Submission on Australia's Implementation of the Concluding Observations of the Committee against Torture

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About the Human Rights Law Resource Centre

The Human Rights Law Resource Centre (***HRLRC***) is an independent community legal centre that is a joint initiative of the Public Interest Law Clearing House (Vic) Inc and the Victorian Council for Civil Liberties Inc.

The HRLRC provides and supports human rights litigation, education, training, research and advocacy services to:

(a) contribute to the harmonisation of law, policy and practice in Victoria and Australia with international human rights norms and standards;

(b) support and enhance the capacity of the legal profession, judiciary, government and community sector to develop Australian law and policy consistently with international human rights standards; and

(c) empower people who are disadvantaged or living in poverty by operating within a human rights framework.

The four 'thematic priorities' for the work of the HRLRC are:

(a) the development, operation and entrenchment of Charters of Rights at a national, state and territory level;

(b) the treatment and conditions of detained persons, including prisoners, involuntary patients and persons deprived of liberty by operation of counter-terrorism laws and measures;

(c) the promotion, protection and entrenchment of economic, social and cultural rights, particularly the right to adequate health care; and

(d) the promotion of equality rights, particularly the rights of people with disabilities, people with mental illness and Indigenous peoples.

Contents

1. Introduction and Recommendations

1. On 16 May 2008, the Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (**Committee**) issued its Concluding Observations on Australia (**Concluding Observations**).[1] The Concluding Observations included 27 recommendations concerning Australia's compliance with its obligations under the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (**CAT**).[2] The Australian Government has called for submissions from NGOs on the Concluding Observations and for suggestions as to what follow-up action might be taken.

2. This submission has been prepared by the Human Rights Law Resource Centre (**HRLRC**). It incorporates information provided to the Committee in an NGO Report prepared by the HRLRC together with the National Association of Community Legal Centres, the Public Interest Advocacy Centre, Rights Australia and the Australian Muslim Civil Rights Advocacy Network.[3]

3. This submission does not address all of the Committee's recommendations. Rather, it focuses on certain Concluding Observations that the Committee made in the following areas of Australian law, policy and practice:

   (a) domestic incorporation of CAT obligations;

   (b) immigration and asylum-seeker law, policy and practice;

   (c) refoulement, extradition and expulsion;

   (d) Indigenous Australians;

   (e) prisoners and conditions of detention, including in particular the lack of access to adequate health care;

   (f) counter-terrorism laws and practice; and

   (g) the use of evidence obtained under torture or pursuant to other cruel, inhuman or degrading treatment or punishment.

4. In particular, the HRLRC makes the following recommendations on the implementation of the Committee's Concluding Observations:

[1] Concluding Observations of the Committee against Torture: Australia, CAT/C/AUS/CO/3, 22 May 2008.

[2] *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, (entered into force 26 June 1987).

[3] A copy of the NGO Report is available at www.hrlrc.org.au/files/4M6OEL69DU/HRLRC%20Report%20to%20CAT.pdf.

Recommendation 1:

That the Australian Government give positive consideration to:

(a) developing mechanisms at a domestic level, such as the establishment of a Joint Parliamentary Committee on Human Rights, to monitor and report on the implementation of the Concluding Observations of UN treaty bodies and the Recommendations of the Special Procedures of the UN Human Rights Council; and

(b) establishing effective domestic mechanisms, including judicial mechanisms, to ensure and monitor implementation of and compliance with Views of the Committee against Torture on Individual Communications, together with Views of other UN treaty bodies on such communications.

Recommendation 2:

That the Australian Government enact Commonwealth laws criminalising torture and ill-treatment.

Recommendation 3:

That the Australian Government initiate a robust, participatory and adequately funded community consultation on the protection of human rights in Australia.

Recommendation 4:

That torture and ill-treatment under Australian law be adequately defined to reflect the definitions contained in the CAT, particularly by reference to the Committee's General Comment No.2 and other international jurisprudence.

Recommendation 5:

That the jurisdictional provisions in Australian laws on torture and ill-treatment reflect obligations under the CAT and other international jurisprudence. Specifically, a new torture offence should apply:

(a) to attempts to commit torture;

(b) when the offences are committed in any territory under Australia's jurisdiction or on board a ship or aircraft registered in Australia;

(c) when the alleged offender is a national of Australia;

(d) when the victim is a national of Australia if Australia considers it appropriate.

Recommendation 6:

Australian laws criminalising torture and ill treatment should incorporate robust investigatory mechanisms and provide for adequate sanctions and reparations.

Recommendation 7:

Mandatory immigration detention should be abolished and detention should be a last resort and imposed for the minimum period possible and be subject to regular independent review. The *Migration Act 1958* (Cth) should be amended to reflect these principles and standards.

Recommendation 8:

Under no circumstances should children be kept in any form of immigration detention, including Immigration Residential Housing. The *Migration Act 1958* (Cth) should be amended accordingly.

Recommendation 9:

The Australian Government should amend the *Migration Act 1958* (Cth) so that it reflects the principles that:

(a) people in immigration detention will be treated fairly and reasonably within the law; and

(b) conditions of detention will ensure the inherent dignity of the human person.

Recommendation 10:

All persons involved in the management and administration of the immigration system should receive comprehensive training which covers obligations under international human rights law.

Recommendation 11:

The *Migration Act 1958* (Cth) should be amended to comprehensively prohibit the refoulement of a person from Australia in circumstances where they may be exposed to a risk of torture or other cruel, inhuman or degrading treatment of punishment.

Recommendation 12:

The *Extradition Act 1988* (Cth) should be amended to comprehensively prohibit the extradition of a person from Australia in circumstances where they may be exposed to a risk of torture or other cruel, inhuman or degrading treatment of punishment.

Recommendation 13:

Mandatory sentencing laws should be abolished due to their disproportionate and discriminatory impact on Indigenous Australian. More generally, Australia must continue its efforts to address the socio-economic disadvantage that leads to a disproportionate number of Indigenous Australians coming into contact with the criminal justice system.

Recommendation 14:

The Australian Government should review, update and implement recommendations from the *1991 Royal Commission into Aboriginal Deaths in Custody*.

