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COMMITTEE AGAINST TORTURE

Written replies by the Government of Australia* to the list of issues (CAT/C/AUS/Q/4) to be taken up in connection with the consideration of the fourth periodic report of AUSTRALIA (CAT/C/67/Add.7)

[13 September 2007]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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Article 2

Question 1

Section 11 of the Crimes (Torture) Act 1988 provides that is not a defence in a proceeding for an offence against this Act that the offence was committed under exceptional circumstances nor that the accused acted under orders of a superior officer or public authority. However, these circumstances may be taken into account in determining the proper sentence. Please indicate any case that occurred during the reporting period in which exceptional circumstances or superior orders have been considered as mitigating circumstances in the determination of sentences of conviction under this Act.

1. The Commonwealth Director of Public Prosecutions (the CDPP) has never prosecuted any matter under the *Crimes* (*Torture*) *Act 1988* (Cth).

Question 2

Please provide further information on the rights of persons detained in police custody, in particular their right of access to a counsel and to a doctor of their choice, to be informed of their rights and to inform their family promptly about their detention. Has the new legislation against terrorism affected these rights?

2. Each of the jurisdictions in Australia provides a wide range of rights to persons detained in police custody, including rights of access to counsel and to a doctor of their choice, to be informed of their rights and to inform their family promptly about their detention. These rights have not been affected by new legislation against terrorism. Detail is provided below. Information on rights under Commonwealth legislation is set out first, followed by information on rights contained in State and Territory legislation.

Commonwealth Government information

3. Division 3 of Part IC of the Crimes Act 1914 provides for the investigation of Commonwealth offences and imposes a number of obligations on investigating officials. The rationale of having the safeguards provided under Part IC is to ensure the reliability of the evidence obtained and to ensure there is no infringement on the right to a fair trial.

4. Where investigating officials do not comply with their obligations under Part IC, s138 of the Evidence Act 1995 provides that a court may exercise a discretion to exclude the evidence obtained from pre-charge questioning. Under s138, evidence obtained improperly or in contravention of an Australian law "is not to be admitted unless the desirability of admitting the evidence outweighs the undesirability of admitting evidence that has been obtained in the way in which the evidence was obtained."

5. Part IC provides the following rights for persons who are arrested for a Commonwealth offence, or a "protected suspect" which is defined to include persons that are in the company of an investigating official and are being questioned about a Commonwealth offence.

Cautioning Persons who are Under Arrest or Protected Suspects (Section 23F)

6. Section 23F provides that persons who are under arrest or protected suspects must be cautioned. Whilst a protected suspect is in custody in relation to a criminal offence, s/he may participate in a voluntary interview. Section 23F requires the investigating officials to caution the person prior to any questioning, to advise that s/he does not have to say or do anything, but anything s/he does say or do may be used in evidence.

Right to Communicate with a Friend, Relative, Legal Practitioner and for non-Australian nationals to communicate with a consular office, Provisions Applicable to Aboriginal Persons and Torres Strait Islanders and Persons Under 18 (Sections 23G, 23H, 23K and 23P)

7. A protected suspect has the right to communicate, or attempt to communicate with a friend, relative and legal practitioner. The investigating officials must advise persons of this right prior to questioning, and must defer questioning for a reasonable time for this to occur.

8. Investigating officials must also take reasonable steps to ensure that the person can communicate with his/her lawyer without being overheard. Where a lawyer is attending questioning, the arrested person must be able to consult with the lawyer in private.

Providing Information Relating to Persons Who are Under Arrest or Protected Suspects (Section 23M)

9. A person must be informed of any inquiries by his or her friends, relatives and legal representatives as to the person's whereabouts, and, unless the person does not agree, that information must be provided. This requirement is subject to the non-compliance exception in section 23L (see below).

Right to an Interpreter (Section 23N)

10. Investigating officials have a duty to provide an interpreter where s/he believes on reasonable grounds that the protected suspect cannot communicate adequately because of language or a disability. Questioning must be delayed until an appropriate interpreter is present.

Treatment of Persons Under Arrest (Section 23Q)

11. Section 23Q provides that a protected suspect must be treated with humanity and respect for human dignity, and not be subjected to cruel, inhuman or degrading treatment.

Right to Remain Silent etc. not Affected (Section 23S)

12. Section 23S confirms that Part IC does not affect the right to silence or the discretion of a court to exclude illegally, improperly or unfairly obtained evidence. Further, Part IC does not affect any burden on the prosecution to prove the voluntariness of an admission or confession made by a person or any burden on the prosecution to prove that an admission or confession was made in such circumstances as to make it unlikely that the truth of the admission or confession was adversely affected.

Tape Recording of Information Required to be Given to Person Under Arrest (Section 23U)

13. Where investigating officials are required to provide information to a protected suspect, s 23U requires that where practicable, the investigating official tape record the giving of that information (e.g. giving a caution), and the person's response to that information. If the information is not taped, the prosecution bears the burden of showing that it was not practicable to do so.

Tape Recording of Confessions and Admissions (Section 23V)

14. A confession or admission is inadmissible against the person unless the questions and response are recorded. Where this is not reasonably practicable, a written record of the questions and answers must be produced and read to the person in the appropriate language, and the person must be given the opportunity to interrupt and state where the record is inaccurate or incorrect. The reading of the confession/admission must be tape recorded, and the person must have the process explained to him or her.

15. A copy of the recording and any transcript is to be provided to the person or their legal representative within 7 days of the recording or transcript being made.

16. However, a court can admit evidence where there has been non-compliance with this section if, having regard to the nature of, and the reasons for the non-compliance and any other relevant matters, the court is satisfied that, in the special circumstances of the case, admission of the evidence would not be contrary to the interests of justice (sub-s 23V(5)). In these circumstances, the judge must advise the jury of the lack of compliance and give such a warning as he or she thinks appropriate (sub-s 23V(7)).

Exceptions (Section 23L)

17. Where the above obligations are imposed on investigating officials, if expressed in the legislation, the obligation will not apply if the investigating official believes on reasonable grounds that compliance is likely to result in an accomplice of the person taking steps to avoid apprehension, conceal, fabricate or destroy evidence, or intimidate a witness, or where the questioning of the person is so urgent that having regard to the safety of other people, there should not be a delay in order to comply with this provision.

18. In relation to things done by, or relating to a legal practitioner, the exception will only apply in exceptional circumstances, and if the grounds for belief are authorized by an officer of a police force of the rank of Superintendent or higher, or a person holding the position of an office prescribed. In these circumstances, the investigating official must offer the services of another legal practitioner.

19. Please see response to Issue 5 in relation to the rights of persons under arrest for terrorism offences.

HREOC

20. The Human Rights and Equal Opportunity Commission (HREOC) is able to investigate an act or practice of the Australian Government which is inconsistent with human rights, including the prohibition on torture in the International Covenant on Civil and Political Rights (ICCPR). HREOC has the power to consider complaints from federal prisoners that an act or practice of the Commonwealth is contrary to a human right.

Commonwealth Ombudsman

21. The Commonwealth Ombudsman has functions under the *Ombudsman Act 1976* and the *Australian Federal Police Act 1979* that enable the Ombudsman to investigate complaints against the Australian Federal Police (AFP).

22. Where a person is detained in AFP custody the person may make a complaint about their treatment by the AFP. Such complaints may include complaints about:

(a) The use of force by AFP members toward the person;

(b) The actions of AFP members toward the person through the process of arrest, interview and charging;

(c) The actions of AFP members toward the person whilst the person is in custody;

(d) The failure of the AFP to provide access to a legal practitioner of the person's choice or to allow the person to notify a relative or family member of their whereabouts;

(e) The failure of the AFP to provide medical assistance or treatment to the person where the person has a medical condition that needs immediate treatment.

Note: The provision of a medical practitioner of the arrested person's choice is not a statutory right. However, the provision of medical treatment is a duty of care requirement that falls upon AFP members undertaking custodial duties and is covered under AFP Watch House (custodial) procedural requirements.

23. Under the *Australian Federal Police Act 1979* a person may make a complaint to the AFP and the AFP is under a statutory obligation to deal with the complaint.

24. The Commonwealth Ombudsman's function of reviewing the AFP's handling of complaints made under the *Australian Federal Police Act 1979* enables the Ombudsman to access AFP complaint management and investigation records and to review and report on those records.

25. A person detained in AFP custody may also make a complaint directly to the Commonwealth Ombudsman about the actions of the AFP.

State and Territory information

New South Wales

26. Section 122(1)(a) of the *Law Enforcement* (*Powers and Responsibilities*) *Act 2002* (NSW) (LEPAR Act) provides that a detained person must be informed as soon as practicable by the police custody manager that they do not have to say or do anything but that anything they say or do may be used in evidence. A custody manager is also required to provide a detained person with a summary of the provisions of Part 9 of the LEPAR Act which outlines police procedure for investigations and questioning (s122(1)(b)).

27. Section 123 of the LEPAR Act also provides detained persons with a right to communicate with a friend, relative, guardian or independent person and to communicate with a legal practitioner. Before any investigative procedure in relation to a detained person starts, the custody manager is required to inform the person orally and in writing that he or she may communicate, or attempt to communicate, with a friend, relative, guardian or independent person to inform them of their whereabouts and to ask them to attend the place where they are being detained (s123(1)(a)). This section also requires a detained person to be informed that they can communicate, or attempt to communicate with a lawyer of their choice. A detained person can also ask the lawyer to attend the place where the person is being detained to enable them to consult with their lawyer and/or have the lawyer present during any investigative procedure (s123(1)(b)).

28. Section 129 of the LEPAR Act provides that the custody manager must immediately arrange for a detained person to receive medical attention if it appears to the custody manager that the person requires medical attention or the person requests it on grounds that appear reasonable to the custody manager.

29. Section 130 also provides detainees with a right to reasonable refreshments and facilities including facilities to wash, shower or bathe and (if appropriate) to shave if it is reasonably practicable to provide access to such facilities and the custody manager is satisfied that the investigation will not be hindered by providing the person with such facilities.

30. For information on safeguards contained in the *Terrorism* (*Police Powers*) *Act 2002* (NSW), please see the NSW input to the answer to Issue 5.

Victoria

31. In Victoria, every person taken into custody for an offence must be released unconditionally, released on bail or brought before a bail justice or court within a reasonable time of being taken into custody (s 464A(1) *Crimes Act 1958* (Vic)). A person must not be detained any longer than is reasonably necessary.

32. Police may grant bail in accordance with the *Bail Act 1977* (Vic). If it is not possible to bring the person before a court within 24 hours of arrest, police are obliged to release the person on bail, unless s 10(1) of the Bail Act provides otherwise.

33. Persons detained in police custody may communicate (or attempt to communicate) with a friend or relative and with a legal practitioner. Under the Bail Act, a court may order examination by a medical practitioner.

34. Article 11 of the Victorian Charter of Rights and Responsibilities includes a prohibition against torture: <http://www.nswccl.org.au/issues/bill_of_rights/other.php>.

35. These rights have not been affected by new terrorism-related legislation.

Queensland

36. The rights of persons detained in police custody are safeguarded by Chapter 15 of the *Police Powers and Responsibilities Act 2000* (Qld) (Police Powers and Responsibilities Act) and include:

(a) The right to legal representation;

(b) The right to communicate with friend, lawyer or relative;

(c) The right to an interpreter;

(d) The right to communicate with relevant foreign embassy;

(e) The right to silence;

(f) Limitations upon time in detention;

(g) The right to review by a magistrate.

37. Persons in police custody also have the right to a doctor.

38. For information on safeguards contained in the *Terrorism* (*Preventative Detention*) *Act 2005* (Qld), please see the Queensland input to the answer to Issue 5.

Western Australia

39. In accordance with section 137 of the Criminal Investigation Act 2006 (WA), the following statutory rights must be afforded to all arrested people regardless of the reason for the arrest. This includes people arrested for the purposes of doing identifying procedures and forensic procedures under the relevant legislation.

40. Arrested people have the statutory right:

(a) To any necessary medical treatment;

(b) To a reasonable degree of privacy from the mass media;

(c) To a reasonable opportunity to communicate or to attempt to communicate with a relative or friend to inform that person of his or her whereabouts; and

(d) If he or she is for any reason unable to understand or communicate in spoken English sufficiently, to be assisted in doing so by an interpreter or other qualified person.

41. In addition, it is the policy of WA Police to afford all people arrested by police the following additional rights:

(a) If detained in police custody, to have safety and welfare needs determined by Police at regular intervals;

(b) If a police officer has cause to arrest a person who has been injured, all reasonable action must be taken to obtain details relating to the nature and severity of such injury so as to minimize the possibility of aggravation of the injury and unnecessary pain to that person;

(c) It is the responsibility of the arresting officer to cause that person to be examined by a medical practitioner as soon as possible and remain with that person until suitable arrangements for bail or alternative custody arrangements are organized or can be made;

(d) To be treated in a dignified and humane way;

(e) To complain about mistreatment to the Ombudsman and to be provided with material necessary to make the complaint.

42. In addition to the rights afforded by section 137 of the *Criminal Investigation Act 2006* (WA), people who have been arrested by police:

(a) Under s.128 of the Criminal Investigation Act on suspicion of committing an offence;

(b) Under an arrest warrant on suspicion of committing an offence;

(c) Under another written law on suspicion of committing an offence; or

(d) Under the *Criminal Investigation* (*Extra-territorial Offences*) *Act 1987* (WA) have additional statutory rights.

43. Arrested suspects are entitled:

(a) To be informed of the offence for which he or she has been arrested and any other offences that he or she is suspected of having committed;

(b) To be cautioned before being interviewed as a suspect;

(c) To a reasonable opportunity to communicate or to attempt to communicate with a lawyer; and

(d) If he or she is for any reason unable to understand or communicate in spoken English sufficiently, not to be interviewed until the services of an interpreter or other qualified person are available.

44. Furthermore, the officer in charge of the investigation must, as soon as is practicable after the arrest of a suspect:

(a) Inform the suspect of his or her rights under s 137(3)(c) and sub-s (2)(c); and

(b) Afford the suspect his or her other rights under s 137 and sub-s (2).

45. There are also circumstances where an arrested suspect's right of communication may be refused. In accordance with s 38(4) Criminal Investigation Act 2006 members may refuse a suspect the right of communication or attempted communication with a person where it is reasonably suspected to do so would result in:

(a) An accomplice taking steps to avoid being charged;

(b) Evidence being concealed, disturbed or fabricated; or

(c) A person's safety being endangered.

46. If a police officer refuses a suspect the right of communication, a record of such, and the reason why, must be made and the right should be afforded when:

(a) The grounds or reason for refusal are either found to be false; or

(b) The need to decline the suspect the right no longer exists.

47. Please see response to Issue 5 in relation to the rights of persons detained under terrorism related legislation.

South Australia

48. The rights of people detained in police custody are generally governed by the *Summary Offences Act 1953* (SA) (or the *Young Offenders Act 1993* (SA) for youth aged 10-18 years).

49. The rights of a person who has been detained in police custody (whether with or without a warrant) are set out in s79A of the Summary Offences Act and section 13 of the *Bail Act 1985* (SA). Pursuant to these sections a person is:

(a) Entitled to make a phone call to a nominated friend or relative to inform them of his or her whereabouts (s79A(1)(a));

(b) Entitled to have a solicitor, friend or relative present during any interrogation or investigation (s79A(1)(b)(i));

(c) Entitled to be assisted by an interpreter (s79A(1)(b)(ii));

(d) Entitled to refrain from answering any question (s79A(1)(b)(iii));

(e) Entitled to apply for release on bail (*Bail Act 1985* section 13).

50. Under s 79A(3) "a police officer must, as soon as is reasonably practicable … inform that person of his or her rights under subsection (1) and warn the person that anything that he or she may say or do may be taken down and used in evidence".

51. Where a person detained in police custody is injured or ill the officer in charge of the station must, if practicable, cause the prisoner to be conveyed to a recognized hospital or if that is not practicable for the person to be attended by a police medical officer or other legally qualified medical practitioner (*Police Regulations 1999*, Regulation 69). A person is entitled to request that he or she be examined by a specified medical practitioner (Regulation 70(2)), however, where such a medical practitioner attends the person is liable for the payment of any medical expenses that are not covered by a medical benefit scheme (Regulation 10A(1)(a)) .

52. Section 81 of the Summary Offences Act and s 25 of the *Criminal Law* (*Forensic Procedures*) *Act 2007* (SA) provides a person with the right to have a medical practitioner of their choice present during the conduct of an intrusive search or an intrusive forensic procedure. The procedure itself cannot be carried out by a medical practitioner of their choice.

53. Please see response to Issue 5 in relation to the rights of persons detained under terrorism-related legislation.

Tasmania

54. In Tasmania, the rights of citizens who have been arrested are safeguarded by a number of statutory and common law protections. Significant protections are afforded by the *Criminal Law* (*Detention and Interrogation*) *Act 1995* (Tas) which makes police interrogation procedures subject to legislative guidance and control, and requires members to videotape confessions and admissions made during "official questioning" in relation to serious offences. Key requirements of the Act include:

(a) The requirement that the arrestee be taken before a magistrate or justice as soon as practicable after arrest unless released unconditionally or released on police bail: s 4(1);

(b) The requirement that the arrestee be informed of the right to silence prior to questioning: s 4(5);

(c) The requirement that the arrestee be informed of the right to communicate with a friend or relative and a legal practitioner prior to questioning: s 6(1);

(d) The requirement (subject to s 6(3) and (6)) that the police defer any questioning and investigation to enable the arrestee to make or attempt to make the communication: s 6(2);

(e) The requirement (subject to s 6(3) and (6)) that the police afford the arrestee reasonable facilities to make the communication: s 6(7);

(f) The provision of an interpreter when needed: s 5;

(g) The requirement that the arrestee be questioned only for a "reasonable" time: s 4(2)(a); reasonableness in this context is determined by the considerations set out in s 4(4);

(h) The requirement that the arrestee be taken before a custody officer without delay and placed in the custody of the custody officer: s 15(1);

(i) The requirement that the custody officer perform the duties in relation to the arrestee imposed by s 15(2) and (4); and

(j) The requirement that the custody officer ensure that the arrestee is treated in accordance with the Act: s 16(1).

55. Section 3(2) provides that a person is "in custody" for the purposes of the Act if he or she is:

(a) Under lawful arrest by warrant; or

(b) Under lawful arrest under section 27 of the *Criminal Code Act 1924* (Tas) or a provision of any other Act.

56. The provisions of the Criminal Law (Detention and Interrogation) Act are reflected in the Tasmania Police Manual, policies, procedures and training.

57. Specifically, Tasmania Police maintains regular education and training for police officers in legislation and policy instructions (Tasmania Police Manual) as well as operational practices applicable to their duties, particularly with regard to the use of force through a continuum, detention, arrest, management of people in custody, the use of restraints and reporting requirements.

58. Section 7.1.1.3 of the Tasmania Police Manual states that:

(a) A member involved in the arrest, incarceration or supervision of a person in custody has a legal duty of care to that person and may be held responsible for the death or injury of the person caused, or contributed to, by a breach of that duty; and

(b) A legal duty of care applies at all times from the time a person first comes into police custody until the time of that person's safe discharge.

59. The *Evidence Act 2001* recognizes the relatively vulnerable position of those detained in police custody. Their vulnerability arises from the power imbalance that exists between detainees and the police and in the context of preventing abuse, including "torture", the provisions of s84 and s85 are particularly relevant.

60. Section 84 provides that an admission (by a defendant or a witness) will not be admissible as evidence in Court proceedings if it was influenced by "violent, oppressive, inhuman or degrading conduct". Section 85 provides that an admission by a defendant is not admissible unless "the circumstances in which the admission was made make it unlikely that the truth of the admission was adversely affected". In making a decision under s 85, the Court is to consider the characteristics of the defendant and the nature of the questioning that led to the admission being made.

61. A range of other processes, procedures and conventions are in place to ensure that the rights of persons detained in police custody are protected, including the requirement that, in order to be admissible, admissions in relation to a serious offence should be recorded on video wherever practicable, with limited exceptions (*Evidence Act 2001*, s 85A), and the provision of interpreting services where necessary.

62. For admissions to be admissible they must be obtained voluntarily. Admissions must not be obtained or influenced by violent, oppressive, inhuman or degrading conduct towards the person who made the admission or towards another person, or a threat of conduct of that kind. An admission will not be admissible where a person capable of influencing the decision to prosecute does anything which makes it likely that the truth of the matter may be affected (e.g. inducements). Where an admission is ruled to have been made involuntarily, a Judge or Magistrate has no discretion to admit it. The admissions must be excluded from evidence.

63. In discussing measures to protect the rights of those in custody it is also relevant to draw attention to the role of admissions and the "caution". Admissions are an exception to the hearsay rule (when made by a person who is or becomes a defendant) and an admission can be made orally, written, or by conduct. Evidence of an admission can only be given by a person who perceived it first hand or by tendering a document in which it is recorded.

64. The "caution" is given to remind suspects of their right not to incriminate themselves. The minimum requirements for when the "caution" must be given are:

(a) Prior to any questioning by an investigating official; and

(b) Where the investigating official has formed a belief that there is sufficient evidence to establish that the person has committed an offence;

(c) Giving of the "caution" should not be limited to one occasion.

65. The Evidence Act states that the wording of the "caution" is to include that anything the person says or does may be used in evidence. A suitable caution would be: "You are not obliged to say or do anything unless you wish to do so, but whatever you say or do will be recorded and may be given in evidence. Do you understand?"

Australian Capital Territory

Human Rights Act

66. Relevant to Australia's obligations under article 2 of the Convention, a statutory Bill of Rights was adopted by the Legislative Assembly of the Australian Capital Territory (ACT) in 2004. The ACT *Human Rights Act 2004* incorporates provisions of the International Covenant on Civil and Political Rights (ICCPR) into ACT law, including the prohibition against torture and cruel, inhuman or degrading treatment or punishment (article 7 ICCPR) and the right to humane treatment when deprived of liberty (article 10 ICCPR).

67. The ACT Human Rights Act requires that all ACT legislation be interpreted and applied consistently with human rights unless legislation clearly authorizes otherwise. A human rights argument can be raised in proceedings against ACT authorities including, for example, where an

agency has breached its statutory duty or its duty of care towards a detainee. The prohibition on torture, cruel, inhuman or degrading treatment or punishment, and the right to humane treatment when deprived of liberty must also be taken into account when framing legislation and developing operational guidelines. New legislation must be accompanied by the Attorney-General's Compatibility Statement, and the Legislative Assembly Committee on Legal Affairs also performs a human rights scrutiny role. The Supreme Court can issue Declarations of Incompatibility where it finds that an ACT law is incompatible with human rights (similar to the UK legislative scheme). The ACT Human Rights Commission has power to review the effect of laws, including conducting human rights audits.

68. It is intended that the Human Rights Act will be interpreted and applied consistently with international law and internationally accepted standards. The ACT judiciary and other public officials may refer to the Convention against Torture, the ICCPR and other related rules and guidelines for the purpose of interpreting the Human Rights Act.

Corrections Management Act

69. The *ACT Corrections Management Act 2007* contains a number of provisions dealing with the treatment of detainees generally, and provisions about health care, access to lawyers and communicating with family. The Act applies principally to prisoners under sentence and people detained on remand, but also contains provisions relating to detention whilst in police custody. Section 30 provides that a person must not be detained continuously at a police cell for a period longer than 36 hours. If a person is required to remain in police custody for longer than 36 hours he or she must be transferred to a correctional centre for the purposes of the police custody.

70. Section 9 of the Corrections Management Act provides that functions under the Act in relation to a detainee must be exercised:

(a) To respect and protect the detainee's human rights;

(b) To ensure the detainee's decent, humane and just treatment;

(c) To preclude torture or cruel, inhuman or degrading treatment;

(d) To ensure the detainee is not subject to further punishment (in addition to deprivation of liberty) only because of the conditions of detention;

(e) To ensure the detainee's conditions in detention comply with section 12 (Correctional centres - minimum living conditions); and

(f) If the detainee is an offender - to promote, as far as practicable, the detainee's rehabilitation and reintegration into society.

71. Section 12 of the Corrections Management Act provides that, as far as practicable, the conditions at correctional centres meet at least the following minimum standards:

(a) Detainees must have access to sufficient food and drink to avoid hunger and poor nourishment;

(b) Detainees must have access to sufficient suitable clothing that does not degrade or humiliate detainees;

(c) Detainees must have access to suitable facilities for personal hygiene;

(d) Detainees must have suitable accommodation and bedding for sleeping in reasonable privacy and comfort;

(e) Detainees must have reasonable access to the open air and exercise;

(f) Detainees must have reasonable access to telephone, mail and other facilities for communicating with people in the community;

(g) Detainees must have reasonable opportunities to receive visits from family members, accredited people and others; detainees must have reasonable opportunities to communicate with their lawyers;

(h) Detainees must have reasonable access to news and education services and facilities to maintain contact with society;

(i) Detainees must have access to suitable health services and health facilities; and

(j) Detainees must have reasonable opportunities for religious, spiritual and cultural observances.

72. Section 53 of the Corrections Management Act provides that whilst in custody, detainees must have a standard of health care equivalent to that available to other people in the ACT. Arrangements must be made to ensure the provision of appropriate health services for detainees and conditions in detention must promote the health and well-being of detainees. As far as practicable, detainees must not be exposed to risks of infection. Detainees must have access to regular health checks hospital care where necessary, and specialist health services from health professionals and necessary health-care programmes, including rehabilitation programmes. In line with the United Nations Standard Minimum Rules for the Treatment of Prisoners this will include the right of remandees to be treated by their own doctor.

73. Section 49 of the Corrections Management Act guarantees a minimum of at least one visit, of at least 30 minutes, each week by a family member. Section 46(1) of the Act goes on to require that provision for further “adequate” visits with family, friends, associates and others to be made. Section 49(4) provides that specific visits may be limited where the visit would endanger the security of the facility or could cause distress to a victim or the community.

74. Section 50 of the Corrections Management Act provides that detainees must have adequate opportunities to contact their lawyer either by phone, mail, or visits from the lawyer. This may be limited where it is suspected on reasonable grounds that visits will undermine the security and good order of the facility or will circumvent the process for investigating complaints. Section 51 provides that communications between a detainee and their client must not be listened to or recorded.

Other provisions - arrest and initial detention

75. The *Crimes Act 1900* (ACT), the *Crimes Act 1914* (Cth), the Human Rights Act 2004, and the *Evidence Act 1995* (Cth) have general provisions that are relevant to the initial arrest and detention of a person suspected of committing an offence, and related procedures for conducting the investigation. These include the obligation to allow an arrested person to contact and arrange for legal representation to attend the place of detention, and a friend or relative to inform them of their whereabouts [s 23G *Crimes Act 1914* (Cth)].

76. The Committee may wish to refer to the Review of ACT Policing's Watch House operations, Joint Report by the Australian Federal Police and the Commonwealth Ombudsman (2007).

Detainees held for terrorism-related offences

77. For information on safeguards contained in counter-terrorism law, please see the answer to Issue 5.

Northern Territory

78. Applicable common law provides a strong disincentive to the denial of access to legal counsel because the admissibility into evidence of admissions or confessions made by persons in police custody may be jeopardized in such circumstances. See *Driscoll v. R* (1977) 137 CLR 517 in which the High Court held that if police officers prevented a suspect from seeing his lawyer (described by the Court as "reprehensible" conduct per Barwick CJ at p 521), this was relevant to whether admissions alleged to have been made were in fact made and the Court had a discretion to exclude them. For exclusions on that basis see, e.g. *R v. Allen* [1977] Crim LR 163; *R v. White* (1976) 13 SASR 276; *R v. Hart* [1979] Qd R 8; cf *MD* (*a child*) v. *McKinlay* (1984) 31 NTR 1. This is consistent with accepted Police practice recognizes that when requested such access should be provided where it is practicable to do so and accordingly the practice is accommodated and facilitated in the Northern Territory.

79. Northern Territory Supreme Court jurisprudence (*R v. Anunga* (1976) 11 ALR 412) also sets out guidelines, known as the "Anunga Rules",[1] for police in relation to the interrogation of

[1] Paraphrased:

(1) When an Aboriginal person is being interrogated as a suspect, unless he is as fluent in English as the average person of English descent, an interpreter should be present, and his assistance should be utilized whenever necessary to ensure complete and mutual understanding.

(2) It is desirable where practicable that a 'prisoner's friend' (who may also be the interpreter) be present. The 'prisoner's friend' should be someone in whom the Aboriginal has apparent confidence and by whom he will feel supported.

(3) Great care should be taken in administering the caution. It is simply not adequate to administer it in the usual terms and say, 'Do you understand that?' or 'Do you understand you do not have to answer questions?' Interrogating police officers, having explained the caution in

Aboriginal suspects. (The Court also noted that much of the statement would also apply to migrants, i.e. or other persons who do not speak English as a first language.) Although the guidelines are not absolute rules, the consequence of their non-observance may be the exclusion of statements of persons questioned. The Anunga Rules are reflected in the Police Commissioner's General Orders issued pursuant to s.14A of the *Police Administration Act* (NT).

80. In addition to the common law, some relevant provisions in Northern Territory legislation include as follows:

(a) Subject to limited provisions relating to police questioning or investigations, police are required to bring a person taken into lawful custody before a justice or a court of competent jurisdiction as soon as is practicable after the person is taken into custody, unless the person is sooner granted bail under the *Bail Act* (NT) or is released from custody (s137(1) Police Administration Act);

(b) Police may only continue to hold a person in custody for the purposes of questioning or for investigations to be carried out, for a "reasonable period" (s137(2) Police Administration Act);

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simple terms, should ask the Aboriginal to tell them what is meant by the caution, phrase by phrase, and should not proceed with the interrogation until it is clear the person has apparent understanding of his right to remain silent.

(4) Great care should be taken in formulating questions so that so far as possible the answer which is wanted or expected is not suggested in any way. Anything in the nature of cross-examination should be scrupulously avoided as answers to it have no probative value.

(5) Even when an apparently frank and free confession has been obtained relating to the commission of an offence, police should continue to investigate the matter in an endeavour to obtain proof of the commission of the offence from other sources.

(6) Suspects may be nervous and ill at ease in the presence of authority figures like policemen. It is important that they be offered a meal if they are being interviewed or in custody at a meal time. They should also be offered tea or coffee if facilities exist for preparation of it. They should always be offered a drink of water. They should be asked if they wish to use the lavatory.

(7) Aboriginal and other people should not be interrogated when they are disabled by illness or drunkenness or tiredness. Interrogation should not continue for an unreasonably long time.

(8) Should an Aboriginal seek legal assistance reasonable steps should be taken to obtain such assistance. If the person states he does not wish to answer further questions or any questions the interrogation should not continue.

(9) If it is necessary to remove the suspect's clothing for forensic examination, steps must be taken to supply substitute clothing.

