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3 November 2011

Matt Hall
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By email: humanrights@ag.gov.au

Dear Matt

Australia's Fifth Report under the Convention Against Torture

The Human Rights Law Centre welcomes the opportunity to provide input in relation to Australia's Report under the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment (CAT).

Overall, we consider that the List of Issues Prior to Reporting identifies most of the key issues arising in relation to Australia's compliance with the CAT. This submission identifies five key issues that did not appear in the LOIPR, but which the HRLC considers should be included in Australia's Report. These issues relate to Australia's obligations under CAT in regard to:

1. criminalisation and prevention of torture;
2. non-refoulement and bilateral and regional arrangements to combat people smuggling;
3. treatment of prisoners and conditions in detention;
4. involuntary psychiatric treatment; and
5. violence against women.

The HRLC supports the Government's decision to provide a focused and succinct Report to the CAT Committee and considers that the following issues are significant and merit consideration.

1. The criminalisation and prevention of torture

(a) Implementation of Views

The Views of treaty bodies, including the CAT Committee, are not directly enforceable or justiciable under Australian law and no effective domestic mechanisms have been established to systematically promote implementation and compliance with Committee Views.

Australia's report should update the Committee on the implementation of Views on Australia and provide details of the mechanisms to systematically promote and monitor implementation and compliance.

(b) Enforcement provisions under the ASIO Act

The *Australian Security Intelligence Organisation Act 1979* (Cth) provides that a person detained under the Act should be treated with humanity, respect for human dignity and must not be subjected to cruel, inhuman or degrading treatment. However, there is no provision for any offence or penalties for contravening conduct and the only means of recourse is for the detainee to make a complaint to the Inspector-General of Intelligence and Security, the Commonwealth Ombudsman or a State or Territory complaints agency.

Australia's report should include consideration of the need for effective enforcement provisions under the ASIO Act for torture or ill-treatment.

2. Non-refoulement and 'border protection'

(c) Migration Amendment (Character Test)

The *Migration Amendment (Strengthening the Character Test and Other Provisions) Act 2011*, introduced in response to unrest in the Christmas Island and Villawood Immigration Detention Centres, broadened the already significant power afforded to the Minister or his or her delegate to refuse to grant, or to cancel, a visa on character grounds.

Australia's report should include information on the procedures and process for review of decisions made under these provisions which ensure that the Minister's discretion does not result in the return of a person to a territory where he or she may be subject to torture or ill-treatment.

(d) Actions to combat people smuggling

Bilateral and multilateral cooperation arrangements are central to Australia's border protection policy. Such arrangements have involved substantial financing and direction by Australia around the detection, interception, and detention of asylum seekers, refugees and other irregular migrants beyond Australia's borders.¹ This includes the interception by Australia (or states with whom it cooperates) of individuals with potential protection needs who are seeking to come to Australia by boat, and by plane (including through the use of 'Airline Liaison Officers'). The HRLC considers that these activities – which may prevent people from fleeing their countries of origin or result in their return to those countries – trigger Australia's non-refoulement obligations.

Australia's report should include information on Australia's domestic and international border protection policies and practices and relevant safeguards against refoulement. It should also include information as to the laws and policies in place to ensure that Australia's cooperation with other

¹ For example the 2011/12 federal budget included \$10.8 million to deploy Australian Federal Police liaison officers to Sri Lanka, Pakistan, Indonesia, Malaysia and Thailand to 'combat people smuggling'.

countries on border policing and people smuggling investigations does not directly or indirectly involve or implicate Australia in exposing people to torture or ill-treatment.

3. Treatment of prisoners and conditions in detention

(e) Mandatory sentencing

The List of Issues identifies mandatory sentencing laws in Western Australia and the Northern Territory and issues requiring consideration in Australia's report. However, many other jurisdictions in Australia have, or propose to enact, some form of mandatory sentencing. For example, the offence of aggravated people-smuggling under the *Anti-People Smuggling and Other Measures Act* attracts a mandatory penalty of 5 years imprisonment with a 3-year non-parole period.

Australia's report should identify all mandatory sentencing laws in Australian jurisdictions and discuss the disproportionate effect of such laws on marginalised communities.

(f) Solitary confinement

The widespread use of solitary confinement (or 'segregation') as a management tool for people incarcerated in Australian prisons is an issue of significant concern, particularly in regard to people suffering from a mental illness. The UN Special Rapporteur on Torture has recently reported to the UN Human Rights Council that solitary confinement, even for 'short terms' or 'legitimate disciplinary reasons', can amount to torture or ill-treatment and should be absolutely prohibited in relation to children, people with mental illness and in pre-trial circumstances.

Australia's report should contain data on the prevalence of the use of solitary confinement in Australian prisons and comment on the use of solitary confinement as a management tool, particularly for prisoners with mental illness.

4. Treatment of persons with psychosocial disability

(g) Involuntary treatment

All Australian State and Territory jurisdictions allow for psychiatric interventions without full, free and informed consent. In some cases, these interventions are performed on people who have legal capacity and refuse treatment, or where the State has failed take all reasonable and necessary steps to support a person to exercise their legal capacity.

Australia's report should contain information on safeguards against involuntary treatment for mental health purposes, including criteria for involuntary treatment, the competence and independence of mental health tribunals, the timeliness of reviews, and the availability and incidence of legal representation.

(h) Restraint and seclusion in psychiatric wards

State and Territory laws allow for the seclusion and restraint (including, in some jurisdictions, chemical restraint) of people on involuntary mental health treatment orders. This practice continues despite the lack of evidence that such practices offer positive health outcomes.

Australia's report should contain data on the use of restraint and seclusion in mental health facilities and checks and balances that exist in respect of such practices.

5. Violence against women

(i) Family violence homicide

Violence is a leading cause of death, disability and illness for Australian women.² An examination of domestic violence homicides could help prevent future deaths by analysing data, uncovering patterns, risk indicators and systems failures, and then formulating risk assessment and action.³ At present there is insufficient data and analysis in this area.

Australia's report should contain current data on domestic violence deaths and procedures and processes for domestic violence death review systems across Australia.

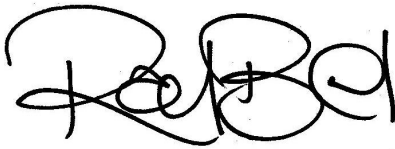
(j) Housing for women leaving violence

Women leaving violence currently face extreme difficulties in trying to obtain appropriate supported and subsequent accommodation. Chronic shortages and increased waiting lists for public and community housing, together with a scarcity of affordable private rental properties, has created a 'bottleneck' where women and their children are unable to move on from supported accommodation, and others in turn are unable to access assistance.⁴

Australia's report should contain information on the availability of appropriate supported emergency and subsequent accommodation for women leaving violence.

Please contact me if you wish to discuss any of the above. We look forward to the opportunity to comment on a draft of Australia's report in due course and also advise that we will be involved in the preparation of an NGO report to the Committee.

Yours sincerely



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² See, for example, Victorian Health Promotion Foundation, *The Health Costs of Violence: Measuring the Burden of Disease Caused by Intimate Partner Violence* (2004), 10.

³ See submissions made by the Federation of Community Legal Centres Victoria on the draft Human Rights Action Plan Baseline Study, available at <http://www.fclc.org.au/lrs.php>.

⁴ *Ibid.*