Recommendation 15:

The Australian Government must take further steps and measures to address overcrowding in prisons, including through the development of alternatives to detention such as restorative and therapeutic jurisprudence. More broadly, the Australian Government should ensure that prisoners are not subject to any deprivations of rights or freedoms that are not a necessary consequence of the deprivation of liberty itself.

Recommendation 16:

The Australian Government should ensure that all prisoners have adequate access to health care, including mental health care, consistent with the human right to the highest attainable standard of physical and mental health. The Australian Government should also take legislative action to prohibit untherapeutic solitary confinement of prisoners with mental illness.

Recommendation 17:

Australia should comprehensively review all counter-terrorism laws and practices to ensure that they are in compliance with international human rights standards.

Recommendation 18:

Australia should comprehensively legislate to absolutely prohibit the use of evidence that has been obtained as a result of torture or other cruel, inhuman or degrading treatment or punishment other than for the purpose of establishing such treatment or punishment.

Recommendation 19:

Australia should ratify the Optional Protocol to the CAT.

Importantly, the Australian Government must undertake a detailed and thorough analysis of its national preventative mechanisms to ensure that they comply with the obligations contained in the Optional Protocol, particularly with regard to being independent, adequate resourced and with powers of access to detention facilities and detainees.

2. Domestic Incorporation of CAT Obligations

5. In its Concluding Observations, the Committee recommended that Australia fully incorporate the CAT into domestic law. The Committee also made specific recommendations in relation to:

   (a) definitions;

   (b) jurisdiction; and

   (c) investigations.

6. Since taking office in November 2007, the current Australian Government has announced a number of promising initiatives in the area of Australia's legal protection of human rights. Amongst these are commitments to:

   (a) develop Commonwealth legislation prohibiting torture;[4] and

   (b) initiate a national consultation on how best to protect human rights in Australia.[5]

7. Recommendations on how to fulfil these commitments are explored further below.

2.1 Institutional Review of Concluding Observations and Views of Treaty Bodies

8. Australia is subject to periodic review by the Committee against Torture, together with UN treaty bodies established under each of the ICCPR, ICESCR, CAT, CEDAW and CERD. These reviews provide an opportunity for a comprehensive analysis of the state of human rights in Australia and for a constructive dialogue as to how best to promote and protect these rights between the Government and independent international human rights experts. Australia has also accepted the jurisdiction of the Committee against Torture, together with the Human Rights Committee and the Committee on the Elimination of Racial Discrimination to hear and determine individual complaints regarding Australia.

9. While international scrutiny and accountability are important aspects of the promotion and protection of human rights, there are no formal domestic mechanisms to independently monitor and report on the implementation of the Concluding Observations of UN treaty bodies, including the Committee against Torture.

10. In the case of Individual Communications, the Committee's views are not enforceable or justiciable under Australian law and no effective domestic mechanisms have been established to ensure and monitor implementation of and compliance with Views.

[4] Robert McLelland, MP, 'Strengthening Human Rights and the Rule of Law', speech at Mallesons Stephen Jacques, Melbourne, 7 August 2008.

[5] Ibid.

11. The position in Australia with respect to the Concluding Observations and Views of treaty bodies can be contrasted with monitoring and implementation mechanisms developed in other jurisdictions, including South Africa, the Netherlands and the United Kingdom. In the United Kingdom, for example, the work of the Joint Parliamentary Committee on Human Rights includes:

    (a) 'scrutinising Government responses to adverse judgments by the European Court of Human Rights'; and

    (b) scrutinising the Government's reports to the UN treaty bodies, the Concluding Observations of those treaty bodies, and the Government's implementations of the recommendations contained therein.

12. The Council of Europe has recommended the model and modalities of the UK Joint Parliamentary Committee on Human Rights as a model for other member states. Further information about the work of the Committee is available in their 2007 Annual Report at http://www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/38/3802.htm.

Recommendation 1:

That the Australian Government give positive consideration to:

(c) developing mechanisms at a domestic level, such as the establishment of a Joint Parliamentary Committee on Human Rights, to monitor and report on the implementation of the Concluding Observations of UN treaty bodies and the Recommendations of the Special Procedures of the UN Human Rights Council; and

(d) establishing effective domestic mechanisms, including judicial mechanisms, to ensure and monitor implementation of and compliance with Views of the Committee against Torture on Individual Communications, together with Views of other UN treaty bodies on such communications.

2.2 Specific Offences of Torture and Cruel, Inhuman or Degrading Treatment or Punishment

13. At present, Australia's domestic legal framework fails to provide effective legislative, administrative, judicial or other protection against acts of torture and other cruel, inhuman or degrading treatment or punishment within its jurisdiction. There is no constitutional prohibition on torture and other cruel, inhuman or degrading treatment or punishment, and the CAT has only been partially adopted into federal law.[6]

[6] See *Crimes (Torture) Act 1988* (Cth).

14. In its Concluding Observations, the Committee recommended that:[7]

> The State party should fully incorporate the Convention into domestic law, including by speeding up the process to enact a specific offence of torture at the Federal level.

15. The Committee further recommended that:[8]

> The State party should introduce a specific offence covering the acts included in article 16 of the Convention; this offence could be also introduced in the State party's legislation in the context of the possible new offence of torture to be included at the Federal level.

16. Article 16 of the CAT prohibits acts of cruel, inhuman or degrading treatment or punishment (collectively '**ill-treatment**'). It is necessary to consider ill-treatment in any analysis of the adequacy of legislative entrenchment of the CAT. The Committee has stated that:[9]

> The obligations to prevent torture and [ill-treatment] … are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture... In practice, the definitional threshold between ill-treatment and torture is often not clear. Experience demonstrates that the conditions that give rise to ill-treatment frequently facilitate torture and therefore the measures required to prevent torture must be applied to prevent ill-treatment.

17. The Australian Government has recently announced plans to develop Commonwealth legislation prohibiting torture.[10] The HRLRC looks forward to the opportunity to participate in consultations relating to this important initiative.

18. We note that detailed guidance on the implementation of Australia's obligation to 'take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction' is provided in the Committee's General Comment No.2.[11]

19. In addition to stating that the obligations to prevent torture and ill-treatment are indivisible, General Comment No. 2 provides that:[12]

    (a) the prohibition against torture is absolute and that no exceptional circumstances whatsoever may be invoked to justify contravention of this prohibition;

    (b) torture should be made punishable as a criminal offence;

    (c) the protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment; and

[7] Concluding Observations [9].