(c) Section 138 of the Police Administration Act sets out factors that may be taken into account by a justice or the court in determining what is a "reasonable period". Relevantly, these include:

(i) The time taken to communicate with a legal advisor, friend or relative of the detained person (s138(h));

(ii) The time taken by a legal advisor, friend or relative of the person or an interpreter to arrive at the place where the questioning or the investigation took place (s138(j));

(iii) The time during which the investigation or questioning of the person was suspended or delayed to allow the person to receive medical attention (s138(m)), or to allow the person to rest or because of intoxication of the person (s138(q));

(d) Before commencing any questioning or investigation of a person in custody, the investigating police officer must inform the person in custody that: the person does not have to say anything but that anything the person does say or do may be given in evidence; and that the person may communicate with or attempt to communicate with a friend or relative to inform the friend or relative of the person's whereabouts (s140 Police Administration Act);

(e) Within the relevant period in which police would be required to bring a person before a justice or a court, police may instead inform a person charged of their right to apply for Police Bail and as far as practicable ensure that the person is able to communicate with a legal practitioner or any other person of their choosing in connection with an application for bail (s16(2) *Bail Act* (NT));

(f) A member of the Police Force must if requested by a legal practitioner representing a person held in custody, or by a spouse, de facto partner, parent, or child of a person held in custody, disclose to the person so requesting, whether or not a person is being held in custody and if so where that person is being held (s135 Police Administration Act);

(g) Section 145 of the Police Administration Act also contains provisions for the carrying out of an "intimate procedure" (as defined in the Act) on a person in lawful custody on a charge of an offence. Such procedure may only be carried out with either the written consent of the person, or the written approval of a magistrate and only by a medical practitioner or a registered dentist;

(h) Before arranging for the procedure to be carried out, the member of the Police Force must inquire whether the person wishes to have a medical practitioner or registered dentist of their own choice present (s145(9)), and if so must provide reasonable facilities to the person to arrange for their choice of medical practitioner/dentist to be present and unless it is impracticable to do so, must arrange for the procedure to be carried out at a time when the person's medical practitioner/dentist can be present (s 145(10));

(i) Relevantly, s 145(13) also provides that nothing in the section prevents a medical practitioner or registered dentist from examining a person in custody at the request of the person or treating the person for an illness or injury;

(j) Further relevant provisions specific to youths (juveniles) are contained in the *Youth Justice Act* (NT). These include:

(i) Before a youth is interviewed or searched in connection with the investigation of an offence, a police officer is required to inform the youth of his or her ability to access legal advice and representation (s 15(2));

(ii) If a police officer is required to inform a youth of any matter in relation to an investigation of an offence, the explanation must be made in a language and manner the youth is likely to understand having regard to the youth's age, maturity, cultural background and English language skills (s 15(1));

(iii) In relation to an offence believed to have been committed by a youth, that if committed by an adult would be punishable by imprisonment for 12 months or longer, an officer must not interview the youth, or cause the youth to do anything in connection with the investigation of the offence unless a support person is present (s15(2)). (A support person may be a "responsible adult" in respect of the youth, a person nominated by the youth, a legal practitioner acting for the youth, or a person from a register of persons appropriate to be support persons maintained by the Youth Justice Advisory Committee);

(iv) If a youth is arrested or charged with an offence, the police officer who arrested or charged the youth must take all reasonable steps to ensure that a "responsible adult" in respect of the youth is notified as soon as practicable (s23). ("Responsible adult" means a person who exercises parental responsibility for the youth: s 5(1));

(k) For information on safeguards contained in counter-terrorism law, please see the NT input to the answer to Issue 5.

Question 3

Please provide information with respect to the law and practice related to the length of custody and pretrial detention.

81. Laws and safeguards are in place in each Australian jurisdiction to limit the length of custody and pretrial detention. The first part of the response provides information regarding federal law and practice related to the length of custody and pretrial detention. This is followed by information regarding law and practice in the States and Territories.

Commonwealth Government information

82. Part IC of the Commonwealth *Crimes Act 1914* (the Crimes Act) enables the Australian Federal Police (AFP) to arrest and detain a person for questioning where there are reasonable grounds to believe the person has committed a Commonwealth offence.

83. The AFP can detain the person for a period of 4 hours (or 2 hours in the case of an Aboriginal person or Torres Strait Islander), which can be extended by a judicial officer to a maximum of 12 hours, or, in the case of a terrorism offence, to a maximum of 24 hours. In addition, the person's detention may be extended by periods of time necessary to enable the person to rest, receive medical attention or speak to a lawyer, among other things. In the case of a terrorism offence, a judicial officer may also approve additional periods of time where it is necessary for police to collect and analyze information from overseas authorities, operate between different time zones or translate material. During these additional periods of time, questioning must be suspended.

84. The legislation contains detailed criteria that require the police to demonstrate to a judicial officer that any additional periods of time requested for detention are reasonable. There are a range of safeguards in the legislation, including the right for a suspect to communicate with a lawyer and have the lawyer present during questioning and the right to be treated with humanity and respect for human dignity. If the person is not an Australian citizen, he or she must be given the opportunity to communicate with the consular office of his or her country.

85. Importantly though, any approval for an extended questioning period or additional detention for the purposes of investigation must be approved by an independent judicial officer. The legislation ensures that appropriate and independent judicial consideration is given to all relevant factors in determining whether additional questioning or detention is permissible.

86. Following conviction, s 16E(2) of the Crimes Act provides that a law of a State or Territory that has the effect of reducing a sentence or non-parole period by the period a person has been in custody for an offence, or provides that the sentence or non-parole period is to commence on the day on which the person was taken into custody for an offence, also applies to federal sentences in that State or Territory.

87. Also, the *Australian Security Intelligence Organisation Act 1979* (the ASIO Act) empowers ASIO to seek a warrant to question, and in limited circumstances detain, a person who may have information relevant to a terrorism offence.

88. A warrant allows a person to be questioned for a maximum total of 24 hours (or 48 hours where an interpreter is used). ASIO may initially question a person for up to 8 hours and then obtain permission from a prescribed authority to continue for up to another 8 hours each time. The prescribed authority may be a former judge of a superior court, a current judge in a Supreme or District Court of a State or Territory or a Deputy President or President of the Administrative Appeals Tribunal.

89. In limited circumstances, for example where there are reasonable grounds to believe that the person may not appear before a prescribed authority, a person may be detained for a maximum of 168 hours. This detention must be specifically authorized by the warrant.

90. Since the introduction of these laws in 2003 until 30 June 2006, 14 questioning warrants have been issued. No detention warrants have been issued in this time. Information on warrants issued, if any, in the year from 30 June 2006 to the present is contained in the forthcoming ASIO Annual Report to Parliament.

91. Division 105 of the Commonwealth *Criminal Code Act 1995* (Criminal Code) empowers a senior officer from the Australian Federal Police (AFP) to issue a preventative detention order authorizing detention of a person for up to 24 hours for the purposes of preventing an imminent terrorist attack or to preserve evidence of a terrorist act. The Criminal Code empowers an issuing authority - a Federal Magistrate or a Judge who has consented to this role and who is acting in their personal capacity - to extend a preventative detention order for an additional 24 hours.

92. No preventative detention orders have been issued since the introduction of these laws in 2005.

93. Further detail and safeguards for persons detained under the preventative detention provisions of the Criminal Code and under the ASIO Act are set out in the response to Issue 5.

State and Territory information

New South Wales

94. Determinations regarding pretrial detention in NSW are governed by the *Bail Act 1978* (NSW). The Bail Act sets out the authority for police to grant bail once a person has been arrested. Section 18(1)(b)(i) of the Bail Act vests authorized officers with the power to grant bail, following a determination of whether or not bail should be granted to the person, or bring the person or cause the person to be brought before a court. Where an accused person is refused bail by an authorized officer or is not released on bail granted by an authorized officer, the police officer in charge of the police station or the police officer with custody of the person, is required to bring the person or cause the person to be brought before a court as soon as practicable (s 20 Bail Act).

95. Further, Part 6 of the Bail Act provides for a review of bail decisions. Under s 48(3) a review of a bail decision can occur by way of rehearing, and evidence or information. A court can review the bail decisions of a court at the same or lower level jurisdiction, and even a higher court in some circumstances.

96. On 1 July 2007 the remand population in NSW was 2,258 (2,045 male and 213 female).[2] The remand population in NSW has been steadily rising since the beginning of 1997. This trend is true for both the male and female remand population. From 2000 to 2007 the remand population in NSW has risen by 223 per cent.[3]

[2] NSW Department of Corrective Services, Corporate research, Evaluation and Statistics "Offender Population Report", 1 July 2007.

[3] Figures have been sourced from the NSW Department of Corrective Services, NSW Inmate Census 1997-2006 and Offender Population Report for 1 July 2007.

Length of pretrial detention

97. Criminal Court statistics for 2006 indicate that the median delay between first appearance in court and determination of defended cases in the Local Court where the defendant was held in custody was 92 days. For those who had all charges dismissed the median delay was 44 days and for those who were guilty of at least one charge, 117 days. These figures have not changed significantly from 2004 when the median delay for all defended hearings where the defendant was held in custody in Local Courts was 94 days.

98. The median number of days between committal and outcome of trials where the defendant was held in the District Court was 207 days. In the Supreme Court, the comparable figure was 290 days.[4]

Victoria

99. Every person taken into custody for an offence must be released unconditionally, released on bail or brought before a bail justice or court within a reasonable time of being taken into custody (s. 464A(1) *Crimes Act 1958*). A person must not be detained any longer than is reasonably necessary. Police may grant bail in accordance with the *Bail Act 1977*. If it is not possible to bring the person before a court within 24 hours of arrest, police are obliged to release the person on bail, unless s. 10(1) of the *Bail Act* provides otherwise.

Queensland

100. The criminal justice system in Queensland is based on the presumption that a person charged with an offence is innocent until proven guilty beyond a reasonable doubt. Arrest and custody powers and alternatives to arrest including notice to appear, discontinuation of proceedings and diversionary options are provided by Chapter 14 of the *Police Powers and Responsibilities Act*. Section 9 of the *Bail Act 1980* (the Bail Act) outlines the presumption of the right to bail.

101. For a person to be deprived of their liberty prior to being found guilty of an offence or a court deciding the appropriate punishment, a magistrate or judge must be satisfied that there is an unacceptable risk that the person will fail to appear, commit further offences, endanger the community or interfere with witnesses. Whether the person poses an unacceptable risk is a decision for the magistrate or judge based upon the facts before them. To determine whether there is an unacceptable level of risk, the magistrate or judge must take into account the nature and seriousness of the offence, the background of the defendant, the strength of the evidence against him or her, and whether he or she has complied with any previous grants of bail.

102. If a magistrate or judge grants bail, the defendant's release may be subject to conditions such as the requirement for a surety, special conditions concerning place of residence, reporting to police on nominated days, not approaching or contacting witnesses or surrendering any passports. If a person fails to comply with their bail undertaking (including any conditions imposed), they commit an offence under the Bail Act.

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[4] BOCSAR NSW *Criminal Court Statistics 2007*.

103. The Bail Act provides a mechanism for a prosecutor, complainant, or defendant to seek a review of, or appeal from, a bail decision. The reviewing court for decisions made by a magistrate is the Supreme Court, and the reviewing court for decisions made by a police officer or justice is the Magistrates Court. The reviewing court may consider additional information or evidence and may make any order it considers appropriate.

104. The Bail Act provides a balance between the right of any citizen accused (but not convicted) of an offence, to the presumption of innocence, and the protection of the community.

105. Chapter 14, part 6 of the Police Powers and Responsibilities Act provides strict requirements regarding consideration of bail and appearance before a court as soon as practicable.

106. Defendants who are not granted bail are transferred from police detention in watch houses to remand facilities administered by Queensland Corrective Services. Prisoners on remand are provided with the same rights and privileges of sentenced offenders. These rights and privileges include, but are not limited to, access to medical care, the right to participate in education and employment, access to visits and telephone calls and the right to access legal representatives.

107. Queensland's Penalties and Sentences Act 1992 provides credit to defendants for time spent in custody. This is done by the sentencing judge making a declaration of time already served.

Western Australia

108. In accordance with section 5 of the *Bail Act 1982*, an accused who is in custody for an offence awaiting his initial appearance in court is entitled:

(a) To have his case for bail for that appearance considered as soon as is practicable; and

(b) If his case is not so considered, or if he is refused bail or is not released on bail, to be brought before a court as soon as is practicable.

109. Further to this, section 6 of that Act provides that as soon as is practicable after the accused is charged, or arrested under a warrant, as the case may be, the arrester shall either:

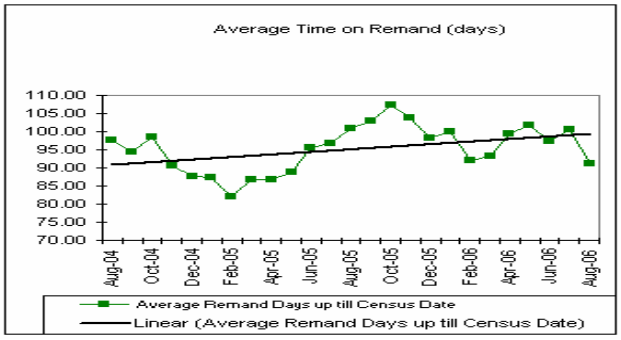
(a) Bring the accused or cause the accused to be brought before a court; or

(b) Perform the other duties of the arrester under this section.

110. In accordance with section 17 of the *Prisons Act 1981* where a court has committed a person to prison, the prisoner may be detained in a lock-up for so long as is reasonably necessary to enable arrangements to be made for the conveyance of the prisoner to a prison. A person who has been confined to prison under this section will have their case reviewed every three months.

111. Section 23 of the *Sentencing Act 1995* provides that when an offender is being sentenced for an offence the prosecutor must inform the court of the period, if any, that the offender has already spent in custody in relation to that offence and for no other reason.

112. Within WA, the average time spent by prisoners on remand fluctuates widely from month to month. However, there has been an average growth of around 8 per cent in the length of stay of remand prisoners in the last two years. This means that remand prisoners can now expect, on average, to spend about 97 days in remand, compared with 91 days two years ago.



113. The average time spent on remand by that cohort of prisoners awaiting sentencing by the courts, and who were eventually sentenced to imprisonment, has also increased from 70 days to 88 days between August 2004 and August 2006. This means that some remand prisoners are spending more time in custody awaiting sentence.

South Australia

114. Section 10 of the *Bail Act 1985* provides a statutory presumption in favour of bail, deriving from the common law principle that a person is innocent until proven guilty. This presumption applies to all bail applications except those made upon lodging an appeal against a conviction or sentence or those set out in s10A of the Act.

115. Bail can be granted by either a court or by a police officer who is of or above the rank of sergeant or who is in charge of the police station. However, a person is not eligible to apply for bail while being detained for purposes related to the investigation of a serious offence pursuant to section 78 of the *Summary Offences Act 1953*. In that case a person may be detained for so long as may be necessary to complete the investigation, or for the prescribed period, whichever is the lesser. The prescribed period for the purposes of this section is "four hours or such longer period (not exceeding 8 hours) as may be authorized by a magistrate".

116. A person who is not released on bail by the police must be brought before a court "as soon as is reasonably practicable on the next working day following the day of arrest, but in any event not later than 4 p.m. on that day".[5]

Tasmania

117. The Supreme Court, Courts of Petty Sessions and Tasmania Police exercise powers to release offenders on bail under the provisions of the *Bail Act 1994*. Bail may be amended, varied or revoked at any stage through proceedings or on application.

[5] *Bail Act 1985* section 13(3).

118. The Tasmanian Bail Act does not provide legislative considerations to guide the judiciary when deciding upon a bail application. The Tasmanian Law Reform Institute (Research Paper No. 1 May 2004) notes that bail exists so that people charged with an offence but not yet found guilty may remain free in the community. Generally, when deciding whether to grant bail the primary consideration is whether the person will appear in court when required to do so. However, incidents of people released on bail committing further offences during their bail period provides an evidence base to reconsider bail laws to protect the community from those offenders that consistently disregard the court's authority. This has already occurred in some jurisdictions, such as New South Wales, where the presumption in favour of bail has been removed if the offence was allegedly committed while on bail.

119. The law does not specify the length of time that a person can be held between charge and trial. However, bail is usually available, depending on the nature of the crime involved, the risk the person presents to the public and the risk of the person not appearing. In most cases except where certain crimes are involved or a person presents a risk to public or a risk of not appearing. Practices are always aiming for earlier pleas and earlier trials.

120. Bail may be granted by police or by the courts (although in some situations it may only be granted by the courts). Where a person has been taken into custody (usually by arrest) for a simple offence they must be granted police bail unless there are reasonable grounds for believing that it would not be in the interests of justice to do so. If police bail is not granted, or if the person is charged with an indictable offence, the person must be taken before a justice for the matter of bail to be determined. However, where a person is charged with an indictable offence they may be released on police bail following questioning or investigation under the Criminal Law (Detention and Interrogation) Act 1995 (Tas) (s 4).

121. In addition, bail may be re-granted or re-refused on any occasion on which a person is taken into custody (e.g. when appearing in court in answer to police or court bail or following a period of being remanded in custody or released on recognizance) during the trial and sentencing process.

122. The Tasmanian Government also provides a Court Liaison Service, which provides mental health assessments of people appearing in court. If an assessment reveals an acute mental illness, the person may be admitted to a psychiatric unit (voluntary or involuntary admission), referred to the Community Forensic Mental Health team or remanded in custody with a referral to Wilfred Lopes Centre or prison-based mental health.

Australian Capital Territory

Ordinary criminal arrest, detention and investigative provisions

123. Once a person has been arrested, section 187 of the Crimes Act 1900 (ACT) provides that Part 1C of the Commonwealth Crimes Act 1914 (the Crimes Act) is to apply. Similarly, s23A(6) of the Crimes Act provides that where the Australian Federal Police are investigating an offence against a law of the ACT punishable by a period exceeding 12 months' imprisonment, Part IC applies as if a reference in the Crimes Act to a Commonwealth offence was a reference to an ACT offence.

124. Please see answer to Issue 5 for more information on safeguards contained in counter-terrorism law.

Bail

125. If a person is in police custody and charged with an offence, the police officer must give the person notice of his or rights in relation to bail and entitlement to apply for bail and have decisions reviewed [s 47 *Bail Act 1992* (ACT)].

126. Once a person has been charged, a police officer at or above the rank of sergeant or above, or any other police officer authorized by the Chief Police Officer, may grant police bail after considering the likelihood of the person attending court at a later date and the risk of offending whilst on bail (if granted) [ss 5 and 22 Bail Act]. If the police do not grant bail, then the person must be bought before a court as soon as possible, and in any event within 48 hours [s 17 Bail Act], which will decide whether bail should be considered in light of the same criteria.

127. There is a presumption for bail for most offences, no presumption for some offences, and a presumption against bail for murder and serious drug offences, and when a person is alleged to have re-offended whilst on bail, or where a person has appealed a decision which relates to a sentence of imprisonment [Part 2 of the Bail Act].

128. If bail is refused by both the police and the courts, the person will be remanded in custody until their matter goes to trial. There is no statutory limit on how long a person can be detained pending trial, however section 22(2)(c) of the *Human Rights Act 2004* (ACT) provides that a person must be tried without unreasonable delay.

129. Detainees on remand in the ACT stay in custody until released by a Magistrate or Justice of the Supreme Court or until they are transported to NSW following a sentence of imprisonment. The table below shows the median and average lengths of stay in days per remandee in the ACT.

Financial year	Median length of stay (days)	Average length of stay (days)
2004-2005	16	46.2
2005-2006	13	41.9
2006-2007	13	39.12

130. In one exceptional case, a detainee has been on remand for 3 years (1,148 days). In this particular case, there are many factors that contributed to the lengthy period of remand, including changes in plea and questions concerning their fitness to plea.

131. Presently, persons sentenced to imprisonment in an ACT Court serve that sentence in New South Wales (NSW) under a fee for service arrangement. In order to address this issue and to increase opportunities for rehabilitation and community integration, ACT Corrective Services (ACTCS) is currently building the Alexander Maconochie Centre (AMC). The AMC is due to open in mid-2008 and will house all remand and sentenced ACT prisoners.

132. Data is not available regarding the average total time in custody, taking into consideration any sentence of imprisonment.

Northern Territory

133. As noted above in relation to Issue 2, subject to limited provisions relating to police questioning or investigations, police are required to bring a person taken into lawful custody before a justice or a court of competent jurisdiction as soon as is practicable after the person is taken into custody, unless the person is sooner granted bail under the *Bail* Act (NT) or is released from custody (s 137(1) *Police Administration Act* (NT)).

134. Police may only continue to hold a person in custody for the purposes of questioning or for investigations to be carried out, for a "reasonable period (s 137(2) Police Administration Act). Section 138 of that Act sets out factors that may be taken into account by a justice or the court, but without limiting its discretion, in determining what is a "reasonable period".

135. Section 37 of the Bail Act provides for the right of an accused person in custody to apply for bail. An application may be made to and granted by:

(a) An authorized police officer, i.e. "Police Bail" (s 16);

(b) A justice or magistrate, who may at any time grant bail to a person appearing before them accused of an offence i.e. "Court Bail" - s 20 (they cannot grant bail to a person appearing before the Supreme Court: s 21); or

(c) The Supreme Court, also "Court Bail" (s 23).

136. There is no limit on the number of applications in relation to bail that may be made to a Court by a person accused of an offence (s 19(1)). Where a person is refused bail by a justice, an adjournment of the hearing of the offence may not, except with the consent of the accused, exceed 15 days (s 22).

137. The Act sets out certain offences in respect of which there is a (rebuttable) presumption against bail (s 7A). These are generally offences in the nature of murder, treason, drug offences carrying a penalty of more than 7 years, narcotic goods offences against the *Customs Act 1901* (Cwth) carrying a penalty of 10 years or more, serious violence offences where the accused has a history of serious violence offences.

138. The Act also sets out a presumption in favour of bail (s 8) for all offences except those noted above and other:

(a) Serious offences against the person (e.g. serious harm, or rape, or sexual assault of a minor) where the accused has a history of serious offences against the person;

(b) Serious offences (i.e. punishable by five or more years' imprisonment) either committed while the person was on bail for another serious offence or has a recent history of serious offences.

139. A person meeting the requirements of s 8 is entitled to be granted bail unless the (authorized member of the Police Force) or Court after considering certain specific matters set out in the Act is satisfied that they are justified in refusing bail (s 8(2)). Those matters are limited to (s 24):

(a) The probability of whether or not the accused will appear in court in respect of the offence;

(b) The interests of the accused (i.e. the likely period of custody if bail is refused and the conditions under which he would be held; the needs of the person to be free to prepare for his appearance in court and obtain legal advice, or for any other lawful purpose; whether the person is incapacitated or otherwise in need of protection);

(c) The protection and welfare of the community; and

(d) Particular considerations regarding breaches of orders under the *Domestic Violence Act*.

140. An accused person who is not entitled to bail under s.8 of the Act, may nevertheless still be granted bail (s 12).

141. In relation to Police bail:

(a) The Bail Act requires the authorized Police Officer to make a determination as to whether or not to grant bail within 4 hours of the person being charged (s 33(3)) failing which the person may apply to a justice or magistrate for a grant of bail;

(b) Section 33 also requires the authorized Police Officer to ensure that:

(i) The person charged is made aware of the officer's determination to grant or refuse bail as soon as practicable after the determination is made;

(ii) The person charged is aware of his right to apply to a magistrate or justice for review of that determination where bail is refused or is granted on conditions that the person is unable or unwilling to comply with; and

(iii) As far as practicable, the person charged is able to communicate with a legal practitioner or any other person in connection with an application to a magistrate or justice for review;

(c) Where a person charged indicates to a Police Officer that he wishes to make an application to a magistrate or justice for review of a bail determination, or to apply for bail, the officer is required as soon as is practicable to arrange for the person to be brought before a magistrate or justice, or for the person to make the application by way of alternative means of communication (e.g. telephone or radio etc.): s 33(4).

Question 4

Please elaborate on the measures taken, if any, to prevent ill-treatment of women in places of deprivation of liberty. Does the State party monitor sexual violence in places of deprivation of liberty, and if so, with what results? Please provide statistical data on the number of complaints received and investigated in this respect during the reporting period, as well as the number of prosecutions and convictions thereof.

142. In each Australian jurisdiction, mechanisms exist to ensure that women in detention are protected from sexual violence and ill-treatment, and there are in place complaint mechanisms and other measures necessary to respond to the particular issues faced by women, including a range of monitoring procedures. The first part of the response below addresses measures to prevent ill-treatment of women in Commonwealth immigration detention. Information on measures taken in other places of deprivation, such as prisons, is then provided by the States and Territories.

Commonwealth Government information

Immigration detention

143. Great care is taken to ensure that people in immigration detention are treated with respect and dignity and are provided with safe and secure detention, including essential and culturally appropriate services. Immigration detention facilities are managed in a way that reflects that immigration detention is administrative, not correctional or punitive detention.

144. The policy that provides for the protection of women in immigration detention is incorporated in the Immigration Detention Standards (IDS), which have been developed in consultation with the Commonwealth Ombudsman's Office and the Human Rights and Equal Opportunity Commission (HREOC). The IDS form part of the contract with Global Solutions Limited (GSL), which manages Australian immigration detention facilities. The IDS place strong emphasis on the sensitive and appropriate treatment of people in immigration detention.

145. IDS 6.8 provides a standard and performance measure on assaults including sexual assault. People in immigration detention and staff are informed of the law pertaining to assault, including sexual assault, the consequences of infringing the law, and avenues for reporting allegations of assault. The Detention Services Provider is required to promptly refer all allegations or reasonable suspicions of assault, including sexual assault, to the Department of Immigration and Citizenship (DIAC) and the appropriate authorities, including the police and State child welfare authorities where relevant, for investigation. Where allegations are substantiated, charges may be laid and the offenders prosecuted in accordance with the relevant law.

146. Past experience has shown that allegations of sexual assault are rarely sustained and a search of DIAC records over the last few years has not identified a case involving a proven sexual assault. Post-incident medical treatment and/or professional counselling are offered promptly, comprehensively and sensitively to a person in immigration detention who may be the alleged victim of an assault.

147. People in immigration detention may report an alleged assault to police or other authorities. They also have a right to make complaints to HREOC under the *Human Rights and Equal Opportunity Act 1986* and to the Commonwealth Ombudsman under the *Ombudsman Act 1976*. Moreover, the Detention Services Contract requires that any request by a person in immigration detention to make contact with HREOC or the Ombudsman is to be facilitated.

148. Every effort is also made to ensure that a person in immigration detention who alleges assault by another person is protected from retaliation, intimidation or further injury.

149. Under IDS 2.2.3, the special care needs of people in immigration detention, including people with special illnesses and conditions are identified, assessed and responded to. These persons include women, whether accompanied or unaccompanied.

State and Territory information

New South Wales

Ill-treatment of women

150. Female inmates must be kept separate from male inmates (except in such circumstances and under such supervision as the Commissioner of Corrective Services determines): clauses 33 and 181 *Crimes* (*Administration of Sentences*) *Regulation 2001* (the Regulation).

151. Except in the case of an emergency, an inmate must not be searched by or in the presence of a person of the opposite sex: clause 46(2) of the Regulation. This is also stated in the NSW Department of Corrective Services (the Department) *Operations Procedures Manual* (OPM). The OPM provides that male correctional officers must not "pat" search a female inmate except in an emergency. Insofar as transgender inmates are concerned, "pat" searches of an inmate who identifies as female must only be conducted by a female correctional officer. The searching of an inmate must be conducted with due regard to dignity and self-respect, and in as seemly a manner as is consistent with the conduct of an effective search: clause 46(3) of the Regulation.

Sexual violence

152. When an assault, sexual assault or fight is observed or alleged to have occurred within a Correctional Centre, the following procedures are to be strictly adhered to.

153. The discovering officer shall, regardless of whether the victim is an officer or an inmate, report the matter to the General Manager or the most senior custodial officer in charge of the correctional centre without delay.

154. The General Manager (or the most senior custodial officer in charge) shall report the assault, sexual assault or fight to the Duty Officer within 2 hours of the incident occurring. The participants in the assault, sexual assault or fight are to be medically examined as soon as possible and the General Manager (or most senior custodial officer in charge) shall obtain a "Corrections Health Service Incident/Assault Report" if it is believed that injuries were sustained.

155. When one or more persons sustains an injury from the assault, sexual assault or fight, the incident is immediately reported to the police, or when any party requests the matter to be reported to the police then the incident and circumstances should be immediately reported to the police. The local police authorities will have control over any ongoing investigations and any decision to charge the offenders will rest with the police.

156. When no injuries have been sustained by any person, the General Manager (or most senior custodial officer in charge) will interview all parties involved and ascertain whether any party wants the matter to be reported to the police or whether any party wants the matter dealt with within the Department. Inmates must indicate in writing whether they want the matter dealt with by the police or the General Manager. The inmate application form must also describe the events surrounding the alleged assault, sexual assault or fight.

157. If police decline to investigate the matter, or after the police have carried out an investigation and have advised that no action will be taken by them, the Department conducts an investigation of the assault, sexual assault or fight.

Complaints received

158. In the period 2005-2007, there were a total of six allegations of sexual assault by inmates (both male and female) against correctional officers, comprising 2.56 per cent of the total allegations made by inmates in that period. Data pertaining to the outcomes of these allegations is not available.

Victoria

Child protection

159. The *Children, Youth and Families Act 2005* allows young people who present a substantial and immediate risk of harm to themselves and/or others to be placed in a secure and safe setting for up to 21 days. There are two Secure Welfare Services (SWS), one for males and one for females. SWS ensures there is always staff of the same gender on duty at all times. There is always a minimum of two staff on duty to increase the observation and monitoring of staff actions and behaviours.

160. Professional standards of conduct are explained to all staff. Clients are provided with information (verbal and written) on admission about their rights to make a complaint and the process of making a complaint. Information is provided to all clients about the role of the Ombudsman's Office and the contact details of the Ombudsman. Representatives of the Ombudsman's Office routinely visit SWS to advise clients of their role etc.

161. Case managers routinely visit their clients and are able to observe and receive feedback from their clients about the way they have been treated whilst in SWS.

162. DHS policy on the reporting of alleged physical or sexual abuse applies to SWS. All allegations made by clients are immediately reported to the SWS programme manager and regional child protection via a critical incident report. This report is also sent to the regional director and the relevant director/s in central office. The complaint is independently investigated and safety measures put in place to ensure the client's ongoing well-being is provided for.

Mental health

163. The Victorian Department of Human Services has commenced a 12-month project to investigate gender sensitivity and safety in acute adult mental health inpatient units. In addition, the Department has provided $20,000 to each such unit to make environmental changes within the unit to enhance safety for female patients of the service.

164. The Chief Psychiatrist is a statutory role established under the Victorian *Mental Health Act 1986*. The Chief Psychiatrist has the power to investigate complaints and take necessary action.

Police custody

165. The Victoria Police Manual guides police members on professional practices and legislative requirements in respect of persons in their custody. This includes ensuring all persons in police custody are treated humanely and that their mental and physical welfare is protected at all times. Victorian citizens can make complaints about their treatment in custody or on any other aspect of police conduct by making a complaint to Victoria Police's Ethical Standards Department, the Victorian Office of Police Integrity or the Minister for Police and Emergency Services.

