABC News Online* (online) 22 December 2008; Natasha Robinson, 'Hopeless Days of Man, Adrian Faulton, Lost in the Legal System', *The Australian* (Sydney) 20 December 2008.

³³ Aboriginal and Torres Strait Islander prisoners account for just over a quarter (27%) of the total Australian prisoner population while the total Aboriginal and Torres Strait Islander population aged 18 years and over in 2015 was approximately 2% of the Australian population aged 18 years and over. Aboriginal and Torres Strait Islander Prisoner Characteristics, *Australian Bureau of Statistics* (30 June 2015) available at: <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2015~Main%20Features~Aboriginal%20and%20Torres%20Strait%20Islander%20prisoner%20characteristics~7>.

³⁴ Ashleigh Baker and Tracy Cussen, Deaths in custody in Australia: National Deaths in Custody Program 2011-12 and 2012-13, *Australian Institute of Criminology* (Canberra: June 2015) available at: <http://aic.gov.au/publications/current%20series/mr/21-40/mr26.html>.

³⁵ Commonwealth of Australia, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) volumes 1-5, available at: www.austlii.edu.au/au/other/IndigLRes/rciadic/.

³⁶ Melissa Davey, 'George Brandis's response to legal services report labelled "inadequate"', *The Guardian* (Sydney) 1 May 2016.

³⁷ J Ryan et al, 'Prisons, Needles and OHS' (2010) 26(1) *Journal of Health, Safety and Environment* 63.

- Opaque parole systems which explicitly exclude natural justice, and potentially result in discriminatory outcomes (for example, Indigenous peoples being refused parole at higher rates than non-Indigenous peoples).
- The lack of independent, effective mechanisms for monitoring, oversight, investigation and inspection of places of detention in most states and territories, despite Australia having signed (but not ratified) OPCAT.
- The lack of independent and transparent systems for investigating deaths in custody (currently police investigate deaths in custody); and
- The failure to protect the safety and dignity of transgender and intersex prisoners due to a lack of specific correctional policies which appropriately house prisoners in men or women's prisons, fail to respect the use of a preferred name or gender and hold transgender and intersex prisoners in more restrictive conditions as a consequence of their gender identity or sex characteristics (eg. protective custody and solitary confinement). There are also concerns about failures to implement safety management plans effectively, regulate unnecessary strip searches and urine tests, provide access to medical and psychological support, and respect transgender and intersex people's privacy in toilet, shower and laundry facilities, and during visitation.

7. Police Use of Force

All jurisdictions in Australia require substantial improvement to their systems of regulating, monitoring and investigating use of force by law enforcement officials in order to comply with Australia's obligations under international human rights law. In particular, the models of investigation for instances of ill-treatment and excessive use of force by law enforcement officials and police-related deaths remain wholly inadequate in all but one of Australia's states and territories.

8. Violence Against Women

Violence against women remains a major issue in Australia. One in three Australian women has experienced physical violence since the age of 15 and Aboriginal women; women with disabilities; and women in rural and remote areas are particularly severely impacted.³⁸ This situation has not improved since Australia last reported to the Committee and violence against women persists as an endemic problem.

Australia is still not fully complying with its due diligence obligations to investigate, prosecute and punish perpetrators of violence, and reparate victims, particularly when it comes to women who experience intersectional forms of discrimination.

³⁸ Indigenous women are 35.1 times more likely than non-Indigenous women to be hospitalised for family violence: see <www.aph.gov.au/library/intguide/sp/ViolenceAgainstWomen.htm>. See also: Commonwealth of Australia (2009) *Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children*, 2009-2021, 9.