[8] Concluding Observations [22].

[9] Committee Against Torture, *General Comment No. 2: Implementation of article 2 by States parties*, CAT/C/GC/2, 24 January 2008, [3].

[10] Robert McLelland, MP, 'Strengthening Human Rights and the Rule of Law', speech at Mallesons Stephen Jacques, Melbourne, 7 August 2008.

[11] General Comment No. 2, above n 9.

[12] Ibid.

(d) the obligation to prevent torture involves negative, positive and procedural obligations and includes a duty to provide effective remedies.

Recommendation 2:

That the Australian Government enact Commonwealth laws criminalising torture and ill-treatment.

2.3 Comprehensive Protection of Basic Human Rights

20. In its Concluding Observations, the Committee recommended that:[13]

> The State party should continue consultations with regard to the adoption of a Bill of Rights to ensure a comprehensive constitutional protection of basic human rights at the Federal level.

21. Australia remains the only developed nation without comprehensive constitutional or legislative protection of basic human rights at a federal level.

22. In the absence of a federal Bill or Charter of Rights, the governments of the State of Victoria and the ACT have recently introduced limited legislative protection of human rights within their jurisdictions incorporating many, but not all, of the rights contained in the *International Covenant on Civil and Political Rights*.[14] While a general prohibition on torture and other cruel, inhuman or degrading treatment or punishment is contained in both the Victorian and ACT legislation, both acts permit limitations on this right contrary to the status of the prohibition against torture as peremptory and non-derogable.[15] Moreover, neither Act provides for an independent right to take legal action to remedy a breach of rights, contrary to articles 13 and 14 of the CAT.

23. The Australian Government has announced plans to initiate a consultation on how best to protect human rights in Australia.[16] Again, the HRLRC welcomes this positive development and looks forward to participating in a national consultation.

24. The HRLRC submits that the national consultation should be broad, robust and participatory and ensure that all Australians are given the opportunity to participate in and make a submission to the consultation, including those who are marginalised and disadvantaged.

Recommendation 3:

That the Australian Government initiate a robust, participatory and adequately funded community consultation on the protection of human rights in Australia.

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[13] Concluding Observations [9].

[14] *Charter of Human Rights and Responsibilities Act 2006* (Vic); *Human Rights Act 2004* (ACT).

[15] See, eg, section 7(2) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

[16] Ibid.

2.4 Definitions

25. The Committee has recommended that Australian legislation to entrench obligations under the CAT incorporate a definition of torture which is in accordance with Article 1 of the CAT.[17]

26. The need to include an adequate definition of torture is particularly important in the context of comments made by former Australian Government ministers denying that techniques such as sleep deprivation amount to torture.[18] Ministers have argued that such techniques are only prohibited under the CAT if they are used in combination and over a long period of time.[19] At no time did the Ministers acknowledge that these techniques, or other techniques authorised by the Australian Government, constitute cruel, inhuman or degrading treatment.

27. Again, the HRLRC notes that guidance around definitions of torture and ill-treatment can be found in the Committee's General Comment No. 2.

> ***Recommendation 4:***
>
> That torture and ill-treatment under Australian law be adequately defined to reflect the definitions contained in the CAT, particularly by reference to the Committee's General Comment No.2 and other international jurisprudence.

2.5 Jurisdiction

28. In its Concluding Observations, the Committee has recommended that any Australian legislation developed to criminalise torture should apply:

    (a) to attempts to commit torture;[20]

    (b) when the offences are committed in any territory under Australia's jurisdiction or on board a ship or aircraft registered in Australia;[21]

    (c) when the alleged offender is an Australian national;[22]

    (d) when the victim is a national of Australia if Australia considers it appropriate.[23]

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[17] Concluding Observations, [22].

[18] ABC-TV, 'Quick Trial for Hicks Essential: Ruddock', *Insiders* (1 October 2006); Richard Sproull, 'Sleep Deprivation is Not Torture: Ruddock', *The Australian* (Sydney), 2 October 2006, 2.

[19] Michelle Grattan, 'PM Rises to Sleep Debate', *The Age* (Melbourne), 6 October 2006, 6. See also Evidence to Senate Legal and Constitutional Committee, Parliament of Australia, Canberra, 31 October 2006, 68-69 (Senator Ellison).

[20] Concluding Observations, [19].

[21] Ibid.

[22] Ibid.

[23] Ibid.

29. In the cases of Mamdouh Habib and David Hicks, the Australian Government has refused to thoroughly investigate serious allegations of the torture of Australian citizens, or to accept any responsibility for the advice of the Australian military lawyer who endorsed the interrogation techniques at Abu Ghraib prison as consistent with the *Geneva Conventions*. In each case, Australia claimed that it had no jurisdiction. The cases of Mamdouh Habib and David Hicks highlight the importance of adequately addressing jurisdictional issues in any new legislation.

Recommendation 5:

That the jurisdictional provisions in Australian laws on torture and ill-treatment reflect obligations under the CAT and other international jurisprudence. Specifically, a new torture offence should apply:

(a) to attempts to commit torture;

(b) when the offences are committed in any territory under Australia's jurisdiction or on board a ship or aircraft registered in Australia;

(c) when the alleged offender is a national of Australia;

(d) when the victim is a national of Australia if Australia considers it appropriate.

2.6 Investigations and Sanctions

30. In its Concluding Observations, the Committee recommended that:

(a) all allegations of acts of torture and ill-treatment committed by law enforcement officials, and in particular any deaths in detention, are investigated promptly, independently and impartially and, if necessary, prosecuted and sanctioned;[24]

(b) victims of police misconduct are able obtain redress and fair and adequate compensation;[25] and

(c) if there are reasonable grounds to believe that acts of torture have been committed in an area where Australia advises or has advised on the exercise of interim authority, prompt and impartial investigations should be conducted.[26]

31. A recent Individual Communication to the Human Rights Committee under the *First Optional Protocol to the International Covenant on Civil and Political Rights*, *Horvath v Australia*, relates to the failure of the State of Victoria to adequately investigate or remedy serious allegations of torture and ill-treatment by members of the Victoria Police in respect of a 21 year old woman and three friends.

[24] Concluding Observations, [27].

[25] Ibid.