Corrections

166. All women prisoners in Victoria are placed in women specific prisons, separate from male prisoners. A range of processes and initiatives are in place focussed on the specific needs and well-being of women prisoners:

(a) The Women's Correctional Services Advisory Committee (WCSAC), chaired by the Parliamentary Secretary for Justice, was established by the Minister for Corrections in 2003, to provide expert non-government advice on women's correctional services. The Committee includes 14 non-government members with membership based on expertise and experience in the area of women's correctional services, advocacy, research, management and academia;

(b) The Standards for the Management of Women Prisoners in Victoria 2006 were developed under the oversight of WCSAC, reflecting a gender responsive approach to the management of women prisoners. They establish the minimum requirements for correctional services in women's prisons and form the basis for the women's prison operating procedures;

(c) The Corrections Inspectorate (CI) is independent of Corrections Victoria and reports directly to the Secretary, Department of Justice and Minister for Corrections. The role of the Inspectorate is to ensure the well-being of all prisoners through regular monitoring and review processes. The Inspectorate conduct regular reviews across the prison system based upon Healthy Prisons principles;

(d) The Better Pathways strategy consists of 37 initiatives to reduce women's offending, imprisonment, re-offending and victimization. The Victorian Government has provided $25.5m to fund the strategy over four years from 2005-2006 to 2008-2009, with $18.3m allocated to programmes to support women prisoners and offenders and $7.2m for improvements to women's prison facilities;

(e) The Women's Correctional Services Framework is an initiative of the Better Pathways strategy, and provides a structure with which to sustain such developments in the longer term. It contains a unifying set of principles and operational objectives to guide the development and delivery of gender responsive correctional services for women in the long term.

167. Corrections Victoria records indicate 12 incidents of alleged sexual assault reported in 2006-2007. All of these incidents were reported to Victoria Police as per protocols and procedures. As of 23 July 2007, seven of these matters have been finalized resulting in:

(a) Complaint withdrawn in three cases;

(b) Case not proven in one instance;

(c) Referred back to prison for local action in two cases; and

(d) No further action by Police in one case.

Queensland

168. Complaints of sexual violence against a person in Queensland Police Service (QPS) custody would be investigated as a criminal complaint. If the complaint is against an officer of the QPS, the matter would constitute an allegation of "official misconduct" and be investigated in accordance with the requirements of the *Crime and Misconduct Act 2001*. These investigations are monitored by the Crime and Misconduct Commission.

169. The Queensland Department of Corrective Services (QCS) has procedures in place to ensure prisoners are treated appropriately while in its custody. Female prisoners are accommodated separately from male prisoners. Allegations of sexual assault are investigated in accordance with the Sexual Assault Procedure which includes medical examinations, collection of evidence and action to separate alleged perpetrators and victims. Sexual assault protocols are implemented immediately and the matter is referred to the Corrective Services Investigation Unit for criminal investigation.

170. On entry into QCS custody, a rigorous assessment process is undertaken which takes into account factors including, but not limited to, the risk of the prisoner being assaulted by other prisoners.

171. Complaints data and internal statistical information is maintained by the Queensland Police Service, however this is not disaggregated to complaints of sexual violence against women held in policy custody.

Western Australia

172. The WA Department of Corrective Service (DCS) is committed to providing women in Western Australian prisons with the necessary care and services specific to their needs. The DCS Women's Custodial Services Directorate was established to increase the focus on women's issues in prison. Custodial services for women are provided in accordance with the following principles:

(a) Personal responsibility and empowerment - Personal responsibility increases the potential for women to be law-abiding and achieve a positive role in the community. Empowerment means developing a sense of values, self-worth and confidence in the ability to create a positive future;

(b) Family responsibility - The importance of family relationships for women in custody is supported and encouraged for the benefit of the prisoners, their families and the community;

(c) Community responsibility - a successful partnership will be built by actively encouraging community participation. Successful transition from prison to the community depends on having positive social networks and involvement in the community. Working in the community helps women prepare for release and reintegration;

(d) Respect and integrity - In all circumstances, the inherent dignity of all people is respected and the unique characteristics, diverse backgrounds and needs and views of women are valued. Respect for individuals and the differences of their religious and cultural beliefs is the basis on which positive interpersonal relationships and self-respect are built.

173. Since 2001 DCS has conducted biannual profiles on women in prison. This assists DCS to deliver services that best meet the needs of these women within the context of their families and communities.

174. Any allegation of sexual violence made by a woman, whether it was while she was in custody or free in the community, is forwarded directly to Western Australia Police for investigation. The prison then refers the woman to specific sexual assault counselling services or more generalist psychological counselling.

South Australia

175. South Australia provides services to women prisoners consistent with the Department for Corrective Services' Strategic Plan 2005-08, whereby a major component is "Effective Offender Management". This objective aims to provide safer communities through:

(a) An effective correctional system;

(b) Cost effective supervision and rehabilitation of prisoners and offenders; and

(c) The provision of a safe, secure and humane environment.

176. Therefore, all policies and procedures must be in keeping with these outcomes.

177. Women prisoners also have the right to report any ill-treatment to:

(a) Their Case Manager;

(b) The unit and/or the General Manager within each prison;

(c) The Visiting Inspectors who are independent of the Department for Corrective Services, appointed by the Minister and visit each person weekly;

(d) The visiting chaplains;

(e) Aboriginal Liaison Officers;

(f) The Department for Corrective Services' complaints phone line to which all prisoners have free access;

(g) The Ombudsman;

(h) The Correctional Services Advisory Council, which is an independent body that reports to the Minister;

(i) Offender Aid and Rehabilitation Services;

(j) Aboriginal Prisoner and Offender Support Services; and

(k) Aboriginal Legal Rights Movement.

178. Also, depending on the seriousness of the allegations, both South Australian Police and the Department's Intelligence and Investigation Unit may investigate the claims.

179. The Department for Correctional Services has a commitment to continuous improvement in the selection and training of Correctional Officers. Trainee Correctional Officers undergo a rigorous selection process including psychological testing prior to commencing the eight week practical training. This is completed before assuming the responsibility for the management of prisoners. The training focuses on respectful and humane care, and reinforces the non-acceptance of any kind of inappropriate behaviour toward prisoners, including violence or brutality.

180. As part of the training process, senior representatives of the Ombudsman's office and the independent Visiting Inspectors, who are appointed by the Minister to closely monitor the treatment of prisoners, explain their role and expectations to all trainees.

181. In addition to the initial selection and training, each prison has a regular training schedule for Correctional Officers.

182. To further ensure best practice for women prisoners, the Adelaide Women's Prison has adopted a multidisciplinary team approach, which includes Prison Health, operational, psychological and social work staff working collaboratively.

183. It is worthy to note that consistent with offering a safe, secure and humane environment, it is not policy at the Adelaide Women's Prison to internally search any female prisoners.

184. In the 2006/07 financial year, there was one complaint of sexual assault made by a female inmate against another female inmate. This matter was investigated by police, but was not proceeded with. The alleged victim was provided with counselling and support.

Tasmania

185. Ill-treatment of women while in police custody or other place is not acceptable and would result in the offenders being charged under the criminal law and dealt with under disciplinary provisions (*Police Service Act 2003* (Tas)). Police officers are properly trained and supervised and there are many avenues for the victim of abuse to put forward complaints. As discussed in the response to Issue 2, police officers owe a duty of care to people in custody.

186. In Tasmanian prisons the provision of health services is administered by the Department of Health and Human Services while the Department of Justice administers the prison system.

187. Female prisoners have an element of choice in healthcare arrangements, for example female prisoners have a right to access female medical officers and can be segregated from male or other prisoners.

Australian Capital Territory

188. The ACT's new prison will include the following initiatives in relation to the needs of women prisoners:

(a) Self-catering cottage style accommodation which will include bedrooms that can accommodate a young child;

(b) Placement within the centre will be based on the assessed needs of the individual woman prisoner and not merely on the basis of security considerations;

(c) Visiting facilities which encourage and support family visits;

(d) Facilities for the delivery of health, rehabilitation and life skills programmes to female prisoners;

(e) A women's community centre and recreational facilities;

(f) A spiritual centre;

(g) Discreet accommodation in the Transitional Release Centre.

189. Section 112 of the *Corrections Management Act 2007* (ACT) provides that a corrections officer may conduct a scanning search, frisk search or ordinary search of a person under sections 111 only if the person is of the same sex as the officer; or if that is not the case - another person of the same sex as the person to be searched is present while the search is conducted. Section 114 provides that a strip search of a detainee must be done by a corrections officer of the same sex as the detainee; and in the presence of 1 or more other corrections officers each of whom must be of the same sex as the detainee. The search must not involve both the upper and lower parts of the person's body being uncovered at the same time.

190. A recruitment plan is currently under way to recruit more female custodial officers, as this is a recognized safeguard against sexual assault. Female custodial officers currently make up 27 per cent of all custodial staff in the ACT.

191. In its human rights audit of the ACT remand facilities, the ACT Human Rights Commission will be recommending that women prisoners should not be guarded by men at night. This recommendation is aimed at the prevention of sexual assault of women prisoners. This is consistent with international standards such as Rule 53 of the Standard Minimum Rules on the Treatment of Prisoners. It is not yet known what the ACT government's response to this recommendation will be.

192. The Corrections Management Act 2007, which is due to enter into force in December 2007 and will provide the legislative framework for the new ACT prison once it is established, provides that strip-searches of women prisoners must only be conducted by women corrective services officers.

Northern Territory

193. The Northern Territory monitors sexual violence in prisons. From 1997 to 2004, seven cases were reported through the Professional Standards Unit (PSU). These were investigated by the PSU and referred to Police for criminal investigation.

Question 5

Please provide statistical data on the number of persons held as suspects of "terrorism". Please also elaborate on safeguards contained in the new counter-terrorism laws, notably the Anti-Terrorism Act (No. 2) 2005, aimed at ensuring that the obligations under the Convention are met also in the context of any counter-terrorism legislation and operation.

194. As a preliminary point, the Australian Government notes that it is arguable that the Committee's first question, seeking data on the number of persons held as suspects of "terrorism", lies outside its mandate. The question does not specify how the question is relevant to obligations under article 2 of CAT. However, to assist the Committee on this and its second question, the Government provides the following information.

195. The Australian Government is very mindful in its implementation of anti-terrorism legislation to ensure compliance with Australia's international obligations, including those under CAT. To this end, counter-terrorism legislation contains appropriate safeguards. The first part of the response provides Commonwealth statistical data on the number of persons held as suspects of "terrorism" and information on safeguards contained in federal counter-terrorism laws. This is followed by statistical data and information from the States and Territories.

Commonwealth Government information

196. As of 2 August 2007, 22 persons are remanded in custody, awaiting trial, on terrorism-related charges. A further six persons are remanded on bail for terrorism-related charges. These numbers will change over time depending on the progress and circumstances of individual cases.

197. Counter-terrorism laws enacted in 2002 introduced a range of terrorism offences into the *Criminal Code Act 1995* (Criminal Code). The offences include engaging in, and preparation and planning for, terrorist acts, training in connection with a terrorist act and funding terrorist acts.

They also include offences for membership of, and other types of engagement with, terrorist organizations. These laws also created a regime for listing terrorist organizations, which includes strict requirements that must be met before an organization is listed and a number of other safeguards.

198. In order to list an organization, the Attorney-General must be satisfied that the organization is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, or advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur). This decision is subject to judicial review. The Leader of the Opposition in the House of Representatives must also be briefed on the proposed regulations and the States and Territories must be consulted.

199. The Criminal Code provides that the regulations listing an organization cease to have effect after two years. A person or organization (including the organization to be listed) may make a de-listing application, which the Minister must consider. The Criminal Code also provides for review by a Parliamentary Joint Committee, who may report its comments and recommendations to Parliament.

200. Any person who is charged with, and prosecuted for, a terrorism offence is afforded all the safeguards available under Australia's system of criminal justice, including a presumption of innocence, the right to remain silent, the right to legal representation and the requirement that guilt be proven beyond a reasonable doubt.

201. The *Anti-Terrorism Act (No. 2) 2005* introduced powers relating to preventative detention and control orders. Other powers to question, and in limited circumstances detain, a person who may have information in relation to a terrorism offence were introduced by amendments to the *Australian Security Intelligence Organisation Act 1979* in 2003. The safeguards contained in these laws are outlined below.

Preventative detention

202. Division 105 of the *Criminal Code Act 1995* (Criminal Code) empowers a senior officer from the Australian Federal Police to issue a preventative detention order authorizing detention of a person for up to 24 hours for the purposes of preventing an imminent terrorist attack or to preserve evidence of a recent terrorist act. The Criminal Code empowers an issuing authority - a Federal Magistrate or a Judge who has consented to this role and who is acting in their personal capacity - to extend a preventative detention order for an additional 24 hours.

203. The legislative regime includes strict requirements that must be met before a preventative detention order can be issued and safeguards to ensure the proper treatment of detained persons.

204. Preventative detention is supervised by a senior Australian Federal Police member, who is appointed to oversee the exercise of powers under, and the performance of obligations in relation to, the order. Questioning of a person in preventative detention, other than to confirm their identity and to ensure their health and well being, is prohibited.

205. A detained person is entitled to a copy of an initial order and a continued order, which must include a summary of the grounds for making the order. A detained person must be informed of the duration and effect of the preventative detention order and their right to access complaints mechanisms and to seek judicial or other remedies in relation to the order.

206. A person detained may seek a remedy in a federal court and/or make a complaint to the Commonwealth Ombudsman in relation to the preventative detention order and their treatment in connection with that order. A person detained may make representations to a senior Australian Federal Police member with a view to having the order revoked and may complain to a relevant state or territory authority in relation to their treatment, by a member of a State or Territory police force, in connection with their detention under the order.

207. The Criminal Code provides that a detained person must be treated with humanity and respect for human dignity and must not be subject to cruel, inhuman or degrading treatment. A person detained must be given an opportunity to contact a lawyer, and is entitled to inform a family member and another specified person that they are safe. A person detained is entitled to an interpreter where the person has difficulty with English.

208. Preventative detention does not apply to people under 16 years and the Criminal Code provides additional safeguards for people between the ages of 16 and 18 and people incapable of managing their own affairs. These include contact with parents or guardians and detention separately from adults.

209. An official who breaches safeguards set out in the Criminal Code, including the requirement that a detained person be treated with humanity and respect for human dignity and the prohibition against cruel, inhuman or degrading treatment, commits an offence punishable by a maximum of two years' imprisonment.

210. The Attorney-General must provide an annual report to Parliament on the operation of the preventative detention powers including information on the number of orders made (if any), the length of detention and details of complaints made to the Commonwealth Ombudsman in relation to the exercise of these powers.

211. No preventative detention orders have been issued since the introduction of these laws in 2005.

Control orders

212. Division 104 of the *Criminal Code Act* (Criminal Code) empowers a senior member of the Australian Federal Police to apply for an interim control order where it would substantially assist in preventing a terrorist act, or where a person has provided training to or received training from a terrorist organization, and where each of the conditions imposed by the order is reasonably necessary, appropriate and adapted for the purpose of protecting the public from a terrorist attack. Control orders are not an alternative to arrest and charge where this course of action is available.

213. The legislative regime includes a number of safeguards aimed at ensuring that persons are treated in accordance with their legal rights.

214. An application for an interim control order requires the consent of the Attorney-General and the control order must be issued by a court. Control orders must not last longer than 12 months, or 3 months for persons between the ages of 16 and 18 years. A person under 16 years of age cannot be the subject of a control order.

215. A person must be notified of the duration and effect of the interim control order and a person's lawyer is entitled to request a copy of the order. The order must specify a day on which the person may attend a court for the court to confirm, declare void or revoke the control order. A person or their representative is entitled to adduce evidence or make submissions before the court in relation to the order. A person is entitled to apply for the order to be varied, revoked or declared void as soon as the person is notified that an order is confirmed.

216. Under the Criminal Code the Attorney-General must report annually to Parliament on the number of interim control orders issued, the number of control orders that have been confirmed, varied or revoked, and details of any complaints to the Commonwealth Ombudsman in relation to the exercise of these powers.

217. One interim control order has been issued since the introduction of these powers in 2005, and has now expired.

Detention and questioning of persons in relation to terrorist offences, for intelligence purposes

218. The *Australian Security Intelligence Organisation Act 1979* (ASIO Act) empowers ASIO to seek a warrant from a Federal Magistrate or a Judge to question and, in limited circumstances, detain a person who may have information relevant to a terrorism offence.

219. The questioning and detention process is subject to a legislative regime which includes strict criteria relating to the issue of a warrant, time limits on the period of questioning and length of detention, and a protocol setting out procedures to be followed when questioning or detaining a person under the ASIO Act.

220. A warrant allows a person to be questioned for a maximum total of 24 hours (or 48 hours where an interpreter is used). ASIO may initially question a person for up to eight hours and then must obtain permission from a "prescribed authority" to continue for up to another eight hours each time. A prescribed authority may be a former judge of a superior court, a current judge in a Supreme or District Court of a State or Territory or a Deputy President or President of the Administrative Appeals Tribunal, who is appointed by the Minister under section 34B of the ASIO Act.

221. In limited circumstances, for example where there are reasonable grounds to believe that the person may not appear before a prescribed authority, a person may be detained for a maximum of 168 hours. This detention must be specifically authorized by the warrant. Questioning is supervised by a prescribed authority. Detention is supervised by a police officer.

222. Upon first appearing before a prescribed authority, a person must be informed of the duration and effect of the warrant, their right to access complaints mechanisms and to seek judicial or other remedies in relation to the warrant, and who they are entitled to contact.

223. The ASIO Act provides that the subject of a warrant must be treated with humanity and respect for human dignity and must not be subject to cruel, inhuman or degrading treatment. The ASIO Act also provides for the subject of a warrant to have access to legal representation and, in certain circumstances, to contact friends, family or other persons.

224. The subject of a warrant has a right to seek a remedy in a federal court relating to the warrant or their treatment in connection with the warrant. The subject may also contact the Inspector-General of Intelligence and Security, the Commonwealth Ombudsman or other relevant complaints bodies at any time to make a complaint about ASIO, the Australian Federal Police or the relevant State or Territory police force.

225. An official who breaches safeguards or fails to afford a person their rights as set out in the ASIO Act, or who fails to comply with a direction of the prescribed authority commits an offence punishable by a maximum of two years' imprisonment.

226. Since the introduction of these laws in 2003 until 30 June 2006, 14 questioning warrants have been issued. No detention warrants have been issued in this time. Information on warrants issued, if any, for the year from 30 June 2006 to 30 June 2007, will be published in the forthcoming ASIO Annual Report to Parliament.

State and Territory information

New South Wales

227. Suspects detained in New South Wales in relation to terrorism offences have been detained under Federal powers. NSW enacted a complimentary counter-terrorism preventative detention scheme in 2005 which is contained in the *Terrorism* (*Police Powers*) *Act 2002*. This scheme has not been used.

228. The NSW Government has established a legislative scheme that balances the dual imperatives of appropriate police powers and protection of civil liberties. The following safeguards for control and preventative detention orders include:

(a) No person can be detained under any combination of Preventative Detention Orders (PDO) for a total of more than 14 days;

(b) The detained person or police may apply to a Judge of the Supreme Court for revocation (at any stage);

(c) Anyone subject to a preventative detention order has the right to legal representation;

(d) Hearings are held in closed court;

(e) Information relied upon by police in applying for a PDO is available to the person, subject to any requirement under the National Security Information (Criminal and Civil Proceedings) Act or public interest immunity to withhold such information;

(f) It is not an offence for the detained person to disclose to a person that they are detained under a PDO;

(g) PDOs are not available to persons under 16 and special provisions apply between 16 and 18;

(h) A person detained under a PDO cannot be questioned except to confirm their identity;

(i) It is an offence for anyone implementing a PDO to fail to treat the person with humanity and dignity;

(j) The Police are subject to oversight by the Ombudsman and PIC. The Attorney-General and Minister for Police are required to prepare a report annually, to be tabled in Parliament, on the operation of the provisions;

(k) The NSW legislation will be scrutinized by the Ombudsman for a period of five years, and the Ombudsman will furnish reports on the operation of the legislation two and five years after the legislation commences;

(l) The scheme will sunset after 10 years;

(m) A final preventative detention order can only be made after a confirming hearing where both parties can be present and heard. A copy of any interim order and a summary of the grounds on which the order was made must be provided;

(n) There is judicial oversight of PDOs including judicial review of the merits of the case.

Rights of detainees under the *Terrorism* (*Police Powers*) *Act 2002* (NSW)

229. The preventative detention provision relating to terrorism are contained in the *Terrorism* (*Police Powers*) *Act 2002* (NSW) (the TPPA).

230. Under ss 26ZE and 26ZF of the TPPA, a detainee has the right to contact family members and the Ombudsman and Police Integrity Commission respectively. Section 26ZG of the Act also provides detainees with the right to contact a lawyer. Special contact rules for persons under 18 or anyone incapable of managing their own affairs are provided for in s 26ZH of the TPPA. These rules enable a person under 18 or a person detained under the order to have contact with a parent or guardian or another person who is able to represent their interests and is acceptable to the person and the police officer who is detaining the person.

231. Further, s 26ZC requires that a person being taken into custody under a preventative detention order must be treated with humanity and with respect for human dignity and must not be subjected to cruel, inhuman or degrading treatment by anyone exercising authority under the order or implementing or enforcing the order.

232. Section 26ZI enables contact with family members and lawyers etc., to be monitored by a police officer exercising authority under the preventative detention order.

Victoria

233. Operations are coordinated by Federal agencies. Regarding safeguards please see Victoria's response to Issue 3.

Queensland

234. Two individuals, on separate occasions in Queensland, have been charged with terrorism-related offences under the Commonwealth Criminal Code. These charges were both subsequently withdrawn.

235. Section 12 of the *Terrorism* (*Preventative Detention*) *Act 2005* (Qld) allows for a person over the age of 16 to be detained for a period of up to 14 days to prevent an imminent terrorist act from occurring or to preserve evidence of a recent terrorist act under the terms of a preventative detention order. Under s 52 of the Act, it is an offence to not treat a person detained under a preventative detention order with humanity, or to subject the person to cruel, inhumane or degrading treatment. A person detained under a preventative detention order has a right to contact family members, the ombudsman, the Crime and Misconduct Commission and lawyers unless subject to a prohibited contact order. They cannot be questioned except on issues of welfare, identity or to enable police to comply with Act. Special rules, including additional contact provisions, apply to children (ss 9, 60) and persons of impaired capacity (s 60). These include being allowed daily contact, including visits, with a parent or guardian, or an independent person able to represent the detained person's interests.

236. Under the Terrorism (Preventative Detention) Act, where a person is detained under a preventative detention order, it is an offence not to treat the person with humanity or subject the person to cruel, inhumane or degrading treatment. A person detained under a preventative detention order has a right to contact family members, the Ombudsman, the Crime and Misconduct Commission and lawyers. A person detained under a preventative detention order cannot be questioned except on issues of welfare, identity or to enable police to comply with Act. Special rules apply to children and persons of impaired capacity. A person who is the subject of a final preventative detention order may apply to the Supreme Court for a review or revocation of the order. Further, an independent Public Interest Monitor has the right to appear before an issuing authority and to make submissions on applications for preventative detention orders to ensure that the public interest, individual rights and civil liberties are safeguarded.

Western Australia

237. In relation to *the Terrorism* (*Preventative Detention*) *Act 2006* (WA), which authorizes temporary detention in order to prevent the occurrence of a terrorist act or preserve evidence of, or relating to, a recent terrorist act, a person may be detained at a police facility, a prison or a detention centre.

238. No persons have been held as suspects of terrorism under the Terrorism (Preventative Detention) Act.

239. The Terrorism (Preventative Detention) Act provides that where a person is detained under a preventative detention order, they must be treated with humanity and with respect for human dignity; and must not be subjected to cruel, inhumane or degrading treatment. This would include the provision of medical treatment in accordance with existing WA Police policies and procedures.

240. With respect to the person's rights to a counsel, to be informed of their rights and to inform their family promptly of their detention, irrespective of where they are detained, these rights are not affected by this legislation. The Terrorism (Preventative Detention) Act in fact makes these rights explicit.

241. Where persons are detained for the purposes of preventing an act of terrorism, there are legislative provisions that allow them contact, in specified circumstances, with:

(a) Family members and home or work associates - contact in these circumstances allows the person being detained to disclose that they are safe but cannot be contacted for the time being;

(b) The WA Parliamentary Commissioner, WA Corruption and Crime Commission or WA Inspector of Custodial Services - contact can be for the purposes of making a complaint about the person's detention under a Preventative Detention Order; and

(c) A lawyer - the person being detained can contact a lawyer to seek legal advice, arrange legal representation or to make a complaint or representation to an oversighting body.

242. With regard to rights related to accessing a doctor of choice, this may depend on where the person is detained. For example, subject to some exemptions relating to contact and communicating with others, if a person is detained in a prison facility or a detention centre, the person is then provided with the same entitlements as though a prisoner under the *Prison Act 1981* (WA), or the *Young Offenders Act 1994* (WA). That is, essentially, medical treatment and access to a doctor would be provided, but not necessarily by the detainee's preferred medical practitioner.

243. Where a person is under the age of 18 years or incapable of managing their own affairs, special provisions apply. In these circumstances, the person is entitled to contact a parent or guardian or another person who is able to represent the detainee's best interests. To maintain the integrity of this provision, the person cannot be a Commonwealth, State or Territory police officer, or an employee of ASIO.

244. In order to monitor their treatment, the Inspector of Custodial Services is able to review the circumstances and treatment of the detainee and make recommendations to police where this is considered appropriate. Should a person (e.g. a police officer) contravene the legislative safeguards, they commit an offence and are liable to imprisonment for two years.

South Australia

245. There are no people currently held in South Australia as terrorism suspects. The South Australian *Terrorism* (*Preventive Detention*) *Act 2005* (the "Terrorism Act"), is based on the *Anti-Terrorism Act* (*No. 2*) *2005*; hence, the safeguards in South Australia are identical to those in the Commonwealth legislation.

246. The Terrorism Act authorizes temporary detention in order to prevent the occurrence of a terrorist act or preserve evidence of, or relating to, a recent terrorist act. The Act does not grant a power to question except for matters of benefit to the detainee.

247. A preventative detention order (PDO) may be made by either a senior police officer or a judge (or retired judge) of the Supreme Court or District Court. Section 10 of the Terrorism Act provides that a person can only be taken into custody and detained for a specified period. Where the PDO is issued by a senior police officer the order is limited to 24 hours. Where a PDO is issued by a judge the order is limited to 14 days. Section 11 provides that a person may only be taken into custody under an order within 48 hours of the making of the order.

248. Similar rights exist for people detained under a PDO in relation to the right to counsel, the right to be informed of their rights and a right to inform a family member that they are safe.

249. Under s 29 a person must be informed of the matters set out in subsection (2) as soon as is practicable after first being taken into custody under a PDO. These matters include:

(a) The restrictions that may apply to the people the person may contact while being detained;

(b) The period of detention;

(c) The right to make a complaint to the Police Complaints Authority;

(d) The person's entitlement to contact a lawyer or be given assistance to contact a lawyer under section 37; and

(e) The right to a review of the order by the Supreme Court under s17.

250. Safeguards have also been provided for in the Act and include the requirement to explain matters as set out above, the right to contact family members and the requirement that they must not be subjected to cruel, inhuman or degrading treatment (Terrorism Act s 33(b)).

Tasmania

251. As at 26 July 2007, Tasmania Police has not held terrorism suspects.

New counter-terrorism laws

252. Tasmania has enacted the *Police Powers* (*Public Safety*) *Act 2005* which was proclaimed on 13 December 2005 and the *Terrorism* (*Preventative Detention*) *Act 2005* (Tas) which commences on a day to be proclaimed. Proclamation will not occur in the short term unless necessary to prevent or respond to a terrorist act.

253. The *Evidence Act 2001* contains provisions dealing with the taping of interviews; while the Terrorism (Preventative Detention) Act (to be proclaimed) sets out conditions and rights to be afforded to terrorism suspects, including providing for detention for certain periods for preventative and investigatory purposes. This adopts the national "model" in most facets.

Terrorism (Preventative Detention) Act 2005

254. The purpose of the Terrorism (Preventative Detention) Act is to provide Tasmania Police with the power to detain persons for up to 14 days in order to prevent an imminent terrorist act occurring or preserve evidence of, or relating to, a terrorist act if it has occurred. Preventative detention involves incarceration, albeit for a short period of time and deprives those detained of their liberty.

255. The Act includes significant safeguards. These include:

(a) An application by the police for a preventative detention order will be subject to normal and proper judicial approval and review;

(b) A person held under a preventative detention order has the right to legal representation, and is able to challenge the validity of the order;

(c) No person under the age of 16 can be detained under these orders;

(d) There are modified provisions for those young people who are older than 16 but not yet 18 years of age and for people incapable of managing their own affairs;

(e) Any person detained must be treated humanely, with respect and dignity. It is an offence to breach this provision, punishable by imprisonment for a term not exceeding five years;

(f) Those detained may be subject to prohibited contact orders which will specify particular individuals whom the person detained may not contact. However, the Act allows for the detainee to challenge these orders and seek to have them varied or revoked by a court.

256. Apart from seeking a remedy from a court in relation to a preventative detention or prohibited contact order a detainee has several other safeguards available:

(a) A senior police officer will oversee the performance of obligations of those officers carrying out orders in relation to a detainee. The senior police officer, who must not have been involved in the seeking or making of the orders for detention, will be nominated by the Commissioner of Police. The detainee or a person acting on their behalf will be able to make representations to this nominated senior police officer about their treatment;

(b) The detainee or a person acting on their behalf will also be able to contact the Tasmanian Ombudsman to have relevant matters dealt with under the provisions of the Ombudsman Act 1978; and

(c) Any person detained will be entitled to have legal representation. This will allow a detainee to obtain legal advice and provide instructions in relation to proceedings before a court; any complaints made to the Ombudsman; and representations on their behalf to the nominated senior police officer.

257. In addition, the ability of the police to seek preventative detention orders under the Act will automatically cease 10 years after its commencement. There will be ongoing monitoring and review of the effectiveness of the legislation and the sunset clause will ensure that a detailed review of the Act is conducted prior to its expiration after 10 years.

Police Powers (Public Safety) Act 2005

258. The purpose of the *Police Powers* (*Public Safety*) *Act 2005* is to allow the police to stop, search and question people; search vehicles; and seize and detain things to ensure the safety of the public where there is a risk of terrorism, a potential terrorist threat or a terrorist act has occurred.

259. The Police Powers (Public Safety) Act allows the Commissioner of Police to seek authorization from the Premier of Tasmania or the Supreme Court for police officers to be able to exercise certain powers when the circumstances warrant their use. The circumstances that justify the use of these powers include:

(a) The protection of the public participating in or attending an event, when the nature of the event means it might be at risk of a terrorist act;

(b) The protection of sites or areas of a type that mean they might be at risk of a terrorist act, and the protection of persons in the vicinity of those sites or areas. Such areas and sites include:

(i) An airport, bus or coach station or interchange, train station, or ship or ferry terminal; or

(ii) A place where people gather in large numbers; or

(iii) An area in which a defined essential service is located;

(c) Preventing, or reducing the impact of a terrorist act; and

(d) Investigating, or dealing with the aftermath of a terrorist act.

260. The authorization to exercise the powers will designate an area in which the powers can be exercised.

261. An authorization may also authorize the exercise of powers in relation to designated persons, or designated vehicles. There are two categories of powers. The first category is those powers that do not require authorization by the Court but can be initiated by the Commissioner of Police with the approval of the Premier. These powers are authority to:

(a) Obtain disclosure of a person's identity;

(b) Stop a person and conduct an ordinary search of that person;

(c) Stop and search vehicles;

(d) Move vehicles; and

(e) Place cordons around designated areas and limit entry and egress.