Further areas requiring attention are the lack of reporting of cases of violence against women; the lack of adequate social services for women experiencing violence, including ongoing housing security, ongoing counselling and appropriate medical services; the lack of adequate access to sexual assault services for rural and remote women; and the lack of access to crisis accommodation services, particularly for Aboriginal women and women with disabilities.³⁹

9. People with Disability

The Committee has previously stated that ‘the principle of non-discrimination is a basic and general principle in the protection of human rights and fundamental to the interpretation and application of the Convention.’⁴⁰ People with disability are frequently subject to discriminatory treatment that may constitute torture, or cruel, inhuman or degrading treatment, including persistent and severe violence and abuse, forced sterilisation, long-term neglect of basic human needs, and painful and degrading behaviour modification techniques or ‘restrictive practices’.⁴¹ The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has expressed concern that ‘in many cases such practices, when perpetrated against persons with disabilities, remain invisible or are being justified, and are not recognised as torture or other cruel, inhuman or degrading treatment or punishment’.⁴²

10. Counter-Terrorism

ASIO questioning and detention warrants

Under Australia’s counter-terrorism laws, the Australian Security and Intelligence Organisation can detain a person for up to seven days for the purposes of questioning, even if the person is not suspected of being involved in a terrorist offence.⁴³ People detained are required to keep certain information secret, and have limited opportunities to contact family or lawyers, or to challenge their detention. This virtual incommunicado detention creates an extremely unsafe situation for detainees.

Police powers to detain without charge

Part 1C of the *Crimes Act 1914* (Cth) (**Crimes Act**) currently allows the police to detain persons suspected of terrorist related offences for over a week without charge.⁴⁴ The period for pre-charge

³⁹ See: Women With Disabilities Australia (WWDA), Submission to the National Human Rights Consultation (2009) at <www.wwda.org.au/subs2006.htm>. See also Commonwealth of Australia (2009) *Time for Action: The National Council’s Plan for Australia to Reduce Violence against Women and their Children*, 2009-2021, 9.

⁴⁰ Committee Against Torture, *General Comment No. 2*, [20].

⁴¹ Phillip French, Julie Dardel and Sonya Price-Kelly, *Rights Denied: Towards a national policy agenda about abuse, neglect & exploitation of persons with cognitive impairment* (2010) People with Disability Australia, 72 at: <www.pwd.org.au/documents/pubs/RightsDenied2010.pdf>.

⁴² Manfred Nowak, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc A/HRC/7/3 (15 January 2008) 9.

⁴³ *Australian Security Intelligence Organisation Act 1979* (Cth) pt III div 3.

⁴⁴ Section 23DB(11) of the *Crimes Act 1914* (Cth) now provides that no more than seven days may be excluded from the ‘investigation period’.

detention remains excessive and unjustified, and is a considerably longer period of time than pre-charge detention permitted under the Crimes Act in non-terrorism cases.⁴⁵

Preventative detention regime

Counter-terrorism laws allow for a system of preventative detention. There are restrictions on access to a lawyer of a person's choice in the preventative detention order regime under Division 105 of the Criminal Code, which only allows detainees to access legal representation for limited purposes such as obtaining advice or giving instructions regarding the issue of the order or treatment while in detention.⁴⁶ Contact with a lawyer for any other purpose is not permitted. In addition, communication between a lawyer and a detained person can be monitored.⁴⁷

11. Extra-Territorial Conduct

Australian officials may be aiding and assisting in the torture and other cruel treatment committed by foreign security forces. Australia has extremely close policing and military ties with countries in the Asia-Pacific region and does not do any vetting of the units or individuals with which it works.

For example, Australia provides training, resources and intelligence to the Sri Lankan police and military to block Sri Lankan asylum seekers from leaving their country. Since at least 2009, Australia has encouraged, facilitated and resourced the Sri Lankan police and military to stop its people leaving the country as part of Australian border control operations. The aim is to stop boats at their source before they can depart Sri Lanka.⁴⁸ Australian Federal Police, Defence, and Australian Customs and Border Protection Service (**Customs**) maintain a presence on the ground in Sri Lanka to share information with, and develop the capacity of, Sri Lankan authorities to intercept boats.