[26] Concluding Observations, [28].

32. This case and these recommendations highlight the need for Australian laws criminalising torture and ill-treatment to incorporate robust investigatory mechanisms and provide for adequate sanctions and reparations.

33. In addition, the ratification of the Optional Protocol to the CAT would strengthen Australia's capacity to recognise and investigate instances of torture and ill-treatment. The Optional Protocol is discussed in detail in Section 9 below.

Recommendation 6:

Australian laws criminalising torture and ill treatment should incorporate robust investigatory mechanisms and provide for adequate sanctions and reparations.

3. Immigration and Asylum Seeker Policy and Practice

34. The HRLRC welcomes the Australian Government's proposed reforms to Australia's immigration detention scheme as announced on 29 July 2008.[27] These reforms, outlined in the 'seven key immigration values', signal a significant and positive departure from previous immigration detention policies which constituted grave breaches of Australia's obligations under international human rights law, including under the CAT.

35. Despite these reforms, the proposed immigration detention regime falls short of Australia's obligations under the CAT and fails to implement the Committee Recommendations in a number of respects.

3.1 Mandatory Detention of Asylum Seekers

CAT Articles 2, 11 and 16

36. Since 1992, Australia has maintained a policy of indefinite mandatory detention of asylum seekers. The *Migration Act 1958* (Cth) establishes a scheme whereby an 'unlawful non-citizen' — that is a non-citizen who does not hold a valid visa[28] — must be detained[29] until such time as they are removed from Australia, deported, or granted a visa.[30] If none of the triggers for release eventuates, detention can be indefinite.

37. In its Concluding Observations, the Committee recommended that the Australian Government consider abolishing its policy of mandatory immigration detention for those irregularly entering the State party's territory. The Committee advised that detention should be used as a measure of last resort only and a reasonable time limit for detention should be set.[31] The Committee also advised that action be taken to 'avoid the indefinite character of detention of stateless persons'.[32]

38. Unfortunately, the Australian Government's proposed immigration detention regime fails to comprehensively implement the Committee's recommendations. Significantly, the first of the Australian Government's new 'seven key immigration values' is that '[m]andatory detention is an essential component of strong border control.'[33] The second principle limits mandatory immigration detention to the following three groups:

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[27] Chris Evans, *New Directions in Detention – Restoring Integrity to Australia's Immigration System*, speech at Australia National University, Canberra, 29 July, 2008.

[28] *Migration Act* ss 13 and 14.

[29] *Migration Act* s 189.

[30] *Migration Act* s 196.

[31] Concluding Observations, [11].

[32] Ibid.

[33] Chris Evans, above n 27.

(a) all unauthorised arrivals, for management of health, identity and security risks to the community;

(b) unlawful non-citizens who present unacceptable risks to the community; and

(c) unlawful non-citizens who have repeatedly refused to comply with their visa conditions.

39. The proposed regime does not adequately address the Committee Recommendations to the extent that it:

(a) does not require adequate and individualised justification for detention in each case;

(b) does not provide for full and independent merits and judicial review of decisions to detain people in immigration detention centres; and

(c) does not impose a time limit for immigration detention, thereby leaving open the possibility of indefinite detention.

40. The HRLRC has made a more detailed submission on these issues to the Joint Standing Committee on Migration's inquiry into Immigration Detention. That submission is available through the Committee on Migration's website.[34]

Recommendation 7:

Mandatory immigration detention should be abolished and detention should be a last resort and imposed for the minimum period possible and be subject to regular independent review. The *Migration Act 1958* (Cth) should be amended to reflect these principles and standards.

3.2 Children in Immigration Detention

41. Despite the former Australian Government's commitment in 2005 to remove children from mainland detention centres, refugee and asylum seeker children remain inadequately protected under Australian law. The non-detention of children is not legislatively guaranteed; rather, the legislation gives the Minister a non-compellable discretion to determine that a person is to reside somewhere other than in immigration detention 'if the Minister thinks that it is in the public interest to do so'.[35]

42. The 'seven key immigration values' include a commitment that children and, where possible, their families, will not be detained in an immigration detention centre.[36] Once again, there has been no indication that this commitment will be enshrined in legislation. Ministerial discretion in this area is inconsistent with the Committee's recommendation that children not be held in immigration detention under any circumstances.[37]

[34] http://www.aph.gov.au/House/committee/mig/detention/subs/sub117.pdf

[35] *Migration Act 1958* (Cth) s 197AB.

[36] Chris Evans, above n 27.

[37] Concluding Observations [25].

43. In addition, the HRLRC is concerned that the Australian Government has suggested that children and their families may be kept in Immigration Residential Housing (**IRH**). When living in IRH, people are not free to come and go as they please and must be accompanied by detention staff when they visit external sites. While IRH is not detention in name, it continues to impose significant limitations on the rights of children and is effectively a form of detention. The use of IRH for children is therefore inconsistent with the Committee's recommendation that children not be held in immigration detention under any circumstance.

> ***Recommendation 8:***
>
> Under no circumstances should children be kept in any form of immigration detention, including Immigration Residential Housing. The *Migration Act 1958* (Cth) should be amended accordingly.

3.3 Conditions in Immigration Detention

CAT Articles 2, 11 and 16

44. In recent years, the conditions of immigration detention in Australia have been a shameful blight on the country's human rights record. In 2002, the Working Group on Arbitrary Detention reported that '[t]he conditions of detention are in many respects similar to prison conditions'.[38] Australia's failure to uphold human rights standards within its immigration detention facilities is reflected in the Committee's recommendations.

45. In its Concluding Observations, the Committee recommends that the Australian Government ensure that asylum-seekers who have been detained are provided with adequate physical and mental health care, including routine health assessments.[39]

46. The Australian Government's proposed immigration detention regime purports to address certain areas in which the Committee expressed concern. In this respect, the 'seven key immigration values' include commitments that:

    (a) people in detention will be treated fairly and reasonably within the law; and

    (b) conditions of detention will ensure the inherent dignity of the human person.

47. As yet, the Australian Government has not released details of the extent to which theses commitments will be incorporated into legislation. The HRLRC considers that it is vital that the commitments listed above are recognised in legislation, rather than left as a matter of policy and subject to discretion.