262. The second category is those additional powers that may require authorization by the Court on application by the Commissioner with the Premier's approval. These powers are authority to:

(a) Conduct a strip search of a person;

(b) Enter and search premises; and

(c) Give directions to a public sector body to exercise its powers or functions so as to assist the exercise of the Commissioner's powers.

263. Generally these additional powers require authorization from the Supreme Court. In urgent circumstances, such as when a terrorist act has occurred or is considered imminent, the Commissioner of Police may, with the approval of the Premier, authorize the use of these additional powers for up to 72 hours. If there is a need to have the powers for a longer period authorization must be sought from the Supreme Court.

264. With powers in either category the police may use reasonable force to exercise the powers, seize and detain things, and authorize assistance from other people.

265. The maximum period for which an authorization to exercise any of the powers in either category can be sought varies according to the circumstances:

(a) In the case of an event, the authorization runs from an appropriate time determined by the Commissioner before the event starts and automatically ceases 24 hours after the event;

(b) In relation to those transport and other special sites exposed to a general risk of a terrorist act occurring the authorization may, subject to the terms of the authorization, continue for up to 12 months; and

(c) If a terrorist act occurs, the period during which an authorization will allow the exercise of the additional powers cannot exceed 14 days.

266. The provisions of the Police Powers (Public Safety) Act will expire on the tenth anniversary of the day it commenced.

Australian Capital Territory

267. No persons have been held as terrorism suspects by ACT Policing. No person has been remanded or convicted of an act of terrorism in the ACT.

268. Under ACT law, people suspected of terrorist offences can be investigated, arrested and dealt with under normal law enforcement legislative provisions. The only specific piece of ACT legislation that could be described as "counter-terrorism" legislation would be the *Terrorism* (*Extraordinary Temporary Powers*) *Act 2006* which gives police the ability to seek preventative detention orders, and special "stop, search and entry" powers.

269. Section 18 of the Terrorism (Extraordinary Temporary Powers) Act allows a court to order the preventative detention of a person if it satisfied on reasonable grounds that the person intends or has the capacity to carry out a terrorist attack, or possesses something or has done an act in preparation for committing a terrorist attack; and it is reasonably necessary to detain the person to prevent the terrorist attack; and it is anticipated that the attack will occur imminently, and in any event within 14 days.

270. A person may be detained for seven days under a preventative detention order [s 21]. An order may be extended, but a person must not be held for a period longer than 14 days. That is to say, no extension, or combination of orders, can authorize the preventative detention of a person for a period longer than 14 days commencing from when the person was first taken into custody under any type of preventative detention order [ss 21(3) and 26(2)].

271. The Terrorism (Extraordinary Temporary Powers) Act contains the following safeguards:

(a) Preventative detention orders cannot be applied for, or made, for a child [s 11];

(b) Where the police apply for a preventative detention order, the person who would be the subject of the order must be given a copy of the application for a preventative detention order [s 13(2)];

(c) A person who is to be the subject of a preventative detention order is entitled to be represented during any proceedings by a lawyer [s 13(3) and (4)] and is entitled to contact a lawyer at any time for the purpose of preparing for any proceedings under the Act [s 52]. During an application proceeding for a preventative detention order, a person or their lawyer is entitled to call witnesses, examine and cross-examine witnesses, and make submissions;

(d) Preventative detention orders may only be made by the Supreme Court (being an independent superior court). Special Powers authorizations may be issued by the Magistrate's Court or the Supreme Court;

(e) The Public Interest Monitor is allowed to appear and make submissions in court proceedings where preventative detention orders are applied for;

(f) The Human Rights Commissioner and the Ombudsman are to be informed of the detention of people under a preventative detention order, and the Ombudsman can hear complaints from detained people;

(g) Suspects are not to be questioned for investigative purposes whilst detained, and may only be questioned about their identity and their welfare [s 58];

(h) Section 48 creates an offence, punishable by 2 years' imprisonment or 200 penalty units, for anyone that treats a person detained under a preventative detention order in a manner that is inconsistent with humanity and respect for the inherent dignity of the human person, or subjects anyone to cruel, inhuman, or degrading treatment;

(i) Pursuant to section 55 and 56, police are allowed to monitor conversations between a detained person and their lawyer and family members only under certain limited circumstances;

(j) Pursuant to section 50, detainees may contact one family member, the person they live with and a work colleague once each. As well as informing their lawyer and the ACT Ombudsman, the detained person may tell the people they contact about the fact that they are being detained under a preventative detention order; the fact that they are safe; the period of time for which they will be detained; and for family members and people they reside with, where they are being detained. If the preventative detention order provides for additional contact, then they may also have that contact;

(k) Section 96 provides that in a proceeding under the Act evidence that is obtained either directly or indirectly from torture is inadmissible. This section applies irrespective of where the torture occurred. For the purpose of this section, the definition of torture is that which is contained in the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 1, paragraph 1;

(l) Section 93 requires police officers who exercise stop and search powers under the Act to be trained about their obligations under ACT Human Rights Act 2004.

Northern Territory

272. There have been no people held as terrorism suspects under the *Terrorism* (*Emergency Powers*) *Act* (NT) nor the terrorism provisions under the *Criminal Code* (ss 50-55).

273. The Terrorism (Emergency Powers) Act: Division 5 mandates the humane treatment of detained persons, in particular section 21ZG, which provides that a person detained under a preventative detention order:

(a) Must be treated with humanity and with respect for human dignity; and

(b) Must not be subjected to cruel, inhuman or degrading treatment, by anyone exercising authority under the order or implementing or enforcing the order. It imposes a penalty of two years' imprisonment for contravention of the provision.

274. For present purposes, Part 2B of the Terrorism (Emergency Powers) Act - Preventative Detention Orders - is of primary relevance. That Part was inserted into the Act and commenced on 28 June 2006 as part of a national scheme and provides for a person to be taken into custody and detained for a short period of time in order to:

(a) Prevent a terrorist attack occurring in the near future; or

(b) Preserve evidence of, or relating to, a terrorist attack.

275. Because of potential implications for the rights and freedoms of individuals, the Act contains stringent safeguards, checks and balances that guard against its abuse. In this context, key features include:

(a) Preventative Detention Orders (PDOs) may only be made by an "eligible Judge" under strictly limited circumstances and grounds (s 21G), and only on application by a police officer at or above the rank of Superintendent and authorized for that purpose (ss 21D, 21E);

(b) A PDO must specify the period during which the person may be detained (s 21H) and in any event, the maximum period for which a person may be detained is 14 days (ss 21K, 21N);

(c) As soon as practicable after a person the subject of a PDO is taken into custody or detained, police must apply to the Supreme Court for review of the PDO. The Court in the review proceeding must not be constituted by the same Judge who made the order. The detainee is entitled to appear in the review proceedings; give evidence; call, examine and cross-examine witnesses; adduce material; and make submissions (either in person and/or through his legal representative). The Court may confirm, vary, or revoke the PDO (s 21P);

(d) The subject of a PDO may also apply to the Supreme Court for revocation or variation of a confirmed PDO (s 21R);

(e) In an almost identical process, a person under a PDO may also be subject to a Prohibited Contact order (PCO) which prohibits them contacting a person specified in the order (ss 21Q, 21R);

(f) When a person is first taken into custody under a PDO, the detaining police officer must:

(i) Give the person a copy of the PDO and any PCO that is in force together with a summary of the grounds upon which those orders were made. The Police Officer must also, on request, provide copies to a lawyer acting for the person under detention (s 21ZF);

(ii) Explain the effect of the PDO to the detainee, including in particular the persons rights relating to:

– The requirement for review of the PDO by the Supreme Court and the detainee's right to be heard;

- People the detainee is entitled under ss 21ZI or 21ZL to contact and the restrictions on that contact;

- The detainee's rights under s 21ZJ to contact the Ombudsman or OIC of the Ethical and Professional Standards Unit concerning the exercise of powers and performance of duties relating to the PDO, compliance with the s 21T requirement for police to seek revocation of the PDO by the Supreme Court if the grounds for the PDO cease to exist, and the detainee's treatment while under detention;

- The right of the detainee under s 21ZU to seek a remedy from the Court in relation to the PDO, PCO, or the detainee's treatment while in detention;

- The detainee's entitlement under s 21ZK to contact a lawyer; and

- The name and work telephone number of the nominated police officer overseeing the exercise of functions under the PDO;

(g) If the detainee is unable to communicate with reasonable fluency in English, the police officer must also arrange for the assistance of an interpreter when providing the explanation. A police officer who fails to comply with the requirement to explain to the detainee the matters set out may be subject to a term of imprisonment for 2 years (s 21ZD);

(h) A police officer is not permitted to question a person detained under a PDO, except for the purposes of: determining that the person is the person specified in the PDO; ensuring the safety and well being of the person detained; or to comply with a requirement of the Act in relation to the person's detention under the PDO. Contravention carries a penalty of two years' imprisonment;

(i) Section 21ZG requires that a person taken into custody or detained under a PDO:

(i) Must be treated with humanity and respect for human dignity; and

(ii) Must not be subject to cruel, inhuman or degrading treatment, by anyone exercising authority, implementing, or enforcing the PDO. Contravention of this requirement carries a penalty of imprisonment for two years;

(j) The Police Commissioner is required to provide a written annual report to the Police Minister by 30 October each year that discloses, among other things the number of PDOs and PCOs made during the year to 30 June, with the particulars of each order and action taken under or pursuant to it. The Minister is required to table the report in the Northern Territory Parliament within seven sitting days of its receipt.

Question 6

Please comment on the finding of other United Nations bodies that, while detention of individuals requesting asylum is neither unlawful nor arbitrary per se, their continuing detention might become arbitrary after a certain period of time without proper justification.

276. As a preliminary point, the Australian Government notes that it is arguable that the Committee's question lies outside its mandate. The question does not specify how the question of arbitrary detention is relevant to obligations under article 2 of CAT, nor why the Committee should duplicate the follow-up of other United Nations bodies. However, to assist the Committee on this point, the Government provides the following information.

277. The detention of individuals requesting asylum is neither unlawful nor arbitrary per se. There is no indication in the jurisprudence of the Human Rights Committee that detention for a particular length of time could be considered arbitrary per se. In *A v. Australia* (communication No. 560/1993), the Human Rights Committee indicated that the period of administrative detention (such as for immigration purposes) might be a factor in assessing whether the detention is arbitrary. The Committee stated that "The detention should not continue beyond the period for which the state can provide appropriate justification".[6] The determining factor is not the length of the detention but whether the grounds for the detention are justifiable. Ultimately, the question of whether detention is "arbitrary" and in violation of article 9(1) of the International Covenant on Civil and Political Rights (ICCPR) relies on an examination of the particular factors justifying the detention. The Human Rights Committee has indicated that the main test in relation to whether detention for immigration control is arbitrary is whether it is reasonable, necessary, proportionate, appropriate and justifiable in all of the circumstances.[7] In relation to immigration detention, the Human Rights Committee has stated that "The fact of illegal entry may indicate a need for investigation and there may be other factors particular to the individual, such as the likelihood of absconding and lack of cooperation, which may justify detention for a period".[8]

278. The Government understands that the principle of arbitrariness means that immigration detention should not continue longer than can be justified as reasonable, necessary and proportionate. To this end, the Government has a policy of processing Protection visa applications as quickly as possible and has consistently strived to achieve this. Most Protection visa applicants are not detained and remain in the community on a bridging visa during processing of their visa applications.

279. Factors which influence the length of detention are the time required to make an effective assessment of a visa application, the outcome of review procedures and, if necessary, time taken to make removal arrangements. Protection visa applications from people in immigration

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[6] *A v. Australia*, No. 560/1993, paragraph 9.4.

[7] *A v. Australia* (Communication No. 560/1993, paragraph 9.2.

[8] *A v. Australia* (Communication No. 560/1993, paragraph 9.4.

detention receive the highest priority and a number of measures (such as front-end loading of security, character and identity checks) have been implemented to expedite processing while maintaining the robust and rigorous nature of the assessment process. Further changes to expedite processing times of Protection visa applications were made in 2005 (see below). In the 2006-2007 programme year two thirds of Protection visa applicants in detention received decisions on their applications within 43 days of applying for protection. Some 94 per cent of Protection visa applicants in immigration detention had received a decision on their application within 90 days of applying. The small percentage of applications decided outside 90 days are the result of specific character or security related issues concerning those cases and requiring further exploration.

280. Protection visa decision-makers are trained to ensure that all claims are thoroughly and objectively examined and resolved before proceeding to make a decision. After it has been determined that Australia does not have protection obligations in respect of a particular individual, an applicant's time in immigration detention may be extended while they pursue their legal rights of review.

Legislative amendments in 2005

281. In 2005 the Australian Government announced a number of changes to both the law and the handling of matters relating to people in immigration detention and the processing of Protection visa applications. These changes include:

(a) That where detention of an unlawful non-citizen family (with children) is required under the Migration Act, except as a last resort detention should be under alternative arrangements (that is, in the community under residence determination arrangements [now known as community detention] at a specified place in accordance with conditions that address their individual circumstances), where and as soon as possible, rather than under traditional detention;

(b) All primary Protection visa applications are to be decided by the Department of Immigration and Citizenship (DIAC) within 90 days of application lodgement;

(c) All reviews by the Refugee Review Tribunal are to be finalized within 90 days of the date the Tribunal receives the relevant files from DIAC;

(d) Regular reporting to Parliament on cases exceeding these time limits is required;

(e) Where a person has been in detention for two years or more there will automatically be a requirement that every six months a report on that person be furnished by DIAC to the Commonwealth Ombudsman. The Ombudsman's assessment of each report, including recommendations on whether the person should be released from detention, will be tabled in Parliament;

(f) The provision in the Act of an additional non-compellable power for the Minister for Immigration and Citizenship to specify alternative arrangements for a person's detention and conditions to apply to that person;

(g) The provision in the Act of an additional non-compellable power for the Minister for Immigration and Citizenship, acting personally, to grant a visa to a person in detention; and

(h) The amendment of the Migration Regulations 1994 to create a new bridging visa to enable the release of persons in immigration detention into the community whose removal from Australia is not reasonably practicable at the current time. A Removal Pending Bridging visa may be granted using the Minister for Immigration and Citizenship's non-delegable, non-compellable public interest power to grant a visa to a person in immigration detention.

282. In 2005 the Australian Government also introduced Detention Review Managers (DRMs). DRMs independently review the initial decision to detain a person, including Protection visa applicants, and continue to review the cases of people in immigration detention on an ongoing basis to ensure their detention remains lawful and reasonable.

283. The detention of unlawful non-citizens, including those asylum-seekers who are also unlawful non-citizens, is intended to be proportionate to the ends sought, namely to allow the Australian Government to conduct health, character and security checks, to assess any applications to remain in Australia, to ensure the integrity of Australia's right to control entry pending these assessments, and to ensure that removal can be effected if they are found not to meet the criteria for a visa to remain in Australia. The Australian Government rejects any implication that its detention of persons for immigration purposes is arbitrary.

Article 3

Question 7

In relation to immigration detention, please indicate:

(a) What are the avenues to challenge the lawfulness of immigration detention;

284. The lawfulness of immigration detention can be challenged in a number of ways:

(a) Under the Migration Act 1958 (Migration Act), judicial review of the exercise of the power to detain under s189 of the Migration Act can be sought in the Federal Magistrates Court (with appeal to the Federal Court and the High Court available);

(b) Judicial review can also be sought directly in the High Court in its original jurisdiction, which is entrenched in the Australian Constitution;

(c) In addition, a writ of habeas corpus can be sought from the High Court, Federal Court or from State Supreme Courts;

(d) Immigration detainees can also seek review of the decision which resulted in them being refused a visa or having their visa cancelled (which means they are liable for detention if they do not hold another visa). Usually merits review of such a decision is available (by the Refugee Review Tribunal, the Migration Review Tribunal or the Administrative Appeals Tribunal, depending on the kind of visa and the reason for refusal). Judicial review (in the Federal Magistrates Court, the Federal Court and/or the High Court, as outlined above) is also available.

(b) Whether legal aid is accessible for detainees with financial difficulties;

285. Immigration detainees are advised of their right to obtain legal advice.

286. Publicly-funded legal assistance may be available for the purpose of challenging the lawfulness of immigration detention and, as required by the Migration Act, any immigration detainee who requests it is afforded all reasonable facilities for obtaining legal advice or taking legal proceedings in relation to their immigration detention. Detainees may also be able to obtain free legal advice and representation through *pro bono* work by the legal profession.

287. Protection visa applicants in immigration detention have access, free of charge, to professional migration assistance by an Immigration Advice and Application Assistance Scheme (IAAAS) service provider, for the preparation, lodgement and presentation of a protection visa application and for applications for merits review by the relevant Tribunal of any refused decisions.

288. Protection visa applicants wishing to seek judicial review of their RRT decision also have access to some free legal assistance to assess their case and prepare their judicial review application through the "Legal Advice Scheme" which operates in two Australian states (NSW, where the majority of applicants are located, and WA).

(c) Whether defence lawyers can participate in the hearings of the Refugee Review Tribunal;

289. The Refugee Review Tribunal (RRT) is an independent merits review tribunal, which conducts a review of decisions made by officers of DIAC, acting as delegates of the Minister, to refuse to grant protection visas to non-citizens within Australia, or to cancel protection visas held by non-citizens in Australia.

290. The RRT has an obligation to provide a mechanism of review that is fair, just, economical, informal and quick. Unlike a court, the RRT is not adversarial and DIAC is not usually represented at RRT hearings. The RRT is inquisitorial in nature and is not bound by technicalities, legal forms or the rules of evidence but must act according to substantial justice and the merits of the case.

291. If an applicant for review has a (legal) advisor assisting them with their protection visa application, the advisor can attend the hearing with the applicant. The advisor will usually be asked if they wish to say anything after the applicant and any witnesses have given evidence. However, the RRT is not required to allow the advisor to argue an applicant's case for them.

(d) Whether appeals filed against decisions not to grant asylum have suspensive effect on expulsion orders;

292. Section 198(6) of the Migration Act provides that a person in immigration detention, including a protection visa applicant, must be removed from Australia as soon as reasonably practicable if *inter alia* the visa application has been finally determined. A protection visa application is taken to be finally determined when a decision is no longer subject to review by the RRT.

293. Current DIAC policy is that a protection visa applicant in immigration detention will not be removed from Australia while the outcome of either judicial review or a Ministerial Intervention request in relation to a protection visa application is pending.

(e) Whether the State party has a list of "safe third countries" for removal; and, if so, how this list is created and maintained;

294. Australia does not have a list of "safe third countries". All protection visa applications are considered on a case-by-case basis, in accordance with domestic and international law, and take into account extensive up-to-date country information.

295. The Migration Act contains provisions (subdivisions AI and AK) under which a third country may either be declared as safe per se, or alternatively be prescribed as a safe third country in relation to an individual or a class of individuals. Currently there are no countries declared under these provisions. The People's Republic of China (PRC) has been prescribed as a safe third country in relation to Vietnamese refugees settled in the PRC as covered by an agreement between Australia and the PRC. However, in practice this has little impact as there has been no person arriving in Australia affected by this provision for over five years.

(f) What is the legal status of those detainees whose visas have been cancelled under section 501 of the Migration Act.

296. If a person has their visa cancelled under section 501 of the *Migration Act 1958* (the Act), they no longer hold a valid visa and become an unlawful non-citizen (sections 13 and 14 of the Act). Unlawful non-citizens must be detained (section 189 of the Act) until they are removed or granted another visa (s196 of the Act). Detainees must be removed as soon as reasonably practicable once any relevant visa application and merits review options have been finalized (section 198 of the Act).

Question 8

Please indicate whether the State party seeks assurances, including diplomatic assurances, before extraditing or returning an individual to another State as a way of preventing the return to a country where he or she would be in danger of torture. If so, please also indicate whether there is any follow-up mechanism in place to assess if these assurances are honoured.

297. In all cases of extraditing or returning an individual to another State, Australia approaches situations where there are concerns about treatment upon return on a case-by-case basis. The Australian Government assesses each individual case as to whether there is a real risk to the individual of torture or cruel, inhuman or degrading treatment. The "real risk" test involves looking at the circumstances of the particular individual in question, that is on a case-by-case basis to ensure that the particular person returned would not face a real risk of torture. In assessing the risk of torture, the Australian Government takes into account all relevant considerations, including the existence in the relevant State of a consistent pattern of gross, flagrant or mass violations of human rights. The Government is aware of the statement of the Committee Against Torture that:

> *... the aim of such determination is to establish whether the individuals concerned would be personally at risk in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.*[9]

298. The Government is also aware of the statement of the Committee that "[t]he risk need not be highly probable, but it must be personal and present. In this regard, in its jurisprudence the Committee has determined that the risk of torture must be foreseeable, real and personal."[10]

299. Australia is fully committed to upholding its non-refoulement obligations under international law. There are processes established within the Australian Government to determine that Australia's non-refoulement obligations under Article 3 of the Convention Against Torture (CAT) are satisfied, as well as Australia's obligations under the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Status of Refugees (Refugees Convention), in addition to Australia's related obligations under the Second Optional Protocol to the International Covenant on Civil and Political Rights.

300. Where a case is found to engage Australia's non-refoulement obligations it is referred to the Minister for Immigration and Citizenship so he can consider exercising his discretionary power to grant a visa. In addition, an assessment against Australia's non-refoulement obligations is conducted for all failed asylum-seekers who are to depart Australia involuntarily. This assessment is conducted prior to removal and takes into consideration all new country information.

301. The process of cancelling a person's visa for character reasons is also sensitive to Australia's non-refoulement obligations. Where a person claims during the cancellation process that their human rights will be breached upon return to another country, or where the Australian Government identifies human rights issues, a full assessment of Australia's non-refoulement obligations is conducted. This assessment informs the cancellation decision-making process, which affords due consideration to the absolute nature of the non-refoulement obligations under CAT and ICCPR.

302. The Australian Government is aware that international authorities, specifically the European Court of Human Rights, the United Nations Committee Against Torture, and the United Nations Special Rapporteur on Torture, have stated that diplomatic undertakings that a

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[9] *CT and KM v. Sweden* CAT Communication 279/2005, Views of 17 November 2006 para. 7.2.

[10] *CT and KM v. Sweden* CAT Communication 279/2005, Views of 17 November 2006 para. 7.3.

state will not torture a person are not sufficient in themselves to ensure that a country will not breach its non-refoulement obligations if it relies solely on these undertakings and removes that person. International authorities also suggest that the existence of access and monitoring arrangements would contribute to the satisfaction of non-refoulement obligations. While none of these authorities is binding on Australia, they are persuasive and are taken into account by the Australian Government in determining our position. As at 3 September 2007, the Australian Government had sought and received an assurance regarding a person who was subject to removal under the Migration Act, but that person has not yet been removed.

303. Regarding extradition, s 22(3)(b) of the *Extradition Act 1998* (Cth) specifically provides that a person is not to be surrendered unless the Attorney-General is satisfied that the person will not be subject to torture in the country requesting extradition.

304. Receiving a diplomatic undertaking from the receiving State may be a factor to be taken into account by Australia in making a determination about Australia's non-refoulement obligations. However, having an undertaking does not absolve Australia from its responsibility to undertake an assessment as to whether there is a real risk of torture. An undertaking may be a factor in determining that there is not a real risk, but an assessment must take into account all the circumstances of the particular case. Australia also conducts an assessment as to whether the country providing the undertaking will abide by it. This approach satisfies the key requirement for the transferring State to be satisfied that the receiving State will actually abide by its undertaking in each case.

305. Whether Australia seeks access to persons removed to another State for the purpose of monitoring whether a torture undertaking is honoured is ultimately a question of policy. Each case must be considered individually, on its known facts. Australia has taken opportunities to advise the State to which a person is transferred that Australia may from time to time seek access to a person transferred to that State.

Question 9

Please inform the Committee on the number of cases during the reporting period in which the Minister for Immigration and Multicultural and Indigenous Affairs has exercised its power under sections 417, 454 and 501 J of the Migration Act 1958 to substitute a decision of the Refugee Review Tribunal or the Administrative Appeals Tribunal (AAT) with a more favourable decision for the applicant.[11]

306. It is unclear to the Australian Government how this question lies within the Committee's mandate. Nonetheless, to assist the Committee the Government provides the following information.

[11] State party's report, para. 35.

307. During the period July 1997-June 2004, the then Minister for Immigration, Multicultural and Indigenous Affairs exercised the Ministerial Intervention power set out in sections 417, 454 and 501J of the *Migration Act 1958* to substitute a more favourable decision for that of the Refugee Review Tribunal or the Administrative Appeals Tribunal in a total of 1,748 cases.

308. Departmental records as at 6 July 2007 show that from July 2004-June 2007 the Minister intervened under either s 417, 454 or 501J in a further 1,058 cases.

Question 10

Please explain the State party's position with respect to the concerns of the Human Rights and Equal Opportunity Commission (HREOC) expressed recently in relation to the Migration Amendment (Review Provisions) Bill 2006, which reportedly would create the potential for an unfair process and thus increase the risk of incorrect decisions and the likelihood of "refoulement" of asylum-seekers. Please also explain the rationale behind the changes made by the Bill.

309. The *Migration Amendment* (*Review Provisions*) *Bill 2006* has been enacted into law and commenced on 29 June 2007. The Bill is now known as the *Migration Amendment* (*Review Provisions*) *Act 2007* ("the Review Provisions Act").

310. The Migration Review Tribunal (MRT) and the Refugee Review Tribunal (RRT) are independent statutory bodies set up to review various decisions made under the *Migration Act 1958* ("the Act"). For example, the RRT can review a decision of a delegate of the Immigration Minister to refuse an application for a Protection Visa, which is the mechanism by which Australia meets its obligations under the Refugees Convention. The review (by both the RRT and the MRT) consists of a *de novo* consideration of all the circumstances of the case, within the legislative and policy framework, to arrive at the correct and preferable decision. In discharging their review functions both Tribunals are bound by their own code of procedure, contained in the Act, for dealing fairly with review applicants.

311. The amendments brought about by the Review Provisions Act were necessary because the Tribunals' procedural fairness requirements have been very literally interpreted by the High Court of Australia and the Federal Court of Australia in a series of judicial decisions. Subsequent judicial comment on the effect of this very literal interpretation has been that it has led to a highly technical application of the law in circumstances where "no practical injustice can be found" in the way the Tribunals have dealt with a review.

312. The cumulative effect of these judicial decisions was that the Tribunals were forced to adopt a very strict approach to providing review applicants with procedural fairness, and this is having considerable practical ramifications on their operations. For example:

(a) There were delays when issues that have already been covered exhaustively at Tribunal hearings had to be put to review applicants again in writing following the hearing; and

(b) Information such as passport details, family composition, and statutory declarations already provided by the review applicant for the purpose of making the decision being reviewed, had to be put to the review applicant in writing for comment so that the Tribunals could consider the information.

313. The Review Provisions Act simply aligns the relevant provisions in the Act with the sensible and practical way that the Tribunals provided procedural fairness prior to the decisions of the courts mentioned above.

314. The Australian Government rejects the assertion that the Review Provisions Act creates the potential for an unfair process for the determination of asylum claims, or any claims, by the Tribunals. The Act contains several protections to ensure review applicants are given procedural fairness, including that the Tribunals:

(a) Give clear particulars of the adverse information being put;

(b) Ensure, as far as is reasonably practicable, that the review applicant understands why the information is relevant to the review, and the consequences of the information being relied on in affirming the decision under review;

(c) Advise the review applicant that he or she may seek additional time to comment on or respond to the adverse information, where the Tribunal chooses to deal with the adverse information orally at a hearing, and adjourn the review and provide the review applicant with additional time if the Tribunal consider that the review applicant reasonably needs additional time; and

(d) Act in a way that is fair and just in applying the codes of procedure contained in the Act.

Question 11

Please update the Committee on measures taken to follow-up to the recommendations contained in the 2004 report of the Senate Select Committee on Ministerial Discretion in Migration Matters, and notably to the recommendation that the government "give consideration to adopting a system of complementary protection to ensure that Australia no longer relies solely on the minister's discretionary powers to meet its non-refoulement obligations under the CAT'2.

315. The Government has not yet responded to the recommendations in the report of the *Senate Select Committee on Ministerial Discretion in Migration Matters*.

316. The existing provisions of the Migration Act allow for Ministerial intervention in the public interest to deal with relevant international obligations, including any cases where non-refoulement obligations under the Convention Against Torture and the International Covenant on Civil and Political Rights exist.

Question 12

Please provide data, disaggregated by age, sex and nationality, covering the reporting period on:

(a) The number of asylum requests registered and the number of requests granted;

317. The Department of Immigration and Citizenship (DIAC) systems as at 13 July 2007 indicate that 61,018 initial Protection visa (PV) applications were lodged in the reporting period (1 June 1997 to 31 October 2004). The breakdown by age, sex and nationality is provided in the following tables:

Initial PV applications lodged in the period 1 June 1997 to 31 October 2004 by age

Applicant age group*	PV applications lodged
0 to 17	8 512
18 to 30	23 902
31 to 60	27 224
61 and over	1 380
Total	61 018

* Age at application lodgement.

Initial PV applications lodged in the period 1 June 1997 to 31 October 2004 by gender

Gender	PV applications lodged
Male	40 633
Female	20 385
Total	61 018

Initial PV applications lodged in the period 1 June 1997 to 31 October 2004 by nationality - Top 40

Nationality	PV applications lodged
China (PRC)	7 829
Indonesia	6 579
Iraq	5 558
Afghanistan	4 260
India	3 767
Sri Lanka	3 057
Philippines	2 721
Fiji	2 448
Iran	1 807
Malaysia	1 647
Korea, Republic of	1 604
Thailand	1 412
Bangladesh	1 383
Pakistan	966
Colombia	900
Lebanon	886
Viet Nam	813
Turkey	807
Russian Federation	631
Nepal	573
Stateless	559
Myanmar	537
Egypt	499
Former Yugoslavia	488
Ukraine	485
Tonga	398
Former Yugoslav Republic of Macedonia	356
Kampuchea	353
Albania	309
Algeria	303
Nigeria	300
Yugoslavia, Federal Republic	293
Peru	285
Palestinian Authority	281
Somalia	231
South Africa, Republic of	217
Mongolia	209
Syria	200
Jordan	178
Zimbabwe	175
Other (142)	4 714
Total	61 018

The nationality given is that claimed by the applicant.

318. DIAC systems as at 13 July 2007 indicate that 17,240 initial Protection visa applications were successful in the grant of a Protection visa in the reporting period (1 June 1997 to 31 October 2004) as a result of Protection visa processing. The breakdown by age, sex and nationality is provided in the following tables. Note where a person is an unauthorized arrival to Australia after October 1999, they are eligible for grant of a temporary protection visa only, in the first instance. The above-mentioned statistics refer to initial grant of protection visas. Where a protection visa holder is granted subsequently another protection visa (Permanent or Temporary), that subsequent visa is not counted in the above-mentioned statistics.

Initial PVs granted in the period 1 June 1997 to 31 October 2004 by age

Applicant age group*	PVs granted
0 to 17	3 918
18 to 30	7 024
31 to 60	5 832
61 and over	466
Total	17 240

* Age at application lodgement.