The Sri Lankan interceptions expose the intercepted people to an unacceptable risk of torture and mistreatment in Sri Lankan custody. The Committee has previously stated that it was 'seriously concerned' about widespread use of torture and other cruel, inhuman and degrading treatment of suspects in police custody, including after the end of the civil war.⁴⁹

⁴⁵ Section 23C(4) of the *Crimes Act 1914* (Cth) provides that a person can be detained for two hours if the person is or appears to be under 18 years, an Aboriginal person or a Torres Strait Islander, or four hours in any other case, after the arrest, unless the period is extended under section 23DA. Section 23DA(7) of the *Crimes Act 1914* (Cth) provides that the investigation period may be extended for a period not exceeding 8 hours, and must not be extended more than once.

⁴⁶ Criminal Code Act 1995 (Cth) sch 1 s 105.37(1) ('*Criminal Code*').

⁴⁷ *Criminal Code* s 105.38.

⁴⁸ The full extent of the relationship is set out in Human Rights Law Centre, *Can't flee, can't stay: Australia's interception and return of Sri Lankan asylum seekers* (March 2014) at: <www.hrlc.org.au/wp-content/uploads/2014/03/HRLC_SriLanka_Report_11March2014.pdf>.

⁴⁹ Committee Against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention – Concluding observations of the Committee against Torture: Sri Lanka*, 47th sess, 1050th-1052nd mtgs, UN Doc CAT/C/LKA/CO/3-4 (8 December 2011) [6].

12. Other Issues

A number of other areas of Australia's law, policy and practice raise issues in respect of Australia's compliance with the Convention:

- In 2016 the Australian Government committed to consult on the implementation of the UN Guiding Principles on Business and Human Rights. Australia's review under CAT should incorporate an update on steps taken by the Australian Government to develop a National Action Plan on Business and Human Rights and on specific actions to ensure that Government owned, controlled or supported businesses, and businesses with which the Government contracts or transacts, meet their responsibility to respect human rights.
- There are well over 105,000 people who are homeless in Australia. A number of vulnerable groups are disproportionately represented among the homeless, including children and young people, people with disability and older women.⁵⁰
- Several Australian states have passed laws enabling the continued detention in prison of serious sex offenders and violent offenders beyond their term of imprisonment.⁵¹
- There remain gaps in Australian law, policy and practice with respect to exposing persons to the death penalty or torture or ill-treatment abroad, whether through extradition, the provision of mutual assistance in criminal matters, or the provision of police to police agency assistance.⁵²
- The use of unnecessary surgeries, hormone and other non-surgical medical interventions on young infants with intersex variations without their consent, often resulting in reduced sexual function and sensation.⁵³ This can be particularly difficult for intersex children and their parents due to the lack of government funding for support services and educational resources for people with intersex variations and their families.

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⁵⁰ See, eg, Sue Lannin, 'Older Women Enter Ranks of Homeless', *ABC News Online* (online) 4 August 2010; Women With Disabilities Australia, *Shut Out, Hung Out, Left Out, Missing Out: WWDA Submission in Response to the Australian Government's Green Paper on Homelessness* (2008).

⁵¹ New South Wales, Victoria, Queensland and Western Australia. For example, the *Serious Sex Offenders Act 2006* (NSW) permits the court to impose a fresh sentence on a person convicted of a serious sex offence regardless of the years already served, if there is a high probability that the offender is likely to commit a future serious sex offence.

⁵² Human Rights Law Resource Centre, *Submission Regarding Proposed Extradition and Mutual Assistance Reforms* (August 2009) at: <www.hrlrc.org.au/content/topics/torture/submission-regarding-proposed-extradition-and-mutual-assistance-reforms-aug-2009/>.

⁵³ The Senate Community Affairs and References Committee, 'Chapter 3 – Surgery and the Assignment of Gender' in *Involuntary or Coerced Sterilisation of Intersex People in Australia* (October 2013) at: <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation/Sec_Report/index>.