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[38] Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention: Visit to Australia* (24 October 2002) UN Doc. E/CN.4/2003/8/Add.2, [14].

[39] Concluding Observations [25].

48. Implementation of the Committee's recommendations also requires the improvement of health facilities that are currently available to people being held in immigration detention. However, we note that in most cases it is not possible to properly treat the mental health problems suffered by detainees because the main way to treat a mental health concern is to remove the primary cause of the problem; namely, detention itself.

> ***Recommendation 9:***
>
> The Australian Government should amend the *Migration Act 1958* (Cth) so that it reflects the principles that:
>
> (a) people in immigration detention will be treated fairly and reasonably within the law; and
>
> (b) conditions of detention will ensure the inherent dignity of the human person.

3.4 Education and Training of Immigration Officers

CAT Articles 10 and 11

49. In its Concluding Observations, the Committee recommended that Australia ensure that education and training of all immigration officials and personnel, including health service providers, employed at immigration detention centres, be conducted on a regular basis. The Committee further recommended that the training be regularly evaluated.[40]

50. This recommendation is made in the context of evidence of substantial departmental failure within the Department of Immigration. In July 2005, the then Minister for Immigration commissioned an inquiry into the circumstances of the mistaken immigration detention of two Australian citizens. The main findings of the inquiry, published in the 'Palmer Report',[41] included the following:

    (a) there were 'serious problems with the handling of immigration detention cases [that] stem from deep-seated cultural and attitudinal problems' within the Department's immigration compliance and detention areas;[42]

    (b) immigration officials were exercising extraordinary powers 'without adequate training, without proper management and oversight, with poor information systems, and with no genuine quality assurance and constraints on the exercise of these powers';[43]

[40] Concluding Observations [22].

[41] Mick Palmer, *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau* (July 2005).

[42] Ibid [17]. Ms Rau 'was not a prisoner, had done nothing wrong, and was put there simply for administrative convenience': Ibid [12].

[43] Ibid [9].

(c) many immigration officials have received 'little or no relevant formal training and seem to have a poor understanding of the legislation they are responsible for enforcing, the powers they are authorised to exercise, and the implications of the exercise of those powers';[44] and

(d) officers responsible for detaining people suspected of being unlawful non-citizens 'often lack even basic investigative and management skills'.[45]

51. In addition to the Palmer Report, in 2006 the Commonwealth and Immigration Ombudsman released three reports in relation to the immigration detention of 20 people between 2000 and 2005.[46] As stated by the Ombudsman, Prof John McMillan:

> The reports highlight serious administrative deficiencies that existed in [the Department] during the period under investigation. The main areas of concern were poor understanding of law and policy relating to immigration and citizenship, inadequate staff training, deficient record keeping, wrongful exercise of the power to detain, failure of internal monitoring and review, and delay in resolving the immigration status of those in detention.[47]

Recommendation 10:

All persons involved in the management and administration of the immigration system should receive comprehensive training which covers obligations under international human rights law.

[44] Ibid [14].

[45] Ibid [15].

[46] Commonwealth Ombudsman, *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau* (July 2005); *Mr G* (Report No 06–2006), *Mental Health and Incapacity* (Report No 07–2006) and *Children in Detention* (Report No 08–2006).

[47] Commonwealth Ombudsman, 'Ombudsman Releases Three Reports on Immigration Detention', Media release, 6 December 2006.

4. Refoulement and Extradition

4.1 Refoulement

CAT Article 3

52. Article 3 of the CAT provides that a State party shall not refoule or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. In its Concluding Observations the Committee recommended that the Australian Government specifically incorporate this obligation into domestic legislation both at Federal and States/Territories levels.[48]

53. The need to enshrine the principle of non-refoulement in Australian domestic legislation has previously been expressed in a Senate Legal and Constitutional References Committee Report[49] and in a report of the UN Special Rapporteur on Human Rights and Counter-Terrorism.[50]

54. The absence of an express non-refoulement provision in Australian law is of particular concern given that the Australian Government has repeatedly disclaimed any responsibility for the subsequent torture or ill-treatment of persons who are removed.[51] There is substantial evidence that asylum-seekers who have been returned by Australia to their country of origin have been tortured and even killed.[52] Australia deports asylum-seekers to countries which are not signatories to the *Refugee Convention* (such as Malaysia and Thailand) and to so called 'safe third countries' (such as China) in which the use of torture and other cruel or degrading treatment remains widespread. As such, comprehensive legislative protection of the prohibition of refoulement is required.

> ***Recommendation 11:***
>
> The *Migration Act 1958* (Cth) should be amended to comprehensively prohibit the refoulement of a person from Australia in circumstances where they may be exposed to a risk of torture or other cruel, inhuman or degrading treatment of punishment.

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[48] Concluding Observations [15].

[49] Senate Legal and Constitutional References Committee, *A Sanctuary under Review: An Examination of Australia's Refugee and Humanitarian Determination Processes* (June 2000),

[50] Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism, *Australia: Study on Human Rights Compliance while Countering Terrorism*, UN Doc A/HRC/4/26/Add.3 (2006), [62], [72].

[51] A Chinese man deported from Australia earlier this year has claimed that he was interrogated and tortured immediately on his return to China. The man recently committed suicide. See ABC, 'Chinese Deportee Claims Torture', *AM*, 29 June 2007.

[52] See, eg, *Deportations to China: Australian RSD Processes that Return People to Persecution* (2007); Edmund Rice Centre for Justice and Community Education, *Deported to Danger II* (2006); and Refugee Health Research Centre, *Removing Seriously Ill Asylum Seekers from Australia* (2007).

4.2 Extradition

CAT Article 3

55. Australian extradition law and policy does not absolutely prohibit extradition to a country where a person may be subject to torture or other cruel, inhuman or degrading treatment or punishment. The *Extradition Act 1988* (Cth) does contain a presumption against extradition to such a situation,[53] however, the Minister retains an overriding discretion to extradite a person notwithstanding that this may expose them to a real risk of torture.[54]

56. The Committee's Concluding Observations highlight the principle that:[55]

> under no circumstances can [States parties] resort to diplomatic assurances as a safeguard against torture or ill-treatment where there are substantial grounds for believing that a person would be in danger of being subjected to torture or ill treatment upon return.