Initial PVs granted in the period 1 June 1997 to 31 October 2004 by gender

Gender	PVs granted
Male	12 557
Female	4 683
Total	17 240

Initial PVs granted in the period 1 June 1997 to 31 October 2004 by nationality - Top 40

Nationality	PVs granted
Iraq	5 425
Afghanistan	3 976
Sri Lanka	1 287
Iran	1 115
Stateless	438
Turkey	427
China (PRC)	402
Myanmar	394
Colombia	279
Russian Federation	232
Pakistan	226
Algeria	220
Former Yugoslavia	206
Somalia	198
Egypt	163
Lebanon	152
Indonesia	139
Palestinian Authority	134
Yugoslavia, Federal Republic	133
Kuwait	98
Bangladesh	88
India	88
Syria	68
Zimbabwe	67
Ethiopia	67
Kampuchea	65
Ukraine	63
Sudan	62
Jordan	59
Nigeria	49
Albania	47
USSR	46
Viet Nam	42
Nepal	37
Peru	36
Solomon Islands	30
Brazil	28
Bosnia-Herzegovina	27
Belarus	21
Sierra Leone	20
Other (86)	586
Total	17 240

The nationality given is that claimed by the applicant.

(b) The number of forcible deportations or expulsions;

319. Australia is pleased to be able to provide the following data in relation to Issue 12(b). Unfortunately it is not possible to provide a further level of breakdown.

Removals by nationality[1]

Nationality	
Afghanistan	764
Albania	147
Algeria	65
American Samoa	11
Angola	11
Argentina	141
Armenia	12
Austria	162
Bahrain	22
Bangladesh	731
Belarus	18
Belgium	105
Bolivia	44
Bosnia-Herzegovina	26
Botswana	41
Brazil	864
Brunei Darussalam	62
Bulgaria	135
Burma (Myanmar)	201
Cambodia	251
Canada	1 175
Chile	320
China	9 428
Colombia	489
Congo	14
Congo, Democratic Republic of	10
Costa Rica	11
Croatia	65
Cuba	13
Cyprus	44
Czech Republic	195
Czechoslovakia	99
Denmark	157
Ecuador	135
Egypt, Arab Republic of	238
El Salvador	57
Eritrea	12
Estonia	11

Nationality	
Ethiopia	50
Fiji	2 654
Finland	45
Former Yugoslav Republic of Macedonia	346
France	634
Georgia	39
Germany, Federal Republic of	933
Ghana	83
Greece	413
Guinea	10
Hong Kong (SAR of China)	2 444
Hungary	223
India	4 191
Indonesia	15 110
Iran	443
Iraq	406
Ireland	3 348
Israel	656
Italy	657
Jamaica	13
Japan	1 515
Jordan	154
Kazakhstan	290
Kenya	297
Kiribati	22
Korea, Democratic People's Republic of	22
Korea, Republic of	5 671
Kuwait	19
Laos	120
Latvia	34
Lebanon	974
Liberia	12
Lithuania	69
Macau (SAR of China)	39
Malawi	19
Malaysia	6 243
Maldives	11
Malta	26
Mauritius	204
Mexico	89
Moldova	30
Mongolia	84
Morocco	69
Nauru	169

Nationality	
Nepal	484
Netherlands	457
New Caledonia	19
New Zealand	705
Nigeria	215
Norway	188
Oman	28
Pakistan	881
Palestinian Authority	85
Papua New Guinea	1 759
Paraguay	13
Peru	284
Philippines	6 303
Poland	447
Portugal	207
Refugee	12
Romania PRE 1/2/2002	226
Russian Federation	360
Samoa	786
Saudi Arabia	38
Senegal	11
Serbia and Montenegro	25
Seychelles	14
Sierra Leone	18
Singapore	998
Slovakia	158
Slovenia	31
Solomon Islands	124
Somalia	52
South Africa, Republic of	694
Soviet Union	123
Spain	213
Sri Lanka	1 829
Stateless	119
Sudan	23
Sweden	296
Switzerland	287
Syria	177
Taiwan	1 030
Tanzania	749
Thailand	4 336
Timor, East (so stated)	92
Tonga	328
Trinidad and Tobago	17

Nationality	
Tunisia	12
Turkey	639
Tuvalu	16
Uganda	43
Ukraine	226
United Arab Emirates	25
United Kingdom	9 313
United States of America	2 537
Uruguay	104
Uzbekistan	20
Vanuatu	53
Venezuela	47
Viet Nam	2 390
Yemen	15
Yugoslavia, Federal Republic of	335
Zambia	98
Zimbabwe	193
Unknown	7 368
Other[2]	172
Total	114 013

[1] Does not include Australians, e.g. spouses and dependant accompanying removees.

[2] All nationalities where less 10 persons have been removed.

(c) The number of rejected asylum-seekers and/or irregular/undocumented migrants who are held in administrative detention in immigration detention facilities and alternative detention arrangements;

320. There were 20,029 unauthorized arrivals (who arrived by boat or air) held in immigration detention from 1 January 1997 to 27 July 2007. The age groups of the unauthorized arrivals held in immigration detention from 1997 to 2007 are shown in the table below.

17 and under	18-29	30-39	40-49	50-59	60 and over	Total
2 931	8 680	5 536	2 170	540	172	20 029

321. Of the 20,029 unauthorized arrivals held in immigration detention from 1997 to 2007, there were 3,928 females and 16,101 males. The top 10 countries represented are shown in the table below:

Unauthorized arrivals from 1997 to 2007 - top 10 countries

Citizenship	Total
Iraq*	5 436
Afghanistan*	4 337
Peoples Republic of China (inc "China - So Stated" and Hong Kong residents) (*excludes illegal foreign fishers*)	1 570
Iran*	1 002
Malaysia	898
Sri Lanka	788
Indonesia (*excludes illegal foreign fishers*)	563
Korea, Republic Of (Sth)	328
Thailand	322
New Zealand	271

* The majority of the people from Iraq, Afghanistan and Iran were detained as unauthorized boat arrivals in the period 1999-2000 to 2000-2001.

322. All countries are shown in the table below:

Citizenship	Number
Iraq	5 436
Afghanistan	4 337
Peoples Republic Of China (inc "China - So Stated" and Hong Kong residents) (*excludes illegal foreign fishers*)	1 570
Iran	1 002
Malaysia	898
Sri Lanka	788
Indonesia	563
Korea, Republic of (Sth)	328
Thailand	322
New Zealand	271
Turkey	268
Philippines	247
Unknown	236
Viet Nam	235
Algeria	228
India	224
Palestinian Authority	187
Somalia	167
Pakistan	166
Bangladesh	136
United Kingdom	131

Citizenship	Number
Kuwait	128
Singapore	123
United States of America	120
Fiji	94
Korea (So Stated)	75
Japan	71
Syria	67
Nigeria	63
Taiwan	59
Tonga	58
Italy	53
Britain	50
Albania	49
France	38
Lebanon	32
South Africa, Republic of	32
Egypt, Arab Republic of	30
Nepal	30
Russian Federation	30
Israel	28
Papua New Guinea	28
Canada	27
Samoa	27
Sudan	25
Germany, Federal Rep. of	24
Ghana	22
Ireland (So Stated)	22
Irish Republic	20
Greece	19
Colombia	18
Morocco	18
British National Overseas	17
Former Yugoslavia	17
Kenya	15
Ukraine	15
Brazil	14
England	14
Spain	14
Bulgaria	13
Poland	13

Citizenship	Number
Romania pre 1/2/2002	12
Solomon Islands	12
Sweden	12
Hungary	11
Burma	10
Sierra Leone	10
Yugoslavia, Fed. Republic of	10
Zaire	10
Former Yugoslav Republic of Macedonia	9
Jordan	9
Netherlands	9
Tunisia	9
Yemen	9
Cambodia, The Kingdom of	8
Ethiopia	8
Libya	8
Lithuania	8
Peru	8
USSR	8
Denmark	7
Austria	6
Germany (So Stated)	6
Liberia	6
Norway	6
Argentina	5
Bahrain	5
Ecuador	5
Lao Peoples Democratic Rep.	5
Rwanda	5
Uganda	5
Chad	4
Czechoslovakia	4
Korea Democratic Peoples Rep. of (Nth)	4
Moldova	4
Portugal	4
Slovakia	4
Venezuela	4
Zimbabwe	4
America (So Stated)	3
Angola	3

Citizenship	Number
Belgium	3
Botswana	3
Chile	3
Congo, Republic of	3
Croatia	3
Kampuchea	3
Myanmar	3
Nauru	3
Saudi Arabia	3
Slovenia	3
Uruguay	3
Vanuatu	3
Brit Dependent Terr.	2
Brunei Darussalam	2
Burundi	2
Cook Islands	2
Cote d'Ivoire	2
Czech Republic	2
Democratic Republic of the Congo	2
Georgia	2
Kyrgyzstan	2
Latvia	2
Senegal	2
Switzerland	2
United Arab Emirates	2
Viet Nam, South (So Stated)	2
Africa (So Stated)	1
Armenia	1
Belarus	1
Bosnia-Herzegovina	1
Brit O'Seas Citizenship	1
Cameroon	1
Costa Rica	1
Cuba	1
Cyprus	1
Dem. Republic of Timor-Leste	1
Eritrea	1
Estonia	1
Kazakhstan	1
Kiribati	1

Citizenship	Number
Luxembourg	1
Malta	1
Mauritius	1
Mongolia	1
Mozambique	1
New Hebrides	1
Nicaragua	1
Oman	1
Palau	1
Panama	1
Papua	1
Refugee Other than United Nations Refugee	1
Serbia And Montenegro	1
Seychelles	1
Tanzania	1
Timor, East	1
Trinidad and Tobago	1
Tuvalu	1
Uzbekistan	1
Stateless	301
Total	20 029

Detention statistics summary

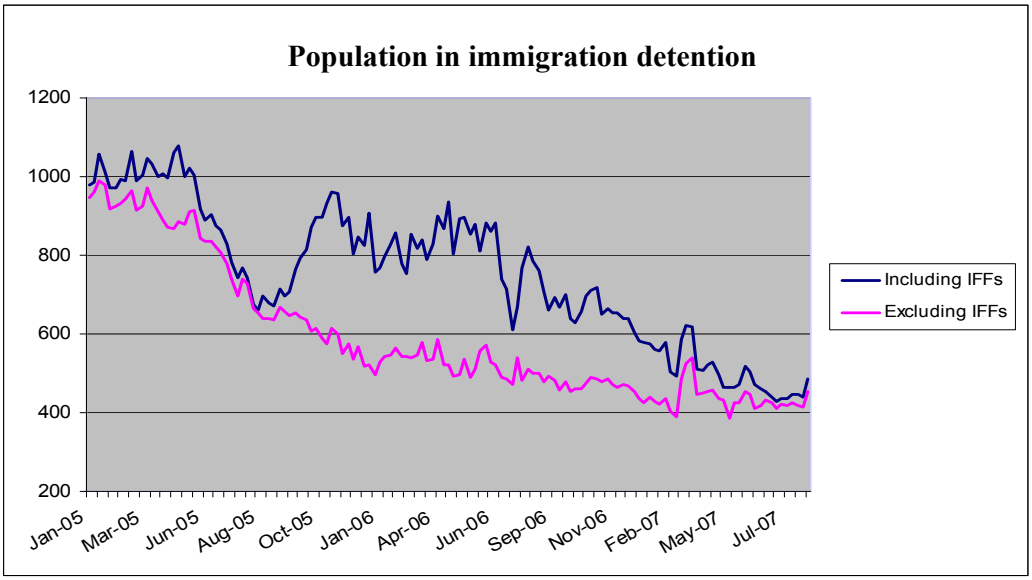
323. As at 17 August 2007, there were 483 people in immigration detention, including 63 in community detention. Of these 483 people, 30 were illegal foreign fishers (IFFs). Most of the IFFs remain in immigration detention for only a short period of time, pending their removal from Australia.

Place of detention	Men	Women	Children	Total
Villawood IDC	241	21		262
Northern IDC (Darwin)	25			25
Maribyrnong IDC	36	6		42
Perth IDC	13			13
Baxter IDC	9			9
Christmas Island IDC	2			2
Port Augusta Immigration Residential Housing	2			2
Sydney Immigration Residential Housing	10	5	8	23

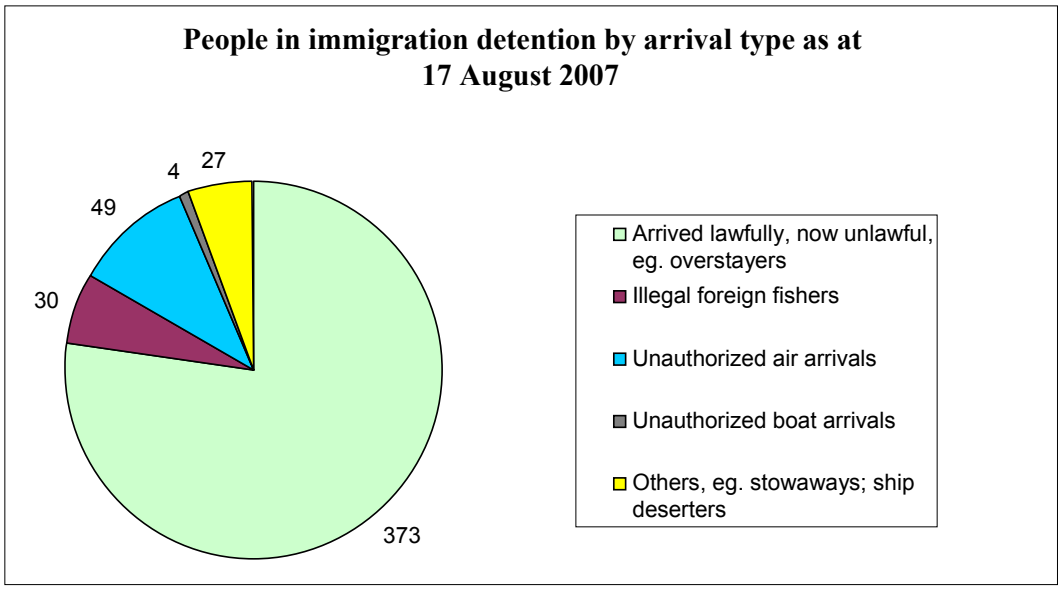
Place of detention	Men	Women	Children	Total
Perth Immigration Residential Housing	4	2		6
Total in IDCs and Immigration Residential Housing	342	34	8	384
Community Detention[1]	20	12	31	63
Alternative Temporary Detention in Community[2]	28	7	1	36
Total	390	53	40	483

[1] Community Detention does not require the person to be accompanied by a designated person.

[2] Includes detention in the community with a designated person in private houses/ correctional facilities/watch houses/hotels/apartments/foster care/hospitals.

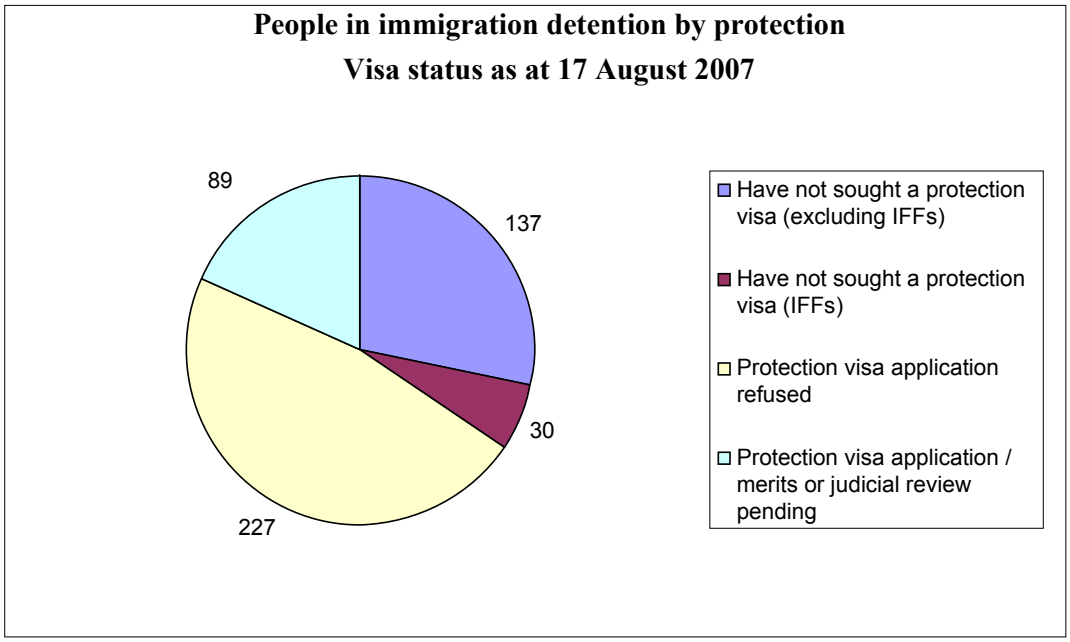


324. Of the 483 people in immigration detention, 373 are detained as a result of compliance action, i.e., overstaying their visa or breaching the conditions of their visa, resulting in a visa cancellation.



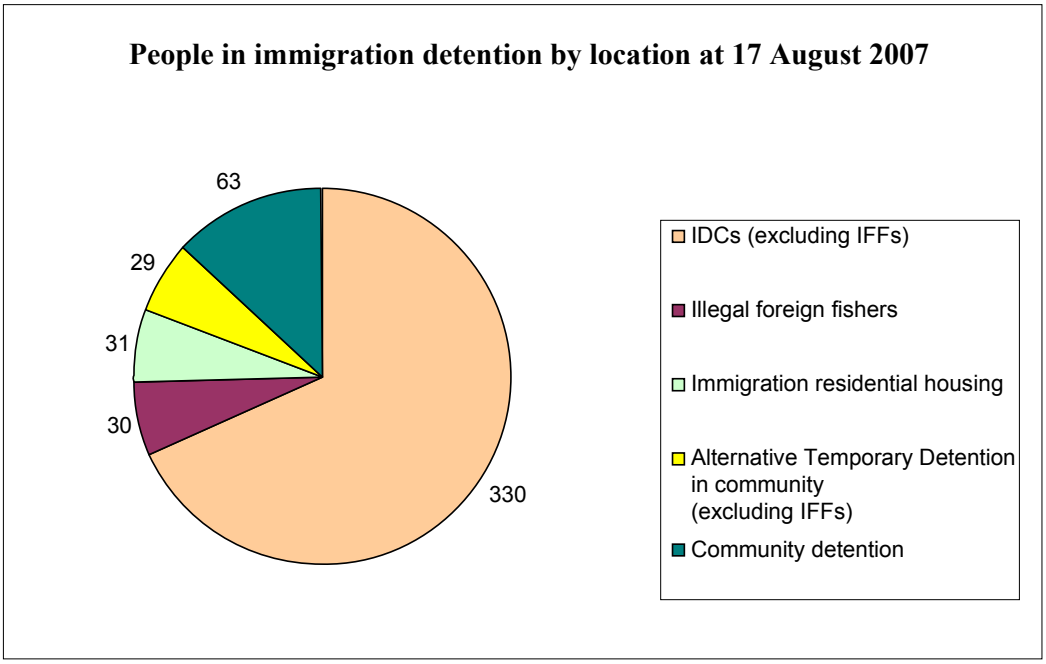
325. Of the 483 people in immigration detention, 4 were unauthorized boat arrivals and 49 were unauthorized air arrivals.

326. In immigration detention 89 people are seeking asylum or a merits or judicial review of a decision in relation to their application for a protection visa. Of these, 25 people were waiting for DIAC to decide a protection visa application outcome. The majority of asylum-seekers arrive in Australia with a valid visa and live in the community while they pursue their claims.



327. Of the 483 people in immigration detention, 205 have been detained for less than three months.

328. As at 17 August 2007 there were 31 children living in community detention, 8 children living in immigration residential housing and 1 child in alternative temporary detention in the community. There are no children in immigration detention centres.



(d) The number of persons transferred to offshore detention centers in the context of the so-called "Pacific Solution";

329. See answer below.

(e) The countries to which these persons were expelled.

330. The Pacific Strategy is a range of initiatives designed to combat people smuggling. The offshore processing of asylum-seekers in Papua New Guinea (PNG) and Nauru is one part of the "Pacific Strategy". The processing of asylum-seekers includes establishing identity, checking their health status and importantly, dealing with any claims for refugee protection and *non refoulement* claims. The offshore processing centres (OPCs) are not detention centres as all residents are legally present within the host country as special purpose visa holders.

331. The PNG facility is currently in contingency mode as there are no residents in that centre.

332. Neither Nauru nor Papua New Guinea is territory under Australian jurisdiction for the purposes of the Convention Against Torture. Notwithstanding this, Australia has ensured that processes are in place to assess any *non-refoulement* issue, including claims that a person will face death, torture or cruel, inhuman or degrading treatment or punishment if returned to another country.

333. In total, 1,524 people were transferred to the Nauru and Manus processing centres between 2001 and 2003, and 23 babies were born to centre residents. The last member of this

original caseload of 1,547 people left Nauru for resettlement in a Scandinavian country in February 2007. In September and October 2006, a new caseload of eight Burmese adult males was transferred to the Nauru OPC. Eighty-two Sri Lankan nationals who were intercepted trying to enter Australia illegally near Christmas Island were transferred to Nauru in March 2007.

334. Persons taken to "declared" countries are not expelled but lawfully transferred under S198A of Australia's Migration Act. No person has been expelled from an OPC by the PNG or Nauru governments. Asylum-seekers have either been resettled or accepted voluntary return. There have been no involuntary or forcible returns from OPCs.

Article 4

Question 13

Please clarify whether the criminal legislation of the different States/territories provides for a specific crime of torture (which would include acts of torture, attempted acts of torture and complicity or participation in torture) qualitatively distinguishable from other relevant offences. Please also indicate the penalties related to these offences and whether statutes of limitation apply to them.

335. Conduct that would fall within the Convention's definition of "torture" or that would constitute cruel, inhuman or degrading treatment or punishment constitutes criminal offences in all Australian jurisdictions. The Committee is referred to paragraph 21, Appendix One and Table 1 of Australia's Fourth Report, and paragraphs 46-49 of Australia's Second and Third Report. The relevant offences in each jurisdiction are set out below.

Commonwealth Government information

336. The *Crimes (Torture) Act 1988* (Cth) provides an offence for acts of torture committed outside Australia which carries the same penalty applicable, should the conduct have occurred in Australia.

337. Division 268 of the *Criminal Code* contains offences for genocide (carrying a penalty of life imprisonment), crimes against humanity (carrying penalties ranging from 17 years to life imprisonment) and war crimes (carrying penalties ranging from 10 years to life imprisonment).

State and Territory information

New South Wales

338. NSW does not have a specific offence of torture. Please refer to Appendices and Tables on page (iv) of Australia's Fourth Report under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for details of provisions in the *Crimes Act 1900* (NSW) (Crimes Act) that may apply in relation to crimes that are cruel, inhuman or degrading. However, torture is taken into account as an aggravating circumstance at sentence. There is also case law in NSW indicating that murders accompanied by torture will potentially place a person in a category that attracts a natural life sentence.

339. The only direct reference to torture in NSW criminal legislation is in sections 91G and 91H of the Crimes Act in relation to child pornography offences. Section 91G of the Crimes Act provides that it is an offence for children to be used for pornographic purposes. Section 91G(3)(c) of the Crimes Act provides that a child is used by a person for pornographic purposes if the child is subjected to torture, cruelty or physical abuse (whether or not in a sexual context) for the purposes of the production of pornographic material by that person. The maximum penalty for these offences is 10 or 14 years depending on whether the child is over 14 years of age or under 14 years of age.

340. Similarly, under s.91H of the Crimes Act it is an offence to produce, disseminate or posses child pornography and child material is defined to include material that depicts or describes, in a manner that would in all the circumstances cause offence to reasonable persons, a person under (or apparently under) the age of 16 years as the victim of torture, cruelty or physical abuse (whether or not in a sexual context) (s.91H(1)(c) of the Crimes Act). Production or dissemination of child pornography attracts a maximum penalty of 10 years' imprisonment and possession of child pornography attracts a maximum penalty of 5 years' imprisonment.

Victoria

341. There is no specific offence of torture under Victorian law, however torture is specifically prohibited under the Victorian *Charter of Rights and Responsibilities.* For details of relevant criminal provisions and penalties in Victorian law please see Appendix One and Table 1 of Australia's Fourth Report.

Queensland

342. Section 320A of the Queensland *Criminal Code* provides for the specific offence of torture. Torture is defined as the intentional infliction of severe pain or suffering (including physical, mental, psychological or emotional) on a person by an act or series of acts. The maximum penalty for torture is 14 years' imprisonment.

343. In Queensland, criminal responsibility is extended to a person who is a party to an offence. Section 7 of the *Code* deems to be guilty of an offence those persons who actually do the punishable act, who do an act aiding another to do it, who aid another to do it or who counsel or procure another to do it. Additionally, section 8 of the *Code* provides that "When 2 or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence". A person convicted as a party to an offence will be liable to the same maximum penalty as the principal offender.

344. The *Criminal Code* also contains the offence of conspiracy to commit a crime (section 541) and attempts to commit offence (section 535).

345. In relation to the statute of limitations, section 6 of the *Limitation of Actions Act* provides that the Act does not apply to a prosecution by the Crown for an offence against any Act.

Western Australia

346. There is no specific offence of torture under the laws of Western Australia, however, offences that could be charged in relation to torture, including intentionally causing grievous bodily harm (penalty 20 years' imprisonment) and grievous bodily harm (7 years' imprisonment) are provided for in the WA Criminal Code. The offences provided for in the Code were listed in Appendix One to Australia's Fourth Report under the Convention against Torture. There have been no significant changes since that time, except the inclusion of a new section 306 creating the specific offence of female genital mutilation, which is referred to in the response to Issue 38.

South Australia

347. Although South Australian legislation does not provide for a specific crime of torture, s 5AA of the *Criminal Law Consolidation Act*, has the effect that some offences become aggravated offences with higher penalties if the offender committed the offence in the course of deliberately and systematically inflicting severe pain on the victim.

348. Section 33 of the Terrorism Act provides that a person being detained under the Act must be treated with humanity and respect for human dignity, and must not be subjected to cruel, inhuman or degrading treatment. A contravention of this safeguard is an offence under section 45 if the person intentionally engages in the conduct in contravention of s 33. The maximum penalty for contravention for such an offence is two years' imprisonment.

349. If a person is to be prosecuted for a summary offence, which includes offences for which the maximum penalty of imprisonment is 2 years or less, the proceedings must be commenced within specified time limits. These limits are set out in s 52 of the Summary Procedure Act 1921 (SA). For a non-expiable offence proceedings must be commenced "within two years of the date on which the offence is alleged to have been committed".

Tasmania

350. There is no specific crime of "torture" under Tasmanian law. However, an act of torture would constitute an assault under the Criminal Code Act 1924, punishable by a maximum penalty of imprisonment for up to 21 years. There is no limitation period under the Criminal Code Act 1924.

Australian Capital Territory

351. There are two offences under ACT law that specifically criminalise actions that would constitute torture. Section 36(2) of the *Crimes Act 1900* specifically provides that it is an offence for a public employee or person acting in an official capacity, or a person acting at the instigation, or with the consent or acquiescence of such a person, to commit an act of torture. This offence is punishable by imprisonment for a maximum of 10 years.

352. Section 48(1) of the *Terrorism (Temporary Extraordinary Powers) Act 2006* provides that a person taken into custody or detained (including under a preventative detention order):

(a) Must be treated with humanity and respect for the inherent dignity of the human person; and

(b) Must not be subjected to cruel, inhuman or degrading treatment by anyone exercising authority under the order or implementing or enforcing it.

353. Subsection 48(2) provides that it is an offence to engage in conduct contrary to s 48(1). The maximum penalty for that offence is 200 penalty units, imprisonment for 2 years or both.

Inchoate and ancillary liability for terrorist offences

354. If a person attempts to commit one of the above torture offences, then they are guilty of the offence of attempting to commit that offence, and may be punished as if they had actually committed the torture offence [s 44 of the *Criminal Code 2002*].

355. If a person intentionally aids, abets, counsels or procures the commission of a torture offence, then they are taken to have committed the torture offence and may be punished accordingly [s 45 of the Criminal Code].

356. If the person incites the commission of a torture offence, then they commit the offence of inciting the commission of that offence. If a person is convicted of inciting the offence under s 48 of the Terrorism (Temporary Extraordinary Powers) Act then they are liable to a maximum penalty of 2 years' imprisonment and/or 200 penalty units. If a person is convicted of inciting the offence under s 36 of the Crimes Act they are liable to a maximum punishment of 5 years' imprisonment and/or 500 penalty units [s 47 of the Criminal Code].

357. If a person conspires to commit a torture offence, then they are taken to have committed the offence of conspiring to commit the torture offence, and may be punished as if they had committed the torture offence [s 48 of the Criminal Code].

Limitation period on commencing prosecutions

358. Pursuant to s 192 of the *Legislation Act 2001,* there is no limitation period applicable to commencing a prosecution for an offence under s 48 of the Terrorism (Extraordinary Temporary Powers) Act and s 36 of the Crimes Act.

Northern Territory

359. The Northern Territory Criminal Code has no specific crime of torture qualitatively distinguishable from other relevant offences. Nevertheless, as previously advised in Australia's Fourth Report under the Convention (Part 2.2 and Table 1) acts that may constitute torture are offences under the applicable criminal law.

360. Section 174G of the Northern Territory Criminal Code sets out circumstances of aggravation for an offence committed against s 174C (Recklessly endangering life) or s 174D (Recklessly endangering serious harm), in which circumstances increased maximum penalties apply. Although "torture" is not specifically enumerated as an aggravating factor, the circumstances of aggravation relevantly include: where the offence was committed against a person in abuse of a position of trust (s 174G(e)); and where the offence was committed against a person in abuse of a position of authority (s 174G(f)).

Question 14

Please provide more information on the National Model Criminal Code and on its implementation throughout the country. Please also clarify whether in this Code torture is only an aggravating circumstance for the commission of other offences or if it constitutes a separate offence.

361. The Model Criminal Code does not contain a model torture offence.

362. The degree of implementation of the Model Criminal Code varies between jurisdictions, with the Commonwealth having the most extensive implementation. To date, the prioritization of the implementation of the various Model Criminal Code chapters has been ad hoc and has varied from jurisdiction to jurisdiction (see table below detailing implementation).

363. The offences against the person were developed in 1998-1999 and the Australian Government has implemented the model offences against the person. All other jurisdictions have implemented offences against female genital mutilation, while some have added specific offences like stalking. This chapter of the model offence provides that torture is to be considered an aggravating circumstance for the commission of other offences.

364. Information on aggravated offences in State and Territory criminal legislation is included in the response to Issue 13.

Model Criminal Code Chapter	Cth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
1 and 2 General Principles (1992)	Yes (1995)	In part (self defence)	No	No	No	In part (self defence; jurisdiction)	No	Yes (2002)	Yes (2006)
3 Fraud Bribery (1995)	Yes (2000)	No	Already similar	No	No	Most aspects (2002)	No	Yes (2004)	No
4 Damage Computer (2001)	Computer offences (2002)	Computer sabotage bushfire offences (2001)	Computer sabotage bushfire damage offences (2003)	No	Already similar bushfire offence	Computer sabotage bushfire offences (2004)	No	Yes (2002)	Computer offences
5 Against the person (1998/1999)	Yes (2000/2002)	FGM,[12] sex abuse child (1994)	FGM (1996)	FGM (2000)	FGM (2004)	FGM (1995) Other aspects (2003)	FGM (1995) Stalking (1995/1999/ 2004)	FGM, stalking (1995)	FGM (1995)
6 Drug Traffic (1998)	Yes (2005)	Using child offence (1998)	Yes (1997)	No	No	Yes (2005)	Yes (2001)	Yes (2005)	No
7 Justice (1998)	No	No	No	No	No	No	No	Yes (2005)	No
8 Contamination of Goods (1998)	Yes (2004)	Yes (1997)	Yes (1998)	Yes (1997)	Yes (2004)	Yes (1999)	Yes (1999)	Yes (2000)	Yes (1999)
9 Slavery and sex servitude (1998)	Yes (1999)	Yes (2001)	Yes (2004)	No	Yes (2004)	Yes (2000)	No	Yes (2000)	Yes (2001)

[12] FGM - Female Genital Mutilation.

Article 5

Question 15

Please indicate whether the State party has ever applied section VII of the Crimes (Torture) Act 1988 which allow Australian courts to prosecute anyone present in its territory who has committed a crime of torture outside Australia.

365. The Commonwealth DPP has never prosecuted any matter under the Crimes (Torture) Act.

Question 16

Please clarify whether the State party considers that the Convention applies to persons under its jurisdiction in cases where Australian troops or police officers are stationed abroad.

366. Australia has implemented fully its obligations under article 5 of the Convention.

367. Acts of torture are offences throughout Australia under Australian criminal law.

368. Any Australian national, including Australian Defence Force personnel and police officers, who commits an act of torture anywhere in the world can be prosecuted under Australian law.

369. Relevant legislation is listed in Appendix 1 and Table 1 to Australia's Fourth Report under the Convention. This includes the *Crimes (Torture) Act 1988,* the *Crimes (Overseas) Act*, the *Defence Force Discipline Act 198* and the *Criminal Code Act 1995*.

370. The obligation to establish jurisdiction over acts of torture committed on an Australian ship or aircraft is fulfilled by the federal *Crimes at Sea Act 2000*, the federal *Crimes (Aviation) Act 1991* and corresponding State and Territory legislation.

371. Where persons are in the custody of Australian Defence Force personnel or police officers stationed abroad, those Australian Defence Force personnel or police officers will be covered by one or more of the Australian Acts referred to above.

372. In addition, where Australian Defence Force personnel or police officers are stationed abroad in a situation of armed conflict of either an international or non-international character, those troops or police officers are bound by the applicable international humanitarian law obligations.

Articles 6, 7, 8, 9

Question 17

Please provide information on cases, if any, where the State party rejected a request for extradition by another State for an individual suspected of having committed a crime of torture, and thus has engaged its own prosecution as a result.

373. There are no cases which fall within this category.

Question 18

Please comment on the information that currently under the Mutual Assistance in Criminal Matters Act 1987 and the Extradition Act 1988 it would not be mandatory to refuse a request for extradition or mutual assistance in circumstances where there are substantial grounds for believing that granting the request may result in a breach of a person's rights under the Convention. In this respect, please explain what is the State party's view in relation to HREOC's recommendation that its extradition and mutual assistance arrangements should contain stronger safeguards against the risk of torture or other cruel, inhuman or degrading treatment.

374. The *Mutual Assistance in Criminal Matters Act 1987* contains discretionary grounds of refusal that enable the refusal of a mutual assistance request where there are substantial grounds for believing that granting the request may result in a breach of a person's rights under the Convention. Paragraphs 8(2)(e) and (g) provide, respectively, that a request may be refused if "the provision of the assistance would, or would be likely to, prejudice the safety of any person (whether in or outside Australia)" and if "it is appropriate, in all the circumstances of the case, that the assistance requested should not be granted". These provisions are sufficient to ensure that mutual assistance provided by Australia will not lead to conduct in requesting countries contrary to the aims of the Convention.

375. In relation to extradition, paragraph 22(3)(b) of the *Extradition Act 1998* specifically provides that a person is only to be surrendered if the Attorney-General is satisfied that the person will not be subjected to torture in the country requesting extradition. The Extradition Act therefore provides for a mandatory ground to refuse to surrender a person the subject of an extradition request unless the Attorney-General is satisfied that the surrender will not result in a breach of a person's rights under the Convention.

Article 10

Question 19

The State party report notes that Australian Defence Force members are bound by the Criminal Code as amended upon ratification of the Statute of the International Criminal Court and that they receive training in humanitarian law principles. Please indicate whether members of the armed forces and other personnel, including contractors, are informed of their obligations under the Convention and other international human rights instruments.

376. All Australian Defence Force members, both full time and part time, are required to undergo training on their obligations under the law of armed conflict and other international instruments including the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), in accordance with Defence policy. There are four levels of training available ranging from basis to advanced training. Training is delivered during initial and professional development courses, specific specialist courses and pre-deployment training. Members are trained to a level of understanding commensurate with their duties and responsibilities. Theoretical training provided to non-commissioned and commissioned officers includes a specific element dealing with the principles of command responsibility. Australian

Defence Force Training Policy is detailed in Defence Instruction (General) OPS 33-1, *Australian Defence Force Law of Armed Conflict Training*, published 27 January 1994. This Policy is currently under review to ensure that it is consistent with best practice standards.

377. Training at the lower level rank level is provided by the single services in consultation with their supporting legal officers. The Australian Defence Force Warfare Centre and Defence Legal usually deliver advanced training to mid- to higher rank officers.

378. Professional legal training to Australian Defence Force Legal Officers is provided by University academic staff as well as Government subject matter experts. Training incorporates both theoretical and practical training. Law of armed conflict training utilizes a range of assessment methods including written examinations, theoretical problem discussion and events inserted into unit field exercises.

379. Pre-deployment training is operation specific and again provided by supporting legal officers. All ADF personnel receive continuation training in relevant aspects of human rights law and the law of armed conflict prior to deployment. This is undertaken by ensuring that ADF personnel receive specific instruction on the handling of persons who have been detained. This instruction is based on Force Standard Operating Procedures or Standing Instructions for Detention, Search and Disarmament which contain orders and guidance derived from, and consistent with, Australia's international and domestic legal obligations and policy requirements.

380. Australian Defence Force personnel responsible for the questioning of detainees must be qualified to do so. They undertake comprehensive specialist training for that purpose and are subject to technical oversight. Such comprehensive training includes wide-ranging education on humanitarian obligations under the Geneva Conventions and other international instruments including the CAT.

381. All contractors deployed with Defence undergo the same pre-deployment training as Australian Defence Force members. That training includes instruction on the law of armed conflict and CAT.

382. All Australian Federal Police also undergo pre-deployment training for international missions, whether United Nations, multilateral or bilateral, and this training includes presentations on human rights and international law.

Question 20

Please elaborate on what kind of training is provided to officials dealing with the expulsion, return or extradition of asylum-seekers.

383. The Department of Immigration and Citizenship conducts a pre-removal clearance for all failed asylum-seekers who are departing Australia involuntarily. An assessment of each client's case is conducted by staff trained in refugee decision-making and Australia's international obligations under ICCPR, CAT and CROC. This assessment requires sign-off from the branch head of Australia's protection programme before removal may proceed. Although the voluntary removal of all failed asylum-seekers does not require pre-removal clearance, officers responsible

for the removal of persons from Australia are instructed to refer cases which meet one of the following risk factor categories to the area responsible for conducting pre-removal clearance for further consideration:

(a) If the person has expressed a fear that they may face persecution, torture or violation of their human rights upon return; or

(b) If it is known that the person may face criminal charges involving the death penalty; or

(c) If the file indicates interest from the UNHCR, United Nations Human Rights Committee or United Nations Committee Against Torture in relation to the person's protection; or

(d) If the person is returning to Iraq, Iran or Afghanistan; or

(e) Any other circumstances which lead an officer to be unsure as to whether there are protection issues that should be considered for the person.

384. In addition to these measures, DIAC has in place a case management service delivery approach for managing its most vulnerable clients or clients who have complex circumstances. DIAC has a network of specialist case managers in every State and Territory Office.

385. DIAC case management is characterised by individualised and active client service provision, as documented in a case plan based on a comprehensive assessment of the client's needs. By coordinating necessary services according to the client's individual circumstances, case managers ensure that each client proceeds expeditiously towards a fair, reasonable and lawful immigration outcome.

386. Case management is designed around "early intervention" - that is, working with clients as soon as possible to ensure they understand how the immigration system works and what role they can play in resolving their status.

Question 21

The Committee notes that management of immigration detention facilities has been contracted out to private companies since 1998. Please advise whether staff employed by private contractors at immigration detention centers are trained on the obligations under the Convention and other international human rights instruments which apply to them in the exercise of their functions.

387. Training conducted by the detention services provider for its staff under the Detention Services Contract includes a module on International Conventions and Treaties, as they apply to the staff in the exercise of their functions, with an emphasis on the human rights of persons in their custody and care.

Article 11

Question 22

Please provide up-dated information on the number of persons and the occupancy rate of the places for deprivation of liberty in the criminal justice system.

388. In Australia, the States and Territories are responsible for imprisonment of all persons convicted with custodial sentences for crimes in each jurisdiction, as well as for persons in that jurisdiction who are sentenced for crimes under the Commonwealth criminal law. Data on the number of prisoners under various categories is collected by the Commonwealth Government, as well as by each State and Territory Government, and is set out in that order below.

Commonwealth Government information

389. Table 1 presents the numbers of Indigenous and non-Indigenous prisoners held in adult corrective institutions by jurisdiction and across Australia on the night of 30 June 2006.

Table 1

Numbers of prisoners across Australia by jurisdiction at 30 June 2006

Location	Indigenous		Non-indigenous		Total[1]	
	N	%	N	%	N	%
ACT[2]	13	13	89	86	104	<1
New South Wales	1 951	20	7 667	78	9 822	38
Queensland	1 506	27	4 056	73	5 562	22
Victoria	215	6	3 690	95	3 905	15
South Australia	300	19	1 244	79	1 567	6
Western Australia	1 400	40	2 126	60	3 526	14
Tasmania	53	10	459	90	512	2
Northern Territory	653	82	139	18	792	3
Australia	6 091	(24)	19 470	(76)	25 790	100

Source: ABS Prisoners in Australia 2006.

[1] The total column includes persons whose Indigenous status was unknown.

[2] ACT includes only prisoners held in the ACT; sentenced ACT prisoners held in NSW prisons are included within the NSW total.

390. Table 2 presents the rates of Indigenous and non-Indigenous prisoners across Australia, per 100,000 relevant population, at 30 June of each year since 2000.

Table 2

Rates of indigenous and non-indigenous prisoners across Australia (30 June)

	Indigenous	Non-indigenous	Total
2000	1 653.2	122.5	149.7
2001	1 753.5	122.8	152.5
2002	1 732.0	120.4	150.3
2003	1 818.0	122.8	154.9
2004	1 851.9	124.3	157.1
2005	2 021.2	125.3	162.5
2006	2 126.9	125.6	163.4

Source: ABS Prisoners in Australia 2006.

Note: Crude rates are per 100,000 relevant population.

391. Table 3 provides the numbers of people (of all ages) detained in juvenile detention facilities across Australia by jurisdiction at 30 June 2005.

Table 3

Numbers of people in juvenile detention facilities across Australia by jurisdiction at 30 June 2005 (all ages)

Location	Indigenous		Non-indigenous		Total	
	N	%	N	%	N	%
ACT	3	<1	8	2	11	1
New South Wales	141	39	187	40	328	39
Queensland	55	15	46	10	101	12
Victoria	26	7	126	27	152	18
South Australia	27	7	40	8	67	8
Western Australia	88	24	30	6	118	14
Tasmania	9	2	30	6	39	5
Northern Territory	15	4	2	<1	17	2
Australia	364	100	469	100	833	100

Source: AIC Juveniles in Detention 1981-2005 (Taylor 2006).

392. Table 4 gives the rates of Indigenous and non-Indigenous detention across Australia for all juveniles (aged 10 to 17) since 2000.

Table 4

Rates of indigenous and non-indigenous detention across Australia for those aged between 10 and 17 years (at 30 June each year)

	Indigenous	Non-indigenous	Total
2000	323.9	17.8	31.3
2001	318.1	15.1	27.9
2002	281.4	13.5	25.0
2003	320.9	16.1	29.1
2004	312.9	12.2	25.5
2005	312.3	13.6	27.2

Source: AIC Juveniles in Detention 1981-2005 (Taylor 2006).

Note: Rates are per 100,000 relevant population.

State and Territory information

New South Wales

393. The NSW Inmate Census 2006 indicates that at midnight on 30 June 2006 there were 9,064 males in custody and 711 females held in gazetted correctional centres and periodic detention centres in NSW. Details of the occupancy rate of correctional centres and periodic detention centres are outlined below in *Table 1: Location and correctional centre security classification*.

Table 1

Location and correctional centre security classification - Department of Correctional Services 2006 Census data

	Gender of inmate				Total	
	Male		Female			
Correctional centre by security rating						
Maximum security						
Cessnock (Maximum)	108	1.2%	-	-	108	1.1%
Goulburn (Maximum)	419	4.6%	-	-	419	4.3%
Lithgow	328	3.6%	-	-	328	3.4%
Long Bay Hospital (Area 1)	68	0.8%	9	1.3%	77	0.8%
Metro Special Programmes Centre (Maximum)	314	3.5%	-	-	314	3.2%
Metropolitan Remand and Reception Centre	874	9.6%	-	-	874	8.9%
Mulawa	-	-	155	21.8%	155	1.6%
Parklea (Maximum)	714	7.9%	-	-	714	7.3%
Special Purpose Centre	48	0.5%	-	-	48	0.5%
- Developmentally Delayed Inmate Unit	7	0.1%	-	-	7	0.1%
Sub-total Maximum security	2 880	31.8%	164	23.1%	3 044	31.1%

Table 1 (*continued*)

	Gender of inmate				Total	
	Male		Female			
Medium security						
Bathurst (Medium)	337	3.7%	-	-	337	3.4%
Berrima	-	-	74	10.4%	74	0.8%
Broken Hill (Medium)	42	0.5%	-	-	42	0.4%
Cooma	128	1.4%	-	-	128	1.3%
Dillwynia	-	-	170	23.9%	170	1.7%
Grafton (Medium)	127	1.4%	-	-	127	1.3%
John Morony (Medium)	227	2.5%	-	-	227	2.3%
Junee (Medium)	569	6.3%	1	0.1%	570	5.8%
Kariong (Juvenile)	32	0.4%	-	-	32	0.3%
Mid-North Coast (Medium)	341	3.8%	1	0.1%	342	3.5%
Parramatta	338	3.7%	-	-	338	3.5%
Tamworth (Medium)	59	0.7%	-	-	59	0.6%
Sub-total Medium security	2 200	24.3%	246	34.6%	2 446	25.0%
Minimum security						
Bathurst (Minimum)	131	1.4%	-	-	131	1.3%
Brewarrina (Yetta Dhinnakkal)	49	0.5%	-	-	49	0.5%
Broken Hill (Minimum)	25	0.3%	8	1.1	33	0.3%
Cessnock (Minimum)	333	3.7%	-	-	333	3.4%
Emu Plains	-	-	173	24.3	173	1.8%
Glen Innes	129	1.4%	-	-	129	1.3%
Goulburn (Minimum)	116	1.3%	-	-	116	1.2%
Grafton (Minimum)	110	1.2%	19	2.7	129	1.3%
Ivanhoe (Warakirri) Camp	47	0.5%	-	-	47	0.5%
John Morony (Minimum)	292	3.2%	-	-	292	3.0%
Junee (Minimum)	136	1.5%	-	-	136	1.4%
Kirkconnell	222	2.4%	-	-	222	2.3%
Mannus	154	1.7%	-	-	154	1.6%
Metro Special Programmes Centre (Minimum)	511	5.6%	-	-	511	5.2%
Mid-North Coast (Minimum)	74	0.8%	41	5.8	115	1.2%
Oberon	106	1.2%	-	-	106	1.1%
Parklea (Minimum)	72	0.8%	-	-	72	0.7%
Silverwater	487	5.4%	-	-	487	5.0%
Special Purpose Centre - Dawn De Loas	43	0.5%	-	-	43	0.4%
St. Heliers	255	2.8%	-	-	255	2.6%
Tamworth (Minimum)	28	0.3%	-	-	28	0.3%
Sub-total Minimum security	3 320	36.6%	241	33.9	3 561	36.4%
Sub-total Full-time custody	8 400	92.7%	651	91.6	9 051	92.6%
Periodic detention centres						
Periodic Detention Administration	9	0.1%	1	0.1%	10	0.1%
Bathurst PDC	36	0.4%	2	0.3%	38	0.4%
Grafton PDC	32	0.4%	1	0.1%	33	0.3%
Mannus PDC	13	0.1%	2	0.3%	15	0.2%
Metropolitan Mid-Week PDC (Stage 1)	97	1.1%	-	-	97	1.0%
Metropolitan Weekend PDC (Stage 1)	216	2.4%	-	-	216	2.2%
Metropolitan PDC (Stage 2)	85	0.9%	-	-	85	0.9%
Norma Parker Mid-Week PDC	-	-	14	2.0%	14	0.1%
Norma Parker Mid-Week PDC	-	-	25	3.5%	25	0.3%
Tamworth PDC	13	0.1%	-	-	13	0.1%
Tomago PDC	81	0.9%	11	1.5%	92	0.9%
Wollongong PDC	82	0.9%	4	0.6%	86	0.9%
Sub-total Periodic detention	664	7.3%	60	8.4%	724	7.4%
Total	9 064	100.0%	711	100.0%	9 775	100.0%

* Less than 0.05 per cent.

Victoria

394. At 30 June 2007, there were 4,184 people detained in the Victorian correctional system (3,926 males and 258 females). The utilization rate of available prison beds was 97.9 per cent.

Queensland

395. As at 16 July 2007, QCS's security facilities were operating at 97 per cent of capacity. As at 30 June 2006, there were a total of 5,562 prisoners in QCS facilities, comprising 5,164 males and 398 females.

396. In relation to juvenile detention centres, there are currently 146 young people in detention. Queensland's juvenile detention centres have a capacity of 150.

Western Australia

397. As at 10 June 2007 there were 3,726 prisoners in WA prisons. Wooroloo Prison Farm is in the process of upgrading some existing facilities and converting areas for extra accommodation. Bandyup is also upgrading existing self care units and planning for new units. Bunbury prison is adding 72 beds for minimum security prisoners.

398. The Adult Custodial Directorate is developing an accommodation plan for housing a prisoner population of 4,100. The Plan will be based on a review of infrastructure, staff and other resources needs.

399. The table below shows the occupancy rate of the adult prisons in Western Australia as at the 10 June 2007.

	In-facility			Work camps		
	Capacity	Prisoner count	% Full	Capacity	Prisoner count	% Full
Total for State[1]	3 261	3 726	114.3	122	84	68.9
Acacia	750	783	104.4	-	-	-
Albany	186	203	109.1	32	18	56.3
Bandyup	147	201	136.7	-	-	-
Boronia	70	54	77.1	-	-	-
Broome	66	117	177.3	46	36	78.3
Bunbury	188	203	108.0	-	-	-
Casuarina	397	563	141.8	-	-	-
Eastern Goldfields	100	103	103.0	24	12	50.0
Greenough	219	233	106.4	-	-	-
Hakea	617	736	119.3	-	-	-
Karnet	174	174	100.0	-	-	-
Roebourne	116	149	128.4	8	8	100.0
Wooroloo	231	207	89.6	12	10	83.3

[1] Note that 20 prisoners located at Police Lockups or in Hospital at the time of the census were not included.

Juveniles

400. Western Australia has two detention centres that hold juveniles. The design capacity of Banksia Hill detention centre is 104. As at 7 June 2007 there were 100 juveniles held at Banksia Hill. Whilst Rangeview remand centre has a capacity of 64. As at 7 June 2007 Rangeview housed 47 juveniles.

South Australia

401. As at 17 July 2007, there were 1,773 prisoners in the South Australian correctional system. As at 17 July 2007, the prison system had an approved capacity of 1,795 beds and was operating at 98.77 per cent of approved capacity. For the 2006/07 financial year, prisoner numbers peaked at 1,786 on 6 June 2007. The capacity figures include 37 emergency beds and a range of double-up accommodation.

402. In the 2006/07 Budget, the South Australian Government approved the procurement of three new prisons via a Public Private Partnership contract. Construction is anticipated to commence in 2009, with completion in 2011.

403. The new facilities will include a:

(a) 150 cell new women's prison to replace the existing 92 bed Adelaide Women's Prison;

(b) 760 cell new men's prison to replace the existing 412 bed Yatala Labour Prison; and

(c) 80 bed new pre-release centre (60 male and 20 female beds), to replace the existing 60 bed (males only) Adelaide Pre-Release Centre.

404. Investment in new infrastructure will allow the Government of South Australia to:

(a) Increase Department for Correctional Services prison bed capacity, providing flexibility in prisoner management and sentencing options;

(b) Replace the outdated, inefficient Yatala Labour and Adelaide Women's Prisons;

(c) Reduce operating costs associated with inefficient infrastructure;

(d) Provide appropriate treatment and conditions for prisoners; and

(e) Improve opportunities for the rehabilitation of prisoners, providing safer communities through reduced recidivism.

405. In the 2007/08 Budget, Government approved another 125 beds in existing prisons and provided $24.5m over the next four years to manage growth in prison numbers.

Tasmania

Prison population

406. The daily average inmate population in 2006/07 was 522. The prison population as at 30 June 2007 was 519, made up of 31 female and 488 male inmates.

Prison capacity utilization rates

407. Percentage Utilization 2006-07 (based on the average population) - design capacity 586 - occupancy based on average population was 89 per cent for 2006/07.

408. The Wilfred Lopes Centre is a dedicated forensic mental health unit providing care and treatment for people with a mental illness who have come into conflict with the criminal justice system. The centre currently has 20 beds operational, and operates at 100 per cent occupancy.

Australian Capital Territory

ACT Corrections statistics as follows:

409. The ACT currently only holds remandees in its correctional facilities. This will change with the commissioning of the AMC in 2008.

410. Prisoners subject to warrants of remand in the ACT are held at either the Belconnen Remand Centre (BRC) or at the Symonston Temporary Remand Centre (STRC). The average number of detainees held at both the BRC and STRC for the financial years 2004/05, 2005/06, and 2006/07 are included in the table below.

Financial year	Average daily number of remandees	Change from previous year
2004/05	68.5	+7.4%
2005/06	67.2	-1.9%
2006/07	64.43	-2.7%

411. The actual number of detainees held in the ACT varied significantly throughout the year. The table below indicates the peaks and troughs in detainee numbers.

Financial year	Maximum number of remandees (month)	Minimum number of remandees (month)
2004/05	84 in June	53 in November
2005/06	85 in September	44 in December
2006/07	86 in June	44 in December

412. The combined maximum occupancy of BRC and STRC is 99 detainees.

Juvenile detention statistics as follows:

413. The Office for Children, Youth and Family Support (OCYFS) provides data on the number of young people and occupancy rate of places for deprivation of liberty in the criminal justice system to two publications annually: the Australasian Juvenile Justice Administrators (AJJA) and the Australian Institute for Health and Welfare (AIHW) report entitled "*Juvenile justice in Australia 2005-06*".

414. The following figures were submitted to the May 2007 Australasian Juvenile Justice Administrators Conference. Data is presented from the year 2002 to March 2007.

Custodial population (Admissions)

Financial year	Committal	Remand	Total
2002/03	26	231	257
2003/04	25	273	298
2004/05	17	193	210
2005/06	17	250	267
July 2006/March 2007	9	213	222

Custody Days

Timeframe	Custody days[13]
2002/03	5 756
2003/04	7 482
2004/05	6 014
2005/06	6 923
July 2006/March 2007	4 900

415. The ACT has the lowest rates of incarceration in the country. According to the Australian Bureau of Statistics, the average daily imprisonment numbers for March 2007 were 70 per 100,000 persons, which is less than half the national average of 163.

Northern Territory

416. Northern Territory Correctional Services were able to provide a response to this question with details of the monthly daily average for June 2007. There was insufficient time to follow this up with an average over the specified reporting period.

[13] Custody Days - population includes children and young people on remand and committal and accounts for the daily population of children and young people held in Quamby Youth Detention Centre.

417. The following table shows the numbers of indigenous and non-indigenous persons, by gender, in each Northern Territory correctional institution at that time.

Institution	Daily average							Capacity	Utilization %
	Indigenous			Non Indigenous			Total		
	Male	Female	Total	Male	Female	Total			
Adult prisoners									
Darwin Correctional Centre	318	19	338	124	6	129	467	450	104
Alice Springs Correctional Centre	394	13	407	29	0	29	435	400	109
Total	712	32	744	152	6	158	902	850	106
Juvenile Detainees									
Don Dale Detention Centre	27	1	28	5	0	5	33	38	87
Aranda House Holding Facility	2	0	2	0	0	0	3	10	26
Total	29	1	30	5	0	5	36	48	74

Question 23

Please inform the Committee of measures taken to protect and guarantee the rights of vulnerable persons deprived of their liberty, notably: women, indigenous peoples, persons suffering from mental illness and children.

418. There is a range of measures in place to protect vulnerable detainees, both by the Commonwealth Government and the State and Territory Governments in Australia, including legislative requirements, guidelines and case-management procedures. The first part of the response below addresses measures taken to protect and guarantee the rights of vulnerable persons in Commonwealth immigration detention. Information on measures taken in other places of deprivation, such as prisons, is then provided by the States and Territories.

Commonwealth Government information

Immigration detention

419. In 2006 the Department of Immigration and Citizenship conducted a review of the long-term detention strategy and an analysis of Australia's likely future detention demand for onshore immigration detention facilities.

420. As part of its findings, the review established that there was need to clearly define core operational principles for onshore detention arrangements, consistent with Australia's immigration detention policy.

421. The following principles, which the Immigration Detention Advisory Group (IDAG) and the Detention Services Steering Committee support, are employed to manage immigration detention facilities in Australia:

(a) Immigration detention is mandatory "administrative detention"; it is not indefinite or correctional detention;

(b) People in detention must be treated fairly and reasonably within the law;

(c) Detention service policies and practices are founded in the principle of duty of care;

(d) Families with children will be placed in facility-based detention only as a last resort;

(e) People in facility-based detention are to be provided with timely access to quality accommodation, health, food and other necessary services;

(f) People are detained for the shortest practicable time, especially in facility-based detention;

(g) People are carefully and regularly case-managed as to where they are to be located in the detention services network and the services they require;

(h) The assessment of risk factors underpins operational decision making;

(i) Detention service operations are subject to continuous improvement and sound governance.

422. The IDAG comprises prominent and respected Australians selected for their expertise and demonstrated commitment to immigration and humanitarian issues.

423. In 2006, the then Minister for Immigration and Multicultural Affairs, revised the IDAG's terms of reference to acknowledge the Group's significant contributions to the detention reform agenda.

424. Specifically, the IDAG continues to advise on the appropriateness and adequacy of detention services provided to detainees accommodated at an Immigration Detention Facility (IDF); IDF accommodation and amenity; and community detention arrangements. The IDAG continues to contribute to the enhancement of immigration detention programme strategies and departmental consultative processes.

425. The IDAG has unfettered access to IDFs and either collectively or individually visits each Australian mainland facility at least once per year. Members are able to talk with staff, people in detention, the detainee representative committees and a wide range of external stakeholders to obtain first-hand information on the operations and environment at each facility and to hear their ideas and views on the immigration detention programme.

426. IDAG has developed a work programme, agreed with the Minister, identifying priority issues, noting that from time to time, the Minister may task IDAG to examine and advise on a particular issue.

427. Conditions in immigration detention are also governed by a set of Immigration Detention Standards (IDS), which have been developed in consultation with the Commonwealth Ombudsman's office and the Human Rights and Equal Opportunity Commission (HREOC). The IDS, which form part of the contract with the detention services provider managing Australian detention facilities, place strong emphasis on the sensitive and appropriate treatment of people in detention. The IDS are publicly available on the Internet at "www.immi.gov.au".

428. The IDS form part of the Global Solutions Limited (GSL) and International Health and Medical Services (IHMS) Operating Procedures which cover, but are not limited to:

(a) Care and management of unaccompanied minors;

(b) Care of children (child protection procedures);

(c) Health care of women in immigration detention;

(d) Care of pregnant women in immigration detention;

(e) Care of physically and intellectually disabled people in immigration detention;

(f) People in immigration detention with a mental illness;

(g) Care of the elderly in immigration detention;

(h) Management of people in immigration detention with serious health problems;

(i) Survivors of torture and trauma;

(j) Suicide and Self-Harm (SASH) prevention;

(k) Long term people in immigration detention.

429. The management of the health and well-being needs of those people detained under the *Migration Act 1958* requires a person-centred approach which, at its core, recognizes that each individual has unique health and well-being requirements. Each person has a health service provider and their health needs are individually managed.

430. The Department ensures that a strategic approach is adopted in managing identified concerns in order to ensure the delivery of appropriate health care to people in immigration detention. All people entering immigration detention are given, as part of their general induction health assessment, a formal mental health assessment. In order to ensure that the mental health and well being of people in immigration detention is adequately protected, a periodic formal assessment is undertaken. Where there exists a clinical indication and need for external mental health care, people are referred to the appropriate provider.

Indigenous Australians

431. The Australian Government acknowledges that Indigenous Australians remain over-represented in the criminal and juvenile justice systems. In 2006, after adjusting for age differences, Indigenous adults were 12.9 times more likely than non-Indigenous Australians to be imprisoned, and Indigenous juveniles were 23 times more likely to be detained than non-Indigenous juveniles.

432. Although criminal and juvenile justice matters, including corrective services, are primarily the responsibility of Australia's State and Territory governments, the Australian Government continues to progress a range of initiatives designed to address Indigenous justice issues. These initiatives are outlined in detail in section 24, which concerns deaths in custody.

433. Pursuant to paragraph 11(1)(f) of the *Human Rights and Equal Opportunity Act 1986*, the Human Rights and Equal Opportunities Commission has jurisdiction to consider complaints from federal prisoners that an act or practice of the Commonwealth is contrary to a human right.

434. Please see the response to Issue 2 which describes the safeguards provided by Part IC of the Crimes Act.

State and Territory information

New South Wales

Protection of the rights of the mentally ill in prison

435. Upon reception, all inmates are screened by Corrective Services and Justice Health (JH) staff to assess their physical, mental and emotional state. If an inmate presents with a mental health issue, a Mandatory Notification Form is completed and arrangements are made for their on-going care.

436. Formal forensic patients in NSW are those persons who:

(a) Are found "not guilty by reason of mental illness" (*Mental Health (Criminal Procedure) Act 1990* (NSW) s 25);

(b) Are found unfit to be tried (Ibid., s 14); or

(c) Become mentally ill whilst in custody (and who are known as transferees) (*Mental Health Act 1990* (NSW) ss 97, 98).

437. Currently in NSW mentally ill offenders may be held in the Long Bay Prison Hospital, which is gazetted both as a hospital and a correctional centre. In line with international best practice for the treatment of mentally ill offenders, the NSW Government is establishing a new Forensic Hospital at the Long Bay Complex, to be operated by Justice Health as a stand-alone Forensic Hospital operating according to international best practice. The Forensic Hospital will provide the opportunity for appropriate care of mentally ill offenders whilst ensuring community safety. This new facility is scheduled to open in 2008.