57. In its Concluding Observations, the Committee made specific recommendations that the Australian Government should ensure that extradition is refused in all cases where extradition would be to a State where there are substantial grounds to believe that the person would be in danger of being subjected to torture.[56] The HRLRC considers that such a provision should be explicitly provided for in legislation.

Recommendation 12:

The *Extradition Act 1988* (Cth) should be amended to comprehensively prohibit the extradition of a person from Australia in circumstances where they may be exposed to a risk of torture or other cruel, inhuman or degrading treatment of punishment.

[53] Section 22(3)(b).

[54] Section 22(3)(f).

[55] Concluding Observations [16].

[56] Concluding Observations [20].

5. Indigenous Australians and the Criminal Justice System

5.1 Incarceration Rates of Indigenous Australians

CAT Articles 11 and 16

58. Many Indigenous Australians confront serious human rights issues in the justice system. In particular, issues resulting from the disproportionate impact of certain criminal laws and the incidence and impacts of incarceration raise serious concerns in relation to Australia's obligations under the CAT.

59. Indigenous peoples in Australia are among the most highly incarcerated peoples in the world. Despite Indigenous Australians representing approximately 2 per cent of the Australian population, around 24 per cent of the total prison population is Indigenous.[57] Based on 2005 figures, the rate of Indigenous imprisonment in Australia had risen by 23 per cent in the previous six years.[58] The incarceration rate for Indigenous Australians is more than 13 times higher than for non-Indigenous Australians and, as at March 2004, Indigenous women were incarcerated at a rate 20.8 times that of non-Indigenous women.[59]

60. While mandatory sentencing provisions for minor property offences in the Northern Territory were repealed in 2001, mandatory sentencing laws for many offences remain in the Northern Territory as well as in the Criminal Code in Western Australia. Indigenous Australians continue to be disproportionately affected by this legislation:

    (a) In Western Australia, Indigenous Australians are 21 times more likely to be in prison than non-Indigenous Australians.[60] Young Indigenous people, who are a small fraction of the total youth population of Western Australia, constitute three quarters of those sentenced in mandatory sentencing cases.[61]

    (b) In the Northern Territory, the Indigenous prisoner population comprises 84 per cent of the total prisoner population.[62]

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[57] Australian Bureau of Statistics, Prisoners in Australia, 2007, Based on the National Prisoner Census about persons held in Australian prisons on the night of 30 June 2007. see http://www.abs.gov.au/Ausstats/ABS@.nsf/Latestproducts/4517.0Main%20Features22007?opendocument&tabname=Summary&prodno=4517.0&issue=2007&num=&view

[58] Australian Bureau of Statistics, *Prisoners in Australia* (2005) 5.

[59] Human Rights and Equal Opportunity Commission, *A Statistical Overview of Aboriginal and Torres Strait Islander Peoples in Australia* (2006) available at http://www.hreoc.gov.au/social_justice/statistics/index.html.

[60] Australian Bureau of Statistics, Prisoners in Australia, 2007, above n 57.

[61] The UN Committee on the Rights of the Child expressed its concern about the over-representation of Indigenous children in the juvenile justice system: see UN Committee on the Rights of the Child, *Concluding Observations: Australia*, UN Doc CRC/C/15/Add.268 (2005) [73]–[74].

[62] Australian Bureau of Statistics, Prisoners in Australia, 2007, above n 57.

61. The HRLRC considers that, in line with the Committee's Concluding Observations, the Australian Government should abolish mandatory sentencing laws.[63] More broadly, Australia must continue its efforts to address the socio-economic disadvantage that leads to a disproportionate number of Indigenous Australians coming into contact with the criminal justice system.

> ***Recommendation 13:***
>
> Mandatory sentencing laws should be abolished due to their disproportionate and discriminatory impact on Indigenous Australian. More generally, Australia must continue its efforts to address the socio-economic disadvantage that leads to a disproportionate number of Indigenous Australians coming into contact with the criminal justice system.

5.2 Aboriginal Deaths in Custody

CAT Article 11

62. The deaths of Indigenous Australians in custody continues to be a matter of serious concern, despite the recommendations of the *Royal Commission into Aboriginal Deaths in Custody* over 15 years ago.[64] Many of these recommendations still have not been implemented by the Australian Government or state and territory governments. More than half of Indigenous deaths in custody are of individuals detained for no more than public order offences.[65] The striking over-representation of Indigenous Australians in prison, as well as the percentage of Indigenous deaths in custody and the lack of fair treatment under the criminal justice system, all raise serious concerns in relation to the CAT.

63. In its Concluding Observations, the Committee recommended that the Australian Government seek to prevent and investigate any deaths in custody promptly and continue implementation of pending recommendations from the Royal Commission into Aboriginal Deaths in Custody of 1991. The HRLRC considers that, 15 years on, the Australian Government should review, update and implement the recommendations from the *Royal Commission*.

> ***Recommendation 14:***
>
> The Australian Government should review, update and implement recommendations from the *1991 Royal Commission into Aboriginal Deaths in Custody*.

[63] Concluding Observations [23].

[64] Commonwealth, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991).

[65] Australian Institute of Criminology, *Trends & Issues in Crime and Criminal Justice: Deaths in Custody in Australia 1990-2004*, April 2006.

6. Prisoners and Conditions of Detention

6.1 Reducing Overcrowding

CAT Articles 2, 11 and 16

64. Unacceptable conditions in Australian prisons, including overcrowding and lack of access to adequate health care treatment, raise issues in relation to the prohibition against torture and may constitute cruel, inhuman or degrading treatment or punishment. A series of reports have highlighted the dire state of the Australian prison system.[66]

65. In its Concluding Observations the Committee recommended that Australia undertake measures to reduce overcrowding, including consideration of non-custodial forms of detention.[67]

> ***Recommendation 15:***
>
> The Australian Government must take further steps and measures to address overcrowding in prisons, including through the development of alternatives to detention such as restorative and therapeutic jurisprudence. More broadly, the Australian Government should ensure that prisoners are not subject to any deprivations of rights or freedoms that are not a necessary consequence of the deprivation of liberty itself.