438. The new Forensic Hospital is part of the NSW Government's commitments under the COAG National Action Plan on Mental Health and has a total funding commitment of $171.6 million over 5 years.

439. Acutely mentally ill inmates are referred to Long Bay hospital. Those with risk factors which indicate suicide and self-harm and who are experiencing situation crisis are referred to an Acute Crisis Management Unit. JH provides clinical support services in all clinical speciality areas including Mental Health. JH provides a specialist consultation liaison service, through mental health nurses and psychiatrists.

440. In cases where an inmate is identified as being at risk of self-harm, the Placements Officer is to be notified as soon as possible to facilitate the inmate being transported to a correctional centre where a Risk Assessment Intervention Team (RAIT) can assess the inmate. Steps are taken to prevent further self-harm attempts and the situation is to be brought to the attention of any JH staff or welfare officers. Relevant records are to be maintained vigilantly, and transport officers are to be advised of the inmate's self-harm status before any escort.

441. The network of Acute Crisis Management Units was established in NSW by the end of 1999 to provide a short-term crisis intervention referral option for Risk Intervention Teams and Risk Assessment and Intervention Teams when the risk of suicide and self-harm can not be managed locally.

442. The Department has Acute Crisis Management Units (ACMUs) for male inmates at the Metropolitan Special Programmes Centre (Long Bay) and Bathurst Correctional Centre.

443. The Kevin Waller Unit provides a residential programme for 15 inmates at risk of suicide and self-harm who have a significant history of self-harm incidents. The programme aims to reduce the severity and frequency of the self-harming behaviours and to improve coping skills. Specific deficits related to offending behaviour are also addressed. Individual and group therapy is undertaken.

444. The Disabilities Services Unit (DSU) ensures the department meets its obligations with regard to the Disability Services Act 1992 and the Disability Discrimination Act 1992. Disability in this context includes inmates with an intellectual disability, psychiatric illness and acquired brain injury.

445. The management of forensic patients is a responsibility of the Department of Health. The Mental Health Review Tribunal is responsible for the regular review of forensic patients, including those in correction centres.

446. The department's electronic offender information management system, OIMS, allows for the recording of information about changes in an inmate's mental and emotional state and their risk of self-harm through inmate "Alerts" and online case notes.

447. The Government is awaiting from New South Wales the provision of information regarding measures taken to protect and guarantee the rights of women and indigenous peoples in particular.

Female offenders with mental health issues

448. In 2006 the Department completed a $14 purpose-built mental health screening unit and clinic at Silverwater Women's Correctional Centre which are designed to provide a secure yet normalized environment to better diagnose and treat women with acute mental health problems.

449. Biyani is a residential programme for female offenders with a mental health disorder or mild intellectual disability and co-existing substance abuse problems. As an alternative to a custodial sentence, Biyani provides accommodation and support to stabilise mental health. During the 2005/08 financial year, 22 women were admitted to the programme, 11 of whom were from an Aboriginal and/or Torres Strait Islander background. An interim evaluation of the programme found the client group targeted by Biyani is characterised as extremely treatment resistant and relapse prone due to the complexity of their needs. It has been difficult to move women through the programme due to the severe lack of appropriate services within the community to serve the needs of this group.

450. The Mum Shirl Unit is available for female inmates at Silverwater Women's Correctional Centre. This unit and the attached Mental Health Step-Down Unit are operated in partnership with Justice Health and assess, manage and treat women with psychosis, chronic mental illness, mood disturbance, personality dysfunction, intellectual disability and issues concerning self-harm and risk of suicide.

Children

451. There are a number of oversight mechanisms in place to ensure that the Department of Juvenile Justice complies with its legislated obligations under the *Children* (*Detention Centres*) *Act 1987* and its associated regulations. Under s 8A of the Children (Detention Centres) Act, the Official Visitor Scheme provides independent monitoring and evaluation of juvenile custodial centres operated by DJJ. Official Visitors report to the Minister every six months on the performance of the centre in accordance with the standards set out by the Australasian Juvenile Justice Administrators' "*Standards for Juvenile Custodial Facilities*".

452. Representatives of the NSW Ombudsman undertake regular visits to each Juvenile Justice Centre. The aim of these visits is to bring to the department's attention any client complaints or issues which require urgent attention and remedial action. Section 25 of the *Ombudsman Act 1974* requires the department to notify and report to the Ombudsman all allegations of child abuse involving employees of the department.

453. Under the *Commission for Children and Young People Act 1998* DJJ is also required to notify the Commission for Children and Young People of any completed relevant disciplinary proceedings where they involve child abuse, sexual misconduct or acts of violence committed by the employee in the course of their employment, directed at, or in the presence of children.

Women

454. Generally, there are similar measures taken in respect of male and female inmates alike to protect their rights to medical treatment, adequate food and accommodation, access to complaints mechanisms and legal advice etc. However, the Department recognizes that women may have additional rights and responsibilities in relation to child-rearing, which is reflected both at law and in departmental policy.

Mothers' and Children's Programme

455. This programme offers a range of options to eligible female inmates who wish to assume a primary parenting role whilst serving a custodial sentence. Options include:

(a) Permitted Absence Programme under sec 26 (2) (l) of the *Crimes (Administration of Sentences) Act 1999* (the Act), whereby a female inmate may be released to serve the remainder of her sentence in the community caring for her children;

(b) Full-Time Residential Programme: Under this option, children reside with their carer on a full-time residential basis at Emu Plains Correctional Centre, Jacaranda Cottages. Women participating in the full-time residential programme have the opportunity to progress to the Parramatta Transitional Centre with the children. The age limit is from newborn to 6 years or school age;

(c) Occasional Residence Programme: Children can reside with their carer on a part-time basis either mid week or weekends and school holidays. The age limit is newborn to 12 years;

(d) Special All Day Visits: Under this option, children can spend from early morning to late afternoon with their carer at any correctional centre accommodating female inmates. The upper age limit is 12 years. All day visits can occur as often as every day (e.g. when the child needs to be breastfed).

Indigenous persons

Aboriginal Inmate Committees

456. Following a recommendation of the Royal Commission into Aboriginal Deaths in Custody, Aboriginal Inmate Committees (AIC) have been established in correctional centres. The AIC is an elected body of inmates and forms an integral part of correctional centre management. The existence of the committees affirms the Department's commitment to support and maintain the right of Aboriginal inmates to discuss and resolve with senior management issues and problems affecting their imprisonment.

457. Inmate representatives of the AIC facilitate two-way communications between staff and Aboriginal inmates regarding correctional requirements, policy, procedures, Aboriginal cultural issues and needs and to assist Aboriginal inmates in general. They have access to new Aboriginal inmates and can form an Aboriginal Induction Programme for all Aboriginal receptions at the earliest possible time after reception. They can also make recommendations to relevant wing officers or other officers regarding the needs of the new inmate, especially if physical or mental health is at issue, and can make recommendations to the area manager about other Aboriginal inmates who may be having problems that could lead to physical or mental harm.

458. Inmate representatives of the AIC are permitted to share accommodation with Aboriginal inmates suffering from trauma, depression, or self-harm potential until the crisis period has passed or other interventions have occurred.

459. The responsibilities of the AIC include the following:

(a) To identify and bring to the attention of correctional centre management any issues affecting the maintenance of and services to living areas;

(b) To identify and bring to the attention of correctional centre management issues affecting employment, education, recreation, family contact and inmate development programmes;

(c) To provide feedback to inmates on all matters raised at committee meetings;

(d) To provide pertinent and relevant information on specific matters as might be requested from time to time by the governor; and

(e) To direct individual inmate's concerns or problems to the appropriate channels i.e. area managers/officers or other appropriate staff, governor, official visitor, Ombudsman, Minister.

Other measures

460. During the reception process, inmates are asked to declare their Aboriginality, which will enable appropriate case management by the Indigenous Services Unit.

461. In addition to the usual authorized visits, an Aboriginal inmate may be visited by a field officer of the Aboriginal Legal Service or of any other organization that provides legal or other assistance to Aboriginal persons, and that is approved by the Commissioner: clause 83 of the Regulation.

Aboriginal Support and Planning Unit

462. The Aboriginal Support and Planning Unit (ASPU) acts as a strategic Aboriginal affairs advisory, planning support, programme and policy unit for the Department, particularly in relation to services, planning and support for Aboriginal and Torres Strait Islander offenders in correctional centres, and under the supervision of the Department in the community.

463. It undertakes research and makes recommendations toward the development of non-discriminatory departmental policies, programmes, operational systems and procedures to minimize the likelihood of re-offending and the risks of Aboriginal deaths in custody. The ASPU also contributes to the design and implementation of support programmes and vocational oriented courses which provide valuable knowledge and skills that allow Aboriginal and Torres Strait Islander offenders to make a contribution to society. The ASPU also ensures the placement of Aboriginal and Torres Strait Islander offenders as close to their families and communities as possible.

Victoria

Victorian Charter of Human Rights and Responsibilities

464. The Victorian Charter of Human Rights and Responsibilities came into operation on 1 January 2007. The rights protected by the Charter are based on the International Covenant on Civil and Political Rights, including the right not to be subjected to torture or treated or punished in a cruel, inhuman or degrading way. The Charter requires the Victorian Government to take these rights into account when developing legislation. The courts must also interpret laws consistently with human rights as far as it is possible to do so consistently with the purpose of the laws. From 1 January 2008 public authorities will be required to act in a way that is compatible with human rights and to take account of relevant rights when making a decision.

Children and young people

Child protection

465. Professional standards of conduct are explained to all staff. Clients are provided with information (verbal and written) on admission about their rights to make a complaint and the process for making a complaint. Information is provided to all clients about the role of the Ombudsman's Office and the contact details of the Ombudsman. Representatives of the Ombudsman's Office routinely visit SWS to advise clients of their role etc.

466. Case managers routinely visit their clients and are able to observe and receive feedback from their clients about the way they have been treated whilst in SWS.

467. DHS policy on the reporting of alleged physical or sexual abuse applies to SWS. All allegations made by clients are immediately reported to SWS programme manager and regional child protection via a critical incident report. This report is also sent to the regional director and the relevant director(s) in central office. The complaint is independently investigated and safety measures put in place to ensure the client's ongoing well-being is provided for.

Youth Justice Custodial Services

468. The governing legislation for Youth Justice Custodial Services in Victoria is the *Children, Youth and Families Act 2005* (Vic). The act outlines the provisions in relation to children who have been charged with, or who have been found guilty, of offences, as well as the operation of the Children's Court of Victoria as a specialist court dealing with matters relating to children.

469. Chapter 5 of the Act contains specific provisions in relation to children and the criminal law in Victoria, establishes corrective services for children and regulates the conditions in relation to persons held in detention pursuant to that chapter.

470. Under this chapter, the Secretary of the Department of Human Services is responsible for determining the form of care, custody or treatment which he or she considers to be in the best interests of each person detained in a remand centre, youth residential centre or youth justice centre.

471. Section 482 of the Act includes provisions aimed at protecting and guaranteeing the rights of persons detained in remand centres, youth residential centres or youth justice centres, including that young people:

(a) Are entitled to have their developmental needs catered for;

(b) Are entitled to receive visits from parents, relatives, legal practitioners, persons acting on behalf of legal practitioners and other persons;

(c) Are entitled to have reasonable efforts made to meet their medical, religious and cultural needs including, in the case of Aboriginal children, their needs as members of the Aboriginal community;

(d) Are entitled to receive information on the rules of the centre in which they are detained that affect them and on their rights and responsibilities and those of the officer in charge of the centre and the other staff;

(e) Are entitled to complain to the Secretary or the Ombudsman about the standard of care, accommodation or treatment which they are receiving in the centre; and

(f) Are entitled to be advised of these entitlements.

472. Furthermore, s 487 of the Act specifies prohibited actions in relation to persons detained in remand centres, youth residential centres or youth justice centres. It prohibits the use of force unless reasonable, the administering of corporal punishment, the use of any form of psychological pressure intended to intimidate or humiliate, the use of any form of physical or emotional abuse, and the adoption of any kind of discriminatory treatment.

473. The policies and procedures in Youth Justice Custodial Services have been reviewed in relation to compliance with the Human Rights Charter and a comprehensive training programme is being undertaken to ensure that all staff are aware of the requirements under the Charter.

474. The groups catered for in custodial facilities are males and females aged 10 to 18 years, who are on remand or have been sentenced to detention by the Children's Court. The youth custodial system also caters for males and females aged 18 to 21 sentenced by adult courts to a youth training centre order. This is known as the "dual track system", and occurs when an adult court considers that the client has reasonable prospects for rehabilitation, or is too vulnerable or immature to serve their sentence at an adult prison.

475. There are three custodial centres in Victoria catering for up to 222 young people, including:

(a) Malmsbury Youth Justice Centre: a 90 bed facility for 18 to 21 year old males sentenced under the dual track system;

(b) Melbourne Youth Justice Centre: a 93 bed facility for 15 to 18 year old males who have been remanded or sentenced by the Children's Court, located in Parkville, 5 kilometres north of Melbourne; and

(c) Parkville Youth Residential Centre (YRC): a 39 bed facility for 10 to 14 year old boys and 10 to 18 year old young women either remanded or sentenced by the Children's Court, as well as 18 to 21 year old young women sentenced through the dual track system. Young women are detained separately from young men.

Youth Justice Custodial Services Policies and Procedures

476. The Youth Justice Centre Operations Manual contains the operating procedures for the three youth justice centres in Victoria. These procedures were developed to be compliant with legislative requirements as well as national and international standards to ensure good practice and outcomes for young people in custody. These include the Australasian Juvenile Justice Administrators Standards for Juvenile Custodial Facilities, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the United Nations Minimum Rules for the Administration of Juvenile Justice. The procedures govern practice in the three centres and ensure a consistently high level of care, custody and treatment is provided to the youth in custody.

477. To ensure services are provided in a manner that supports children and young people in custody regardless of their needs, cultural background or gender, a rehabilitation framework has been developed and is based on comprehensive individual assessments. From these individual assessments, a range of programmes and services are offered including offence specific programmes such as those for young people convicted of sex offences or violent offences; offence related programmes, such as drug and alcohol education, problem solving skills and anger management; comprehensive health services; education, vocational and recreation programmes; and age and gender appropriate personal development programmes.

478. There are a number of systems in place to ensure the centres are compliant with legislation, policy and operational procedures. These include monitoring and compliance activity against critical procedures and legislative requirements. Custodial Services also has in place a comprehensive complaints management process to respond to issues raised by clients, visitors and staff. The centres are also regularly visited by the Victorian Ombudsman, who has unrestricted access to clients within the centres, and whose powers have recently been extended through the Victorian Charter of Human Rights.

479. Youth Justice Custodial Services operates under a legislative framework that outlines and support individuals' rights and guarantees a range of protections when a young person or child is deprived of their liberty. From this legislative framework policies and procedures have been developed to operationalise these protections within Victoria's three custodial centres.

Vulnerable persons in police custody

480. Victoria Police Manual is an operational guide for officers and offers directions on prisoner management and care. It contains particular policies and procedures relating to vulnerable groups such as Indigenous communities and culturally and linguistically diverse communities. Similarly, it offers particular procedures to ensure that persons suffering from mental illness, injury or other illnesses are recognized and treated accordingly.

481. Section 464E(1) of the *Crimes Act 1958* (Vic) requires that if a person in custody is under 18, a parent/guardian or independent person must be present before any interview is conducted and that they must be given an opportunity to speak in private with the child before the interview.

Vulnerable persons in correctional facilities

482. The *Correctional Management Standards for Men's Prisons* (2006) and *Standards for the Management of Women Prisoners in Victoria* (2006) establish the minimum requirements for prison services and form the basis for prison operating procedures. These Standards were developed with reference to the *Standard Minimum Rules for the Treatment of Prisoners* (1977) and the *National Standard Guidelines for Corrections in Australia* (2004). They contain specific requirements for the management of Indigenous prisoners and prisoners with a disability (including mental illness), and prisoners from culturally and linguistically diverse backgrounds.

483. Corrections Victoria is currently reviewing all relevant legislation, policy and procedures for compliance with the Charter of Human Rights and Responsibilities Act and will be implementing a training programme for all operational staff in the second half of 2007.

Women prisoners

484. Please refer to the response to Issue 4 for a summary of processes and initiatives in place to protect the rights and well-being of women prisoners.

Indigenous prisoners

485. The Victorian Aboriginal Justice Agreement is a joint initiative between the Victorian Government and the Victorian Koori community to address the issue of over-representation of Indigenous people within the criminal justice system. The Agreement sets a framework of principles, approaches and initiatives all aimed at directly or indirectly reducing the high levels of disadvantage and inequity experienced by Indigenous people. Initiatives for Indigenous prisoners include:

(a) The Indigenous Policy and Services Unit within Corrections Victoria supports a consistent and collaborative approach to dealing with Indigenous Issues in the correctional system;

(b) A network of seven Aboriginal Wellbeing Officers (AWOs) supports Indigenous prisoners in a range of ways;

(c) Five Aboriginal Official Visitors attend prisons and provide independent advice to the Minister for Corrections on issues related to the imprisonment of Indigenous people;

(d) The Aboriginal Family Visits Programme supports family members of Indigenous prisoners in travelling to prisons to undertake visits;

(e) The Aboriginal Cultural Immersion Programme (ACIP) is delivered to prisoners and offenders with a view to reconnecting participants to their culture;

(f) The Marumali Programme is an intensive five-day programme aimed at addressing the adverse impacts of Stolen Generation policies on Indigenous prisoners;

(g) Corrections Victoria sponsors a variety of activities to recognize and celebrate NAIDOC Week in prisons and CCS locations - including cultural ceremonies, sporting events, family days, art displays and radio broadcasts;

(h) The majority of prisons across Victoria now include Indigenous specific spaces - including Indigenous multipurpose programme rooms and specially landscaped Indigenous gardens;

(i) The Koori Cognitive Skills Programme is an adaptation of the mainstream cognitive skills programme to be more relevant for Indigenous prisoners. It is a problem-solving programme that is based on cognitive behavioural therapy;

(j) The Koori Prisoner Booklet is a user-friendly guide, which explains the services that prisoners can access and details the programmes specifically designed for Indigenous prisoners;

(k) All senior staff in Corrections Victoria are required to participate in an Indigenous Cultural Awareness Training Programme and, on completion, promote to staff the degree of importance that Corrections Victoria places on achieving outcomes through the adoption of its Koori Action Plan;

(l) A Cultural Awareness Training package is provided for new prison officer and community corrections officer recruits;

(m) A Koori Transitional Support Programme is currently under development and will be rolled-out in 2007/08. It will provide intensive pre- and post-release support to Indigenous prisoners (men and women) exiting prison back to the community;

(n) Funding has been provided for the establishment of two transitional properties for Indigenous women on bail or in the wider criminal justice system (with priority access to a further 10 transitional properties).

Mental health

486. The Charter obligation in relation to public authorities will apply to public mental health services. This will reinforce the existing requirement in the *Mental Health Act 1986* to provide care and treatment to mentally ill patients in the least possible intrusive manner and to keep any interference with their rights, privacy, dignity and respect to the minimum necessary in the circumstances.

Prisoners suffering from mental illness

487. The Corrections Victoria Health Care Standards, an integral part of the contracts with prison health service providers, require the following services to be available to all prisoners:

(a) A comprehensive health assessment, including a psychiatric assessment of their mental state and risk of self-harm/suicide, must be undertaken within 24 hours of reception of all prisoners. 100 per cent compliance is required;

(b) All prisoners deemed to be at risk of self-harm/suicide must be seen by a mental health professional within 2 hours. 100 per cent compliance is required;

(c) At the point of any transfer from one prison to another, or on return from court (including tele-court), all prisoners are assessed for psychiatric needs and an assessment of their risk of self-harm/suicide is undertaken.

Queensland

Indigenous People

488. Section 420 of the *Police Powers and Responsibilities Act 2000* (Qld) relates to the questioning of Indigenous persons. It provides that if the Indigenous person has not arranged for their own lawyer to be present, an officer must arrange for legal aid to be made available to the person unless, having regard to the person's education and understanding, the person would not be at a disadvantage in comparison with members of the Australian community generally. Police officers are not to question an Indigenous person unless they have had the opportunity to speak to a support person in private, and that support person is present, unless the Indigenous person has waived this right, or the support person is unreasonably interfering with questioning.

489. To protect further the rights of Indigenous persons deprived of their liberty, the Queensland Government has introduced a number of initiatives:

(a) Murri Courts currently operate in the Adult Magistrates Court criminal jurisdiction and/or the Children's Court in nine locations across Queensland, and have been successful in seeking to divert Indigenous offenders and young people from prison and detention centres by placing them on rehabilitative orders. Indigenous Elders provide advice to the Murri Court Magistrate on cultural issues when an Indigenous offender is sentenced;

(b) Magistrates Courts may be constituted by two Indigenous Justices of the Peace for minor criminal matters and these courts operate in 18 remote Indigenous communities across the State. These courts give the local community ownership of, and access to, a culturally relevant local justice system;

(c) The $36 million Queensland Indigenous Alcohol Diversion Programme is designed to rehabilitate people charged with certain alcohol-related criminal offences and provide intensive support for parents with an alcohol problem who are involved in the child protection system;

(d) Community Justice Groups provide community leadership for safer communities, and support courts and offenders in the juvenile and adult criminal justice systems;

(e) Police Liaison Officers and local police work with communities and Indigenous community consultative groups to provide local responses to community safety issues;

(f) A probation and parole service includes officers in remote Indigenous communities who supervise and monitor offenders and deliver programmes at a local level. This initiative represents a significant improvement in service delivery for these areas and offers an option to the courts to divert Indigenous offenders from prison;

(g) The Post Release Employment Assistance Programme aims to prevent reoffending by assisting prisoners prior and post release to become work ready and gain sustainable employment;

(h) Alcohol management strategies are in place, including alcohol supply restrictions and strategies to reduce the demand for, and impact of alcohol and other substances.

Persons with mental illness or other disabilities

490. Sections 422 and 423 of the Police Powers and Responsibilities Act relate to questioning of persons with impaired capacity. A police officer must allow a person suspected of having impaired capacity to speak to a support person in private. An intoxicated person may not be questioned until the relevant police officer is reasonably satisfied that alcohol or drugs are no longer affecting the person's ability to understand his or her rights and decide whether or not to answer questions.

491. Additional safeguards, including additional contact provisions, apply for children and persons with impaired capacity under the *Terrorism (Preventative Detention) Act* (Qld). All persons detained under a preventative detention order must be treated with humanity and not subjected to cruel, inhuman or degrading treatment.

492. The Office of the Adult Guardian is a statutory body established to protect the rights and interests of adults **(**18 and over) with impaired capacity. The Guardianship and Administration Tribunal may appoint a guardian (family member, friend or Office of the Adult Guardian as guardian of last resort) as a decision-maker. Depending on what decisions are required, the guardian can be authorized to make decisions around legal matters (such as the decision to employ legal services for particular legal matters).

Children and young people

493. Measures currently taken to protect the rights of young people who have been detained at one of the State's youth detention centres include individual assessment of their level of risk-taking behaviour, health, special needs and a thorough explanation of their rights and responsibilities.

494. To ensure that the rights of young offenders are respected, the Commission for Children and Young People provides an independent oversight of operations and ensures that young people have ready access to legal aid and representation.

495. Young people assisting the Queensland Police Service with their investigations have an independent person present during the interview phase.

Vulnerable persons (generally) in correctional services custody

496. QCS employs a number of measures to protect and guarantee the rights of vulnerable persons deprived of their liberty including women, Indigenous peoples and persons suffering from mental illness.

497. QCS undertakes a rigorous assessment process upon an offender's admission to custody which considers matters such as potential for self-harm, mental health and general health issues and any concerns the prisoner may have for his or her safety. The prisoner's placement and level of supervision is determined in light of these assessments to ensure that they are not placed at risk of harm from themselves or others.

498. Prisoners in QCS custody have available to them a range of services including counselling, psychological and psychiatric consultations, medical attention, culturally appropriate support and religious visitors.

499. There are various mechanisms for offenders to raise issues regarding their supervision. All prisoners are entitled to write directly to the General Manager of the correctional centre. All prisoners are permitted to make phone calls and communicate in confidence with the Ombudsman's Office and their legal representatives.

500. QCS operates an Official Visitors Scheme whereby Official Visitors are appointed to correctional centres to assist prisoners to manage and resolve their complaints. Official Visitors are drawn from the community and include legal visitors and indigenous visitors. Official Visitors have an important role in ensuring that administrative decision makers are accountable for their decisions.

501. Under the Terrorism (Preventative Detention) Act, additional safeguards apply to children and persons with impaired capacity including additional contact provisions. All persons detained under a preventative detention order must be treated with humanity and not subjected to cruel, inhuman or degrading treatment.

Western Australia

502. Four cornerstone principles underpin the management of all offenders in a correctional facility in WA:

(a) Custody and containment - Prisoners are to be kept in custody for the period prescribed by the court at the lowest level of security necessary to ensure their continuing custody, the good order and security of the prison and the safety and protection of the general public;

(b) Care and well being - Prisoners' emotional, physical, spiritual and cultural needs are acknowledged and appropriately addressed;

(c) Reparation - Prisoners are to continue to positively contribute to the community through work and other activities;

(d) Rehabilitation and reintegration - Prisoners are to be encouraged to engage in programmes, education and activities that seek to reduce the risk of re-offending and increase their potential for reintegration into the community.

503. More specifically:

(a) Western Australian juvenile detention centres have been endorsed by the Australasian Juvenile Justice Administrators. The standards maintained in Western Australia's juvenile detention centres are based on the United Nations Rules for the Protection of Juveniles Deprived of their Liberty: the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the Convention on the Rights of the Child;

(b) A proposal has been developed that focuses on the management of mentally impaired accused (MIA) persons that are held in custody. The proposal is structured around the principle of moving MIAs from a custodial environment to the community whenever feasible, while balancing the right of the accused person to treatment and services with the right of the community to safety and protection. This proposal has been endorsed by all relevant agencies, and a submission is currently being prepared for Cabinet consideration.

504. The Department is also a key player in the development of Local Aboriginal Justice Plans. These plans are developed under the auspices of the Aboriginal Justice Agreement and identify local justice priorities of Aboriginal communities. Once local issues have been identified, the Local Justice Forums will negotiate with government and non-government agencies to develop action plans to address the priorities.

505. Recently, the Department created an Assistant Commissioner Aboriginal Justice position which has now been filled. This position will be responsible for the delivery of innovative, customer-focused partnerships in corrective services for Aboriginal people. These services will be developed in consultation with Aboriginal communities and will focus on improving the safety and quality of life in Aboriginal communities.

506. If a prisoner feels their legal or other rights have been violated they have the right to lodge a grievance. Prisoners are provided with a brochure on grievance procedures at their induction. Prisoner grievances can be lodged with the Superintendent or Assistant Superintendent. If the prisoner does not feel comfortable lodging a grievance with senior staff, a grievance can be lodged with the Ombudsman's Office. The Department provides free telephone access to the Ombudsman's Office.

507. The Office of the WA Inspector of Custodial Services (the Office) is an independent statutory body that provides external scrutiny to the standards and operational practices of custodial services in Western Australia.

508. This model is designed to ensure that the Office's activities remain independent and that, in the public interest, the conduct of custodial operations in Western Australia is transparent and fully accountable. Core responsibilities of the Office include:

(a) Comprehensive inspections of all non-police custodial facilities in Western Australia;

(b) Thematic reviews and discussion papers on systemic issues;

(c) Advice to Parliament and the Minister for Corrective Services on criminal justice policy issues;

(d) Coordination with other relevant statutory bodies, such as the Ombudsman;

(e) Administration of the Independent Visitor Scheme.

509. The Office has jurisdiction over all public and private sector prisons and juvenile detention centres, court custody centres, prescribed lock-ups, and contracted prisoner transport and support services in Western Australia.

510. The following information is specific to people with a mental illness made involuntary patients under the West Australian *Mental Health Act 1996* (MHA). The WA MHA provides for the detention of persons with a mental illness who meet the criteria including that they have a mental illness requiring treatment and that treatment can be provided as an involuntary detained patient in order to protect the health or safety of the person or others or be protected from self-inflicted harm. The other criteria are that the person has refused or due to the nature of their mental illness is unable to consent to treatment and treatment cannot be provided in a less restrictive way.

511. The objects of the MHA include "to ensure that persons having a mental illness receive the best care and treatment with the least restriction of their freedoms and the least interference with their rights and dignity". The MHA sets out in detail the rights of detained involuntary patients, which include:

(a) An explanation of rights

512. A person admitted to an authorized hospital voluntarily or involuntarily, is to be given an explanation, verbally and in writing, regarding his or her rights and entitlements (s 156). The explanation must be in the language usually spoken by the person. Explanatory leaflets in English and 15 other community languages are available at mental health facilities. Practitioners also know how to access language and sign language interpreters. Copies of legal forms are also provided to the patient and where identified carers.

(b) Right to make a complaint

513. A person has the right to complain if they are not satisfied with the care received, or feel unfairly or improperly treated. They may complain to staff members, the hospital management, or other external agencies, such as the Office of Health Review. A patient or any other person may complain to the Mental Health Review Board (MHRB) regarding any failure to recognize rights given by the MHA (s 146). Complaints may also be made to the Council of Official Visitors (COV) (s 188) or the Chief Psychiatrist (s 9).

(c) Access to personal records

514. A person who is or has been an involuntary patient, including a mentally impaired defendant detained in an authorized hospital, has the right to inspect and receive copies of any document pertaining to themselves. Some restrictions apply in regard to information which may have an adverse effect on the health or safety of the patient or any other person, or reveal

personal information of a confidential nature about another (without the prior permission of that person) or reveal information obtained in confidence (s 160). In circumstances such as these, the patient may nominate a suitably qualified person to exercise his or her right to inspect and to be given a copy of a relevant document relating to the person (s 161).

(d) Right not to be ill-treated

515. Any person with responsibility for the patient who ill-treats or wilfully neglects a patient has committed an offence, the penalty for which is a fine of $4,000 or one year's imprisonment.

(e) Right to a second opinion

516. In addition to the right to an interview with a psychiatrist at the hospital, an involuntary patient also has the right to a second opinion from another psychiatrist. The request can be made verbally or in writing to the treating psychiatrist. The second opinion to be given as soon as is practicable and the examination may be conducted by audiovisual means (ss 111 and 164).

517. If the patient being given psychiatric treatment (s 109) is dissatisfied with the treatment they may request that an opinion as to whether the treatment should be given, be obtained from a psychiatrist who has not previously considered the matter. Alternatively they may request that the Chief Psychiatrist arrange for that opinion.

518. If having been informed that the second psychiatrist recommends that the treatment be modified or discontinued, the patient remains dissatisfied, then the matter may be referred to the Chief Psychiatrist. The Chief Psychiatrist may give directions as to treatment (s 12), or refer the matter to the MHRB, or transfer the responsibility for treatment of the patient to another psychiatrist (s 112).

(f) Right to personal possessions

519. Patients will, as far as is practicable, be given the facilities to use and store articles of personal use, unless the psychiatrist feels certain articles are inappropriate for use or storage at the hospital (s 165).