6.2 Mental Health Care in Prisons

CAT Articles 2, 11 and 16

66. Recent research indicates that, of a total Australian prison population of around 25,000 people, approximately 5,000 inmates suffer serious mental illness.[68] Rates of major mental illnesses are between three and five times higher in the prison population than in the general Australian community.[69] There is both a causal and consequential link between imprisonment and mental illness. People with mental illness are more likely to be incarcerated, particularly having regard to the lack of support provided by the poorly resourced community mental health sector, and people in prison are more likely to develop mental health problems, with prisons not being conducive to good mental health.

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[66] Ombudsman Western Australia, *Report on Deaths in Prisons* (2000); ABC, 'Claims of Overcrowding in SA Prisons', *ABC Online,* 10 March 2008; Greg Skelton, 'Overcrowding Pressures Prisons', *Adelaide Advertiser* (Adelaide), 17 February 2008; ABC, 'Juvenile Prisoners Sharing One-Person Cells', *ABC Online,* 7 April 2008.

[67] Concluding Observations [23].

[68] J P R Ogloff et al, *The Identification of Mental Disorders in the Criminal Justice System* (Australian Institute of Criminology, March 2007).

[69] J P R Ogloff et al, *The Identification of Mental Disorders in the Criminal Justice System* (Australian Institute of Criminology, March 2007).

67. There is significant evidence that mental health care in Australian prisons is manifestly inadequate and may amount to a level of neglect that constitutes degrading treatment or punishment. The Committee recognised this in their Concluding Observations and recommended that the Australian Government provide adequate mental health care for all persons deprived of their liberty.[70] In order to address this recommendation, the Australian Government should reconsider its approach to mental health care in prisons, including questions of resource allocation and the appropriateness of detention for people suffering from mental illness.

68. The widespread use of solitary confinement (or 'segregation' as it is also known) as a management tool for people incarcerated in Australian prisons is an issue of significant concern, particularly in regard to those incarcerated who are also suffering from a mental illness. Research suggests that solitary confinement can cause and significantly exacerbate symptoms of mental illness, such as paranoia.[71]

69. At present, Australian law, in general terms, allows the governor of a correctional centre to direct that an inmate be held in segregated custody in circumstances where they consider that their association with other inmates may constitute a threat to the security of a correctional centre, or good order and discipline within the centre. The security of the facility is given greater priority than the mental health condition of the inmate.

70. The Committee recognised these issues in its Concluding Observations and expressed concern 'about the prolonged isolation periods to which detainees, including those pending trial, are subjected and the effect such treatment may have on their mental health'.[72]

Recommendation 16:

The Australian Government should ensure that all prisoners have adequate access to health care, including mental health care, consistent with the human right to the highest attainable standard of physical and mental health. The Australian Government should also take legislative action to prohibit untherapeutic solitary confinement of prisoners with mental illness.

[70] Concluding Observations [23].

[71] NSW Deputy State Coroner, *Inquest into the Death of Scott Ashley Simpson* (17 July 2006).

[72] At [24].

7. Counter-Terrorism Law and Practice

71. Since the events of 11 September 2001, the Australian Government has introduced more than forty pieces of legislation to address terrorism and related activities.[73] In the absence of a federal Charter of Rights, these laws have not been assessed against, or counterbalanced by, a legislative human rights framework. As a consequence, many of the measures allow for significant violations of human rights. The enactments have been heavily criticised both domestically[74] and internationally[75] for their failure to allow for adequate judicial oversight and redress mechanisms.

7.1 ASIO Detention

CAT Articles 2, 11 and 16

72. Following amendments introduced under the *Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Act 2003* and the *ASIO Legislation Amendment Act 2006* (Cth), a person can be detained without charge under an ASIO warrant for up to 168 hours, or 7 days.[76] A separate warrant can be issued at the end of the 168 hours if new material justifies it.[77] A person may thus be held in detention indefinitely for rolling periods of 7 days, without any charge having been made out against them in accordance with conventional criminal procedure. Further, under this legislation:

(a) the person may be prohibited and prevented from contacting anyone at any time while in custody;[78]

(b) the person may be questioned in the absence of a lawyer;[79]

(c) the person's lawyer may be denied access to information regarding the reasons for detention and also in relation to the conditions of detention and treatment of the person;[80]

(d) the person is prohibited from disclosing information relating to their detention at risk of five years imprisonment; and[81]

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[73] A comprehensive list of the 'legislative suite' can be found at the Government's 'National Security' website.

[74] For example, there was vociferous opposition in the Parliament to the *ASIO Legislation Amendment Bill* (2003) (Cth). The Chairman of the Joint Committee which reviewed the Bill described it as 'the most draconian legislation ever to come before parliament' (*The Australian,* 19 June 2002, 3).

[75] See, eg, Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism, *Australia: Study on Human Rights Compliance while Countering Terrorism*, UN Doc A/HRC/4/26/Add.3 (2006).

[76] *Australian Security Intelligence Organisation Act 1979* (Cth) s 34S.

[77] *Australian Security Intelligence Organisation Act 1979* (Cth) s 34F(6) and s 34G(2).

[78] *Australian Security Intelligence Organisation Act 1979* (Cth) s 34F(8).

[79] *Australian Security Intelligence Organisation Act 1979* (Cth) s 34TB.

[80] *Australian Security Intelligence Organisation Act 1979* (Cth) s 34VA.

(e) the person's lawyer, parents and guardian may be imprisoned for up to five years for disclosing any information regarding the fact or nature of the detention.[82]

73. These secrecy provisions prevent the press, academics and human rights advocates from independently monitoring the use of ASIO questioning and detention powers. As Amnesty International has noted, '[t]he level of secrecy and lack of public scrutiny provided for by this Bill has the potential to allow human rights violations to go unnoticed in a climate of impunity.'[83]

74. The legislation does provide that a detainee should be treated with humanity and with respect for human dignity, and must not be subject to cruel, inhuman or degrading treatment.[84] However, the legislation does not provide for any offence or penalties for contravening conduct. Therefore, the only means of recourse is for the subject to make a complaint to the Inspector-General of Intelligence and Security, the Commonwealth Ombudsman or a State/Territory complaints agency. The HRLRC considers that the lack of enforcement provisions for a breach of the prohibition against torture or ill-treatment under s 34J(2) is manifestly inadequate.

75. Australia must comprehensively review all counter-terrorism laws and practices to ensure that they are in compliance with international human rights standards.

7.2 Preventative Detention and Control Orders

CAT Articles 2, 11 and 16

76. The *Anti-Terrorism Act (No 2) 2005* amended the *Criminal Code* and introduced, among other things, control orders and preventative detention orders. In addition to raising concerns regarding freedom from arbitrary detention, the presumption of innocence and the right to a fair hearing, the regime raises significant concerns due to the inadequacy of safeguards to comprehensively prevent ill-treatment.

77. A preventative detention warrant for up to 48 hours may be made by a senior member of the Australian Federal Police, with no requirement of judicial authorisation.[85] For the extension of an initial detention order or the continuation of a preventative detention order, a police member is merely required to adduce 'such facts and grounds' which would make the continuation of a detention order 'reasonably necessary' in the circumstances.[86] Under a preventative detention warrant:

[81] *Australian Security Intelligence Organisation Act 1979* (Cth) s 34VAA(2).

[82] *Australian Security Intelligence Organisation Act 1979* (Cth) s 34U(7) and s 34V.

[83] Amnesty International Australia, *Concerns Regarding the ASIO Legislation Amendment Bill 2003* (2003).

[84] *Australian Security Intelligence Organisation Act 1979* (Cth) s 34J(2).

[85] *Criminal Code* Div 105.7 and 105.8.

[86] See *Criminal Code* s 105.10(2) and 105.11(2).

(a) The detainee is held in circumstances of extreme secrecy and may effectively be held incommunicado, except for limited contact with family. Contact with a lawyer of choice, or any lawyer at all, may be prohibited through a 'prohibited contact order.'[87]

(b) Even where contact with a lawyer is permitted, the detainee's ability to effectively communicate is hampered as all communications may be monitored by police.[88]

(c) A reporter, advocate or accused who discloses circumstances of their detention may be liable to five years imprisonment under the 'non-disclosure' offences.[89]

78. Under the preventative detention regime in the *Criminal Code*, an individual can be held for up to 48 hours on virtually untested bases and information, with limited contact with the outside world and no ability to appeal or challenge their detention. This period may be extended to 14 days under state legislation.

79. In its Concluding Observations, the Committee recommended that the Australian Governmetn '[g]uarantee that both preventative detention and control orders are imposed in a manner that is consistent with the State party's human rights obligations, including the right to a fair trial including procedural guarantees'.

Recommendation 17:

Australia should comprehensively review all counter-terrorism laws and practices to ensure that they are in compliance with international human rights standards.

[87] *Criminal Code* Div 105.16. See also Div 105.14A and 105.15.

[88] *Criminal Code* Div 105.38.

[89] *Criminal Code* Div 105.41.

8. Obtaining and Using Evidence

8.1 Prohibition against Use of Evidence obtained under Torture

CAT Articles 2 and 15

80. Article 15 of the CAT provides that evidence obtained contrary to the prohibition against torture must not be invoked as evidence in any proceeding. Australian domestic law, however, contains a number of exceptions to this absolute prohibition.

81. For example:

(a) Section 138 of the *Uniform Evidence Act 1995* (Cth) provides that evidence obtained improperly or in contravention of Australian law may be admitted where, in the opinion of the trial judge, the desirability of admission outweighs the undesirability of excluding it.

(b) Section 26 of the *Foreign Evidence Act* (Cth), which applies to evidence obtained from a foreign country for use in Australia, provides that, in matters relating to terrorism and national security, evidence may only be excluded where it would have a substantial adverse effect on the right of a defendant to a fair hearing.

(c) The *Mutual Assistance in Criminal Matters Act 1987* (Cth) does not contain any prohibition on the provision on government-to-government assistance where such assistance may expose a person to torture or other cruel, inhuman or degrading treatment or punishment. Section 8(1A) of the Act does provide that mutual assistance should be refused in capital cases, unless 'special circumstances' exist justifying assistance.

82. In its Concluding Observations, the Committee recommended the introduction of uniform and precise legislation in all States and Territories excluding the admission of statements as evidence if made as a result of torture.[90]

Recommendation 18:

Australia should comprehensively legislate to absolutely prohibit the use of evidence that has been obtained as a result of torture or other cruel, inhuman or degrading treatment or punishment other than for the purpose of establishing such treatment or punishment.

[90] Concluding Observations [30].

9. Ratification of the Optional Protocol to the CAT

83. The HRLRC commends the Australian Government on the steps it has taken towards the ratification of the Optional Protocol to the CAT.[91] These steps are in line with the Committee's recommendation that Australia 'speedily conclude its internal consultation and ratify the Optional Protocol to the Convention in order to strengthen the prevention against torture'.[92]

84. The HRLRC recently made a submission to the National Interest Analysis of the Optional Protocol to the CAT which strongly supported Australia's accession to the Optional Protocol.[93]

85. The HRLRC considers that accession to the Optional Protocol would:

(a) protect the human rights of persons deprived of liberty and reduce the incidence and likelihood of ill-treatment of such persons;

(b) complement and strengthen existing domestic inspectorate and monitoring mechanisms for places of detention and promote human rights compatible detention management;

(c) foster and promote systematic analysis (and systemic change where necessary) of laws and policies affecting the rights of persons deprived of their liberty;

(d) strengthen Australia's leadership role within the international community; and

(e) be consistent with the Australian Government's commitment to constructive engagement with the UN human rights system and to the harmonisation of domestic laws, policies and practices with international human rights standards.

86. Importantly, by shifting the emphasis from the ad hoc nature of individual complaints to an investigative and inspection model, the Optional Protocol enables a more systematic analysis of the compliance of Australia's places of detention with international human rights standards. The HRLRC considers that this is essential in ensuring the elimination of torture and other forms of ill-treatment in Australia.

Recommendation 19:

Australia should ratify the Optional Protocol to the CAT.

Importantly, the Australian Government must undertake a detailed and thorough analysis of its national preventative mechanisms to ensure that they comply with the obligations contained in the Optional Protocol, particularly with regard to being independent, adequate resourced and with powers of access to detention facilities and detainees.

[91] Cynthia Banham, 'Australia to Sign Torture Treaty that Howard Spurned', *Sydney Morning Herald* (Sydney), 1 March 2008.

[92] Concluding Observations [34].

[93] Available at http://www.hrlrc.org.au/files/8OXTVK5QTY/HRLRC%20Submission%20on%20OP-CAT.pdf.