(g) The right to send and receive mail

520. Patients have the right to send and receive mail without interference or restriction on the part of any hospital employee. Mail given to staff to post or pass on to the patient is not to be opened or delayed by an employee without "reasonable excuse". While the MHA contains no definition of the term "reasonable excuse", patients can apply to the MHRB if there is any denial or restriction of their mail. Should a staff member be found to have acted illegally, he or she faces a possible $500 fine.

(i) Right to receive and make telephone calls

521. A patient must have the opportunity to make and receive telephone calls in reasonable privacy.

(j) Right to be visited

522. A patient must have the opportunity to receive visitors of their own choice in reasonable privacy.

(k) Restrictions or denial of entitlement

523. A psychiatrist may restrict any of the above three rights if it is considered to be in the best interest of the patient to do so. If such a right is restricted, the psychiatrist must review the order daily. If not reviewed, the restriction order lapses at the end of the day. A record of the order and review is to be included in the patient's case notes (s.169). Patients or interested others may apply to the MHRB for a review. The MHRB has the right to confirm, cancel or vary the restriction order (s.170). Additionally in relation to visits the patient may, when visiting is denied or restricted, request the involvement of the Chief Psychiatrist who may overturn the restriction or denial.

(l) The right to vote

524. It is obligatory for everyone on the electoral roll to vote. However, if a person is an involuntary patient, a psychiatrist should determine whether or not that person is capable of voting. If he or she is not, the psychiatrist must give notice of this in writing to the Chief Psychiatrist, who then reports to the Electoral Commissioner. The patient's right to vote is subsequently suspended (s.201 and 202). The psychiatrist may cancel the order at any time, again by writing to the Chief Psychiatrist. The patient or any other person the MHRB considers as having a proper interest in the matter can appeal to the MHRB against the decision to rescind a patient's right to vote. The MHRB may then confirm or cancel the determination.

(m) Right to consent to or refuse certain treatments

525. A voluntary patient has the same legal rights as any other patient in a hospital. He or she may refuse or consent to any treatment. Involuntary patients should also be involved in matters of consent, in line with good clinical practice. Consent involves:

(i) The patient being given a clear explanation of the proposed treatment, along with sufficient information to enable him or her to make a balanced judgement;

(ii) The explanation including a warning of any risks inherent in the treatment;

(iii) The information being given in a language the patient understands, with the use of interpreters as necessary and the person imparting the information must take into account his or her knowledge of the patient, both medical and social;

(iv) The patient having sufficient time to consider the information, which may involve seeking advice from other sources such as voluntary groups; and

(v) Recognition that a patient's failure to offer resistance to treatment does not of itself constitute that person's consent to treatment.

526. Good clinical practice dictates that, where possible, the patient be fully involved in treatment options and the obtaining of consent. However, the MHA does stipulate that an involuntary detained patient, or a mentally impaired defendant in an authorized hospital, may be given psychiatric treatment, apart from psychosurgery, without his or her consent (s 109).

Right of appeal to the Mental Health Review Board

527. Involuntary patients, Official Visitors and any other person the MHRB is satisfied has a genuine concern for the patient may apply to the MHRB for a review of the patient's involuntary status, and if no request is received a mandatory review is conducted within 8 weeks and every 6 months subsequently.

Right of appeal to the Supreme Court

528. A patient or any other person who, in the opinion of the Supreme Court, has sufficient interest in the matter may appeal to the Supreme Court against a decision or order of the MHRB.

Protection of rights

529. Access to an Official Visitor from the COV as an agency, which reports to the Minister for Health. The COV ensures that detained persons are informed of their rights, that the rights of affected persons are observed, that complaints are received, enquired into and resolution of a complaint is sought. Inspection by an Official Visitor of any part of an authorized hospital, which are carried out on a regular basis.

530. MHRB is to consider any matter brought to its attention including any complaint.

531. The Chief Psychiatrist monitors the standards of psychiatric care throughout Western Australia and receives and acts on complaints. The Chief Psychiatrist reports to the Director General of Health and is independent of mental health services.

South Australia

Relevant Corrective Services procedures

532. In South Australia, each prisoner is stress screened upon admission to prison and monitored for the first seven days. They are further assessed to determine their risk of criminal reoffending and identify their criminogenic needs to match to appropriate interventions, or referral for further specialized assessment.

533. The Department for Corrective Services manages all prisoners via a Case Management model. This means that each prisoner is managed as an individual and has a programme plan or individual development plan developed that sets out any programmes they require, the regime and security rating they are accommodated under and their access to work and recreation.

534. Prisoners have access to medical staff, social workers and psychological intervention and may be transferred to other locations to access such services if necessary.

535. Any prisoner who is identified as being at risk either through medical intervention or through observations of Custodial Staff are managed through the High Risk Assessment Team process. This is a formal process run by the Department and the Prison Health Service to assess, monitor and implement management strategies for special needs prisoners. Incumbent with this formal process is the ready exchange of information, both medical and custodial. This ensures that prisoners who are at risk of self-harm, may have mental health issues or are otherwise disadvantaged, are protected whilst in custody.

536. If a prisoner's safety is determined to be at risk from the prisoner population, they may be placed on "protection", which involves the prisoner being housed in units specifically designated for protectee prisoners. These prisoners are kept separate from the general prisoner population and only associate with other protectee prisoners.

537. Indigenous prisoners have the opportunity to meet with the Department's Chief Executive at the Prevention of Aboriginal Deaths in Custody Forum every six weeks in different institutions. This forum gives Indigenous prisoners the opportunity to raise issues or concerns directly to the Chief Executive. The Department's Aboriginal Services Unit follows up any issues raised on behalf of the prisoners. Systemic issues are reviewed and audited at the end of every year to ensure that issues are being progressed.

538. Additionally, there are several influential bodies and agencies, both internal and external to the prison system, that receive and attend to complaints from prisoners, including:

(a) The Unit and General Managers within each prison;

(b) The Visiting Inspectors, who are appointed by the Minister and visit each prison and talk to the prisoners weekly;

(c) Aboriginal Liaison Officers;

(d) Ecumenical religious services and ready access to prison chaplains;

(e) Free telephone access from each prison to a central prisoner complaint line for prisoners to make complaints;

(f) The Ombudsman;

(g) The Correctional Services Advisory Council, an independent body that reports directly to the Minister to monitor and evaluate the administration and operation of the *Correctional Services Act 1982*;

(h) The Minister;

(i) Aboriginal Prisoner and Offenders Support Services;

(j) Aboriginal Legal Aid;

(k) Offender Aid and Rehabilitation Services;

(l) Free telephone access to the Hepatitis C Helpline; and

(m) Through-care links to specialized mental health services.

Specialist services for Aboriginal persons

539. Aboriginal prisoners can also access the Aboriginal Visitors Scheme (AVS), established in SA in 1991 as a response to the Royal Commission into Aboriginal Deaths in Custody. The Department of the Premier and Cabinet (DPC) administers government funding for the operation of the AVS State-wide programme. The programme's focus is to provide a care and comfort role, and to ensure the safety and well-being of Aboriginal people when detained within police cells. Through the AVS programme, detainees' needs are brought to the attention of police, who will then implement an appropriate course of action, including professional intervention if required.

540. In addition, AARD is frequently consulted on Aboriginal affairs by across government agencies, who by virtue of their role are responsible for various legislation concerning the detention of Aboriginal persons and investigating Aboriginal deaths in custody.

Provision of health services

541. The Department for Correctional Services and the Department of Health implemented the Joint Systems Protocols in April 2007, which aim to improve the health and well-being of prisoners.

542. All primary care in prisons includes:

(a) Informed patient consent;

(b) Interpreter services as required;

(c) Clinical autonomy of medical clinical and allied health staff;

(d) Continuity of care post-release;

(e) Therapeutic relationship distinct from security functions;

(f) Engagement with other community services;

(g) Respectful and culturally appropriate care;

(h) Confidentiality and privacy of health information;

(i) Transfer of health information to a community standard.

543. All people admitted to SA prison settings have access to health care and are informed of the availability of health-care services and how to access them. Non-English speakers are informed of the availability of interpreter services. Those who are illiterate are provided with health information in a manner that is comprehensible to them.

544. Within the first hours after admission, all prisoners are provided with a health assessment screening by a registered nurse experienced in identifying: urgent and chronic physical and mental health problems; drug and alcohol issues; signs of trauma and abuse; and infectious diseases. Within 24 to 38 hours, prisoners are reviewed by a medical officer. If urgent medical assessments are required, they are provided. The Department for Corrective Services employs Aboriginal Liaison Officers, social workers and psychologists in all prisons to assist in this process.

545. Prisoners have the right to provide informed consent for all health treatments. Included in prison primary care services is health promotion and preventative care to a standard broadly equivalent to what is provided to the general community.

546. Health-care providers employed in prisons have clinical autonomy and are not unduly influenced by security matters. Therapeutic relationships are established that clearly delineate between custodial from health care. If informed client consent is obtained, a continuity-of-care plan can be implemented following release. Prison health also engages with community services and has a referral system in place.

547. The rights and needs of patients (prisoners) are respected and care is provided in a respectful and culturally appropriate manner. Patient feedback is sought via periodic client satisfaction surveys. When complaints are received, they are logged and investigated. Clients are informed on their right to complain to third parties such as the Health and Community Complaints Service and the Ombudsman.

548. SA Prisoner Health Services has a process to improve safety and quality of care. Only qualified health-care professionals are employed. Systems are in place to manage clinical risk. Professional development and knowledge up-dates are provided to all health staff on a regular basis.

549. The physical features of prison health-care centres provide access for people with disabilities. Each centre is equipped for comprehensive care to a community health primary care standard.

550. Prisoners are provided with medicines and immunization to a community standard free of charge. Communicable disease prevention and control information is freely available.

Health services for immigration detainees, refugees and other vulnerable persons

551. South Australia was the first jurisdiction to develop agreed protocols with the Department of Immigration and Citizenship (DIAC) for immigration detainees. The protocols were finalized in early April 2005. A Memorandum of Understanding (MOU) for the provision of identified services to people detained under the provisions of the Migration Act 1958 was subsequently signed by DIAC and the SA Department of Health in late 2005 for the provision of health services to some immigration detainees referred by the Detention Services Provider contracted by DIAC. The Protocols prescribe that service to immigration detainees should be of the same quality and standard as those provided to the general community and that prevention and early intervention is a focus of care.

552. The draft Mental Health Bill 2007 contains special provisions in relation to children, the aged, people from culturally and linguistically diverse backgrounds and people from Aboriginal and Torres Strait Islander backgrounds.

553. The Bill contains additional protection for children under 18 years of age including more frequent review of orders and provides that a person who has a mental illness may nominate a guardian, relative, carer, medical agent or friend to provide support to him/her. A patient who lodges an appeal against a mental health order has access to fully funded legal representation.

Education for detained young people

554. The SA Department of Education and Children's Services provides education for all young people detained by the juvenile justice system.

555. The South Australian Government recognizes that the rate of incarceration of indigenous people is high compared to the general population.

556. Through consultation with indigenous people and the introduction of a variety of measures, including legislative measures and diversion programmes, the South Australian Government is taking steps to address the problem of the overrepresentation of Indigenous Australians in custody.

557. In 2005 the *Criminal Law (Sentencing) Act 1988* was amended by *the Statutes Amendment (Intervention Programmes and Sentencing Procedures) Act 2005* to provide formal statutory backing for two practices that had developed in the courts. One is the practice of directing defendants to undertake programmes of intervention that help them take responsibility for the underlying causes of their criminal behaviour. The other is the use of sentencing conferences in sentencing Aboriginal defendants on Aboriginal Court days (Nunga Courts).

558. Under section 9C of the Criminal Law (Sentencing) Act any criminal court, with the defendant's consent, may convene a sentencing conference and take into consideration the views expressed at this conference. An Aboriginal Justice Officer employed by the Courts Administration Authority helps the court convene the conference and advises it about Aboriginal society and culture. The Aboriginal Justice Officer also helps Aboriginal people understand court procedures and sentencing options and helps them comply with court orders. An Aboriginal offender's sentence, whether given using a sentencing conference or using standard sentencing procedures, may include a requirement to participate or continue in an intervention programme.

559. Two of the intervention programmes that aim to divert offenders into systems that work to address the underlying health and socio-economic causes of the offending behaviour, rather than into the prison system are the Drug Court and the Court Assessment and Referral Drug Scheme (CARDS).

560. The Drug Court in South Australia provides drug-abuse offenders with an alternative to an immediate sentence of imprisonment to help them break the cycle of drug abuse and crime. Offenders accepted into the programme are subject to strict supervision which may include electronically monitored home detention bail, weekly court appearances and random and frequent drug testing. They must also comply with a number of conditions such as, attending

treatment and support programmes. The offender's level of participation in the programme will then be taken into consideration at the time that the offender is sentenced. By ensuring that Aboriginal defendants are linked to culturally appropriate services the Drug Court helps to address the underlying causes of the offending and thus contribute to decreasing the number of Aboriginal people who are incarcerated.

561. The CARDS programme operates in the South Australian Magistrate's Court and Youth Court and provides defendants who use drugs with an opportunity to access drug treatment as part of the court process. Aboriginal defendants can choose whether they want to access Aboriginal specific treatment clinicians or any other worker. Aboriginal Justice Officers are also available to help Aboriginal defendants through the assessment process. CARDS has a comparatively high level of Aboriginal participation. As with the Drug Court access to treatment as part of the court process reduces risk of further drug related offending.

562. Both the Drug Court and CARDS have been evaluated and demonstrate a reduction in offending by participants that successfully complete the programmes.

563. South Australia also operates the Magistrate Court Diversion Programme which provides referral into treatment and support for people with mental illness. Successful engagement with the treatment programme can result in a withdrawal or dismissal of charges.

564. Since 1999, Magistrates' Courts in Port Adelaide, Port Augusta, Murray Bridge and Ceduna have also held regular Aboriginal Court days to assist Aboriginal people to understand and comply with non-custodial sentencing options and to encourage their participation in the court process.

565. As a sentencing court set up to specifically deal with Aboriginal offenders, the Aboriginal (Nunga) Court has increased the rate of attendance of Aboriginal people in court and as a result, helped to reduce the number of arrest warrants issued for non-attendance and subsequent periods in custody.

Tasmania

566. Police officers are well trained in the rights of persons deprived of their liberty and duty of care obligations and procedures that apply. The deprivation of liberty of vulnerable persons is conducted under supervision.

567. Procedures are in place to mandate that women are only searched by female police officers and if one is not available, a female officer will be recalled to duty. Custody processes provide for independent oversight of persons taken into custody, including validation of the arrest. Detainees are appropriately classified and their welfare and other needs including vulnerability, illnesses, risk assessments are addressed in that process. Hospital and other medical facilities are available and used as required. Women are separately held from males and the *Youth Justice Act 1997* (Tas) provides that young persons (under 18) are separately held from adults.

568. Tasmania Police has a number Memorandums of Understanding in place and liaison officers to ensure that persons suffering from mental illness are dealt with in accordance with appropriate protocols.

569. Similarly, it is the policy of Tasmania Police that, unless exceptional circumstances exist or statutory requirements require otherwise, Aborigines should be admitted to bail at the first opportunity and not be placed in cells.

570. In the event that it becomes necessary to detain and/or interview an Aborigine, the police officer performing the function of Custody Officer into whose custody the Aborigine is first received, or the senior interviewing member if the Aborigine is not in custody, is responsible for making every effort to:

(a) Notify a relative or friend and the Aboriginal Legal Service (ALS);

(b) If attendance of any of those notified is requested, take all reasonable steps to make the necessary arrangements; and

(c) Advise the District Aboriginal Liaison Officer or Tasmania Police Aboriginal Liaison Coordinator of significant matters.

571. Police officers are subject to the requirements of the Code of Conduct under the Police Service Act 2003 (Tas), which provides for significant sanctions including fines, demotion and termination for breach.

572. The Mental Health Act 1996 (Tas) governs the detention and care of involuntary and forensic patients. The Act takes into account obligations contained in international Conventions, is intended to protect fundamental human rights and contains numerous safeguards:

(a) It establishes the role of Chief Forensic Psychiatrist who reports to the Secretary of the Department of Health and Human Services on the care and treatment of forensic patients and persons subject to supervision orders and whether the objects of the Act are being met with respect to forensic patients, persons subject to supervision orders and secure mental health units;

(b) It governs the approval and operation of a secure mental health unit;

(c) It governs the admission of patients to a secure mental health unit, the care and treatment of patients in a secure mental health unit, the leave of Forensic patients, and the release and discharge of patients from a secure mental health unit;

(d) It governs the operation and administration of continuing care orders and community treatment orders;

(e) It sets up the operation of both the Mental Health and Forensic Tribunal. The Mental Health Tribunal has oversight of involuntary (or civil) patients. The Forensic Tribunal has oversight and specific responsibilities of forensic patients.

573. The Department of Health and Human Services, through the Child Protection Services Business Unit, has the responsibility for intervening where children are at risk of abuse and neglect under the *Children, Young Persons and their Families Act 1997*.

Australian Capital Territory

574. Persons detained in the ACT have access to a variety of persons and government agencies that are designed to advocate for their best interests and investigate complaints. These include, the Human Rights Commissioner, the Ombudsman, the Official Visitor, Legal Aid, Victim's Support Service, and the Welfare Officer at the Belconnen Remand Centre (BRC) and the Symonston Temporary Remand Centre (STRC). For example, the Office of the Official Visitor is able to inspect detention facilities and talk to detainees and investigate complaints. Similarly, the Ombudsman may review the actions of police and correctional authorities and make recommendations.

575. Section 13 of the *Corrections Management Act 2007* provides that the Minister may give written directions on how functions under the Act are to be exercised. This provision is intended to allow procedures and protocols to be put in place that respond to findings of inquiries, reports, Royal Commissions etc. that deal with the protection of certain classes of detainees.

Women

576. Please see the response to Issue 4 for measures relating to the protection of women in custody.

Indigenous persons

577. Indigenous Australians have access to specialist services such as the Aboriginal Justice Centre, Winnunga Aboriginal Health Service, Indigenous Liaison Officer, and South East Aboriginal Legal Service. Investigations are currently being conducted into installing an Indigenous Official Visitor.

578. Section 55 of the *Corrections Management Act 2007* provides that detaining authorities must ensure that, as far as practicable, provision is made at correctional centres for the religious, spiritual and cultural needs of detainees.

Persons suffering from mental illness

579. Persons with a mental health issue have access to the Guardianship and Mental Health Tribunal, Forensic Mental Health, Mental Health ACT, Office of Community Advocate, Disability Discrimination Legal Service, the Mental Health Forensic Unit, and the Office of Public Trustees.

580. Sections 66 and 67 of the *Corrections Management Act 2007* provide that upon admission a detainee must be examined to determine whether they are at risk from any physical or mental health problems, and what physical and mental health needs they have (if any).

581. Section 54 of the Corrections Management Act provides that detainees may be transferred to a medical or mental health facility where authorities believe, on reasonable grounds, that such a transfer is necessary or desirable. In addition, the provisions of the *Mental Health (Treatment and Care) Act 1994*, which contains provisions about orders for the treatment of mentally ill people, also apply to detainees in a corrections centre.

Children

582. In July 2005, the ACT Human Rights Commissioner presented to the ACT Government her report titled "Human Rights Audit of Quamby Youth Detention Centre". The Government responded to the 52 recommendations agreeing with 25 and agreeing in principle with 27 of the recommendations. Many of the recommendations have been met. Following consultation, 11 new Standing Orders were notified in December 2006 in compliance with the *Children and Young People Act 1999* and the human rights requirements. The new Standing Orders address the recommendations made by the Human Rights Commissioner.

583. The new Standing Orders provide specific directions to enable staff to implement the provisions of the Children and Young People Act 1999 and all relevant legislation with regard to the management of children and young people held in custody. The new Standing Orders aim to represent best practice, are modern and comprehensive and provide good support to staff at the Detention Centre.

584. This is enhanced through ensuring each resident is detained within a safe and secure environment, with living conditions that meet the minimum requirements specified through the Standing Orders in regards to privacy and dignity. The Standing Orders also encompass programmes and services including educational, vocational and health services with consideration being given to the specific individual characteristics of each resident such as their vulnerability as a child or young person, perceived maturity, sex, abilities, strengths and cultural identity.

585. These Standing Orders recognize that children and young people who offend may be particularly vulnerable due to a wide range of risk factors and may have already experienced high levels of early trauma or adversity. The Standing Orders seek to reduce any further psychological harm whilst a child or young person is resident in the Detention Centre. The Standing Orders stress the rehabilitative and therapeutic role of all staff working in the Detention Centre.

The recent Standing Order - Provision of Information, Review of Decisions and Complaints has been written to ensure children, young people and others have an avenue to report alleged human rights violations and other issues.

586. To support the principles of the new Standing Orders, work is being progressed to review and update handbooks for residents, staff, and family members. The handbooks include important information about how the Youth Detention Centre operates. The handbook will provide children, young people and their families with information about their rights, the programmes and services available while in detention and the complaint processes available to residents and family members.

587. ACT Corrective Services (ACTCS) is not involved in the full time custody of young people. However, young people attending court are under the supervision of ACTCS staff. In order to address the needs of these young people in custody a Memorandum of Understanding is in place with the Public Advocate. Recently ACTCS staff developed a complaints procedure specifically targeted at young people in ACTCS custody. This procedure outlines clearly the

expectations of Officers and offenders, and the ways in which young people may address any areas of concern. This information is made available to all young people in ACTCS custody.

588. In 2006-07 the ACT Human Rights Commission audited the operation of ACT correctional facilities, including on the circumstances of mentally unwell remandees. For 2007-08 the ACT government has committed itself to forward design of high secure and adult acute mental health inpatient units at The Canberra Hospital for all ACT residents whose mental health requires treatment and placement in such facilities.

589. The ACT Human Rights Commission's (the Commission) recommendations concerning women have already been touched upon. In addition to recommending that women prisoners should not be guarded by men at night, the Commission will be recommending that:

(a) More effort should be made to recruit women correctional services officers;

(b) That extensive training concerning issues for women in prison and sensitivity towards women prisoners should be compulsory for all custodial officers;

(c) That the remand centres should meet the special needs of women prisoners, for example, by installing a dispenser for pads and tampons; and

(d) That means for, and information about safer sex be available to women prisoners.

590. The rights of Indigenous persons are reasonably well met in the ACT remand centres by the Indigenous Liaison Officer. However, the Commission will be recommending, among other things, that:

(a) Non-Indigenous corrective services officers should be required to attend courses in cultural awareness;

(b) They should also be assessed on particular skills relevant to interactions with people from culturally and linguistically diverse backgrounds;

(c) Performance review measures should include an assessment of officers' ability to maintain effective relationships with detainees from culturally and linguistically diverse backgrounds; and

(d) The Indigenous Liaison Officer should be given more support and resources to enable more culturally important activities for Indigenous detainees.

591. In relation to children, the ACT Human Rights Commission's audit of the Quamby Youth Detention Centre attracted in principle acceptance of all the Commission's recommendations by the ACT government. A new detention centre, Bimberi Youth Justice Centre, is being established, and the Commission is generally satisfied with the development of new Standing Orders and the design of the detention centre.

Northern Territory

592. The *Prison (Correctional Services) Act* provides guidelines on prisoner access to the Official Visitor Programme. The *Ombudsman Act* provides guidelines on access to places of deprivation. Prisoners can access organizations such as the Health Complaints Commission through the Medical Centre or Prison Services. The Superintendents Parade and Confidential Letters to the Minister are available to all prisoners to protect their rights. Other means by which prisoners might seek to protect their rights include a right of access to the Anti-Discrimination Commission, the Human Rights and Equal Opportunities Commission and through their legal representatives.

593. The Department of Justice operates an Official Visitors Programme in all adult and juvenile detention facilities. In response to an investigation of the programme by the Northern Territory Ombudsman the following changes were made to its administration:

(a) A Secretariat was created to remove any real or perceived conflict of interest in responding to issues raised in Official Visitor reports. This task is now overseen by a part of the Department of Justice that is separate to Correctional Services;

(b) Recruitment and induction processes have been implemented, to have a more transparent system of attracting Official Visitors; induction of Official Visitors (which had not occurred before); to provide required materials (e.g. legislation and standards, guidelines, formats for reports, etc.) to assist Official Visitors carry out their functions; and

(c) A monitoring system has been set up to ensure that the statutory requirements are met, i.e. that visits are made on a monthly basis, reports submitted and ministerial correspondence prepared.

594. Independent review mechanisms are also available through the Office of the Ombudsman for the Northern Territory and the Health and Community Services Complaints Commission.

595. The Ombudsman for the Northern Territory is an independent statutory entity reporting directly to Parliament. Citizens, including those in custody, are able to make complaints to the Ombudsman in regard to any matter pertaining to administrative actions carried out by government entities. This includes the Police, Correctional Services and all other government entities.

596. The Ombudsman has been instrumental in the introduction of a Prisoner Telephone System (PTS) which, among other things, provides prisoners with free call access and a direct line of communication for the purpose of making complaints to the Ombudsman, Anti-Discrimination Commission, Human Rights and Equal Opportunity Commission and the Health Complaints Commission via common numbers programmed in to the PTS. All prisoners have the ability to call legal representatives at the standard call costs. Prisoners may also contact these bodies by way of uncensored mail.

597. The *Mental Health and Related Services Act* (NT) also has mechanisms regarding complaints:

(a) Section 100 provides for internal complaint procedures;

(b) Section 105 provides powers for the Community Visitor programme (a body independent of the Department) to investigate complaints.

598. The rights of prisoners experiencing mental health issues/mental illness are addressed through the Mental Health Programmes Forensic Mental Health Teams. These teams provide visiting services to clients in the prison system and provide advice to and take referrals from prison medical services in relation to prisoners experiencing mental health problems/mental illness. There are also provisions in the Mental Health and Related Services Act for admission of prisoners to an Approved Treatment Facility where necessary and appropriate.

599. The Health and Community Services Complaints Commission also has powers, similar to those of the Ombudsman, to investigate complaints and provides another external and independent review mechanism. The Commission came into operation on 1 July 1998, under the *Health and Community Services Complaints Act* (NT). The Commission's role is to receive and respond to complaints about the delivery of health and community services in the Northern Territory (including in prisons by prison medical staff). As with the Ombudsman, the Commission has the capacity to report directly to the Northern Territory Parliament.

600. In relation to the independent complaints mechanisms, the Health and Community Services Complaints Commission legislation provides that it is an offence to intimidate or take any action against any complainant as a result of making a complaint (penalty up to $10,000 or 12 months' imprisonment). The Ombudsman and the Health and Community Services Complaints Commissioner are also able to investigate any complaint relating to harassment, intimidation or victimization of a complainant as a result of making a complaint.

601. In relation to prisons, Commissioners Directives expressly prohibit retaliation by a staff member against a prisoner for either filing or withdrawing a complaint. Any such action would constitute a breach of discipline and would be subject to disciplinary action.

Children in care

602. The *Community Welfare Act* (NT) provides the legal framework for taking children into care (i.e., removing them from their parents) when they are at risk of harm (usually where there are concerns a child is neglected or abused, abandoned, or parents are incapacitated or dead).

603. The Community Welfare Act sets out the responsibilities and obligations of the Minister to ensure the safety and well-being of a child in out of home care, and the types of statutory orders that can be granted by the Court in support of keeping a child in care temporarily or until the age of 18 years. It also stipulates a hierarchy of placement options that should be applied to Aboriginal or Torres Strait Islander children - known as the "Aboriginal Child Placement Principle". Under the Principle out of home care placements for Aboriginal children should be made according to the following hierarchy to preserve family, community and cultural ties (where appropriate):

(a) Extended family;

(b) Other Aboriginal or Islander people from the child's community;

(c) Other Aboriginal or Islander people from other communities;

(d) Non-Indigenous carers.

604. The care of children in the care of the Minister is monitored by the NT Department of Health and Community Services, Family and Children's Services Division (FACS). If an allegation is made, or it is observed that a child has been harmed, FACS and/or NT Police will investigate the matter and take appropriate protective (i.e. provide health care and other supports, remove the child to another placement if the child is not safe or has been harmed) and criminal justice responses (e.g. lay charges for criminal actions).

605. Complaints about the child protection system, or an out of home care situation, can be made by the child, a carer, a biological parent or other interested party to the Health and Community Services Complaints Commission or the Ombudsman.

Question 24

Please provide disaggregated statistical data regarding reported deaths in custody according to location of detention, sex, age, ethnicity of the deceased and cause of death. Please make available detailed information on the results of the investigations in respect of those deaths and measures implemented to prevent the reoccurrence of similar violations. In particular, please provide the Committee with updated information relating to the investigation of the death of Mr. Mulrunji in police custody in 2004.

606. The first part of the response provides Commonwealth disaggregated statistical data on reported deaths in custody. Investigations into deaths in custody are the responsibility of State and Territory governments. The second part of the response therefore provides information from State and Territory governments regarding investigations into deaths in custody, as well as statistical data regarding reported deaths in custody. Updated information relating to the investigation of the death of Mulrunji is provided by the Queensland Government.

Commonwealth Government information

Deaths in custody

607. In 1992, the National Deaths in Custody Programme was established at the Australian Institute of Criminology in accordance with a recommendation of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC). It provides comprehensive, timely and authoritative data on all deaths which occur in custody and custody-related police operations.

608. Rates for both Indigenous and non-Indigenous deaths in prison custody have generally fluctuated between one and six deaths per 1,000 prisoners since 1982. From 1999, the rates for both Indigenous and non-Indigenous deaths have become more similar and both have begun to

trend downward since that time.[14] In 2005, the rate of Indigenous deaths in prison custody was 1.2 per 1,000 Indigenous prisoners, compared to 1.4 per 1,000 for non-Indigenous prisoners.[15]

609. Of the total of 54 deaths in custody in Australia in 2005, 15 deaths were of Indigenous people, which is the equal lowest number recorded by the Australian Institute of Criminology since 1996. The most common cause of death for Indigenous people in prison custody was natural causes (three), hanging (one) or drugs/alcohol (one). Of the eight deaths in police custody, the most common cause was external/multiple trauma (four) or hanging (two). The most common manner of death in police custody was an accident (five) or self-inflicted (two).

610. More recent data cited in the 2007 *Review of Government Services*[16] reports that there were no deaths of Indigenous prisoners from apparent unnatural causes in any jurisdiction in 2005-2006.

611. Trends in custodial deaths are represented in the table below:

Trends in custodial deaths in Australia (prison custody and police custody) by Indigenous status															
	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Indigenous	13	9	10	14	22	18	15	17	19	17	18	19	18	15	15
Non-Indigenous	57	58	73	68	65	64	90	80	67	75	74	68	58	54	39
Total	70	67	83	82	87	82	105	97	86	92	92	87	76	69	54

Source: J. Joudo, *Deaths in custody in Australia: National Deaths in Custody Programme Annual Report 2005* (2005) AIC Technical and background paper series No. 21.

612. Key Findings from *Deaths in Custody in Australia*[17] (2005) can be summarized as follows:

(a) Fifty-four deaths occurred in custody in 2005 (34 in prison custody and 20 in police custody and custody-related operations);

[14] J. Joudo, *Deaths in custody in Australia: National Deaths in Custody Program Annual Report 2005* (2005) AIC Technical and background paper series No. 21.

[15] J. Joudo, *Deaths in custody in Australia: National Deaths in Custody Program Annual Report 2005* (2005) AIC Technical and background paper series No. 21.

[16] Report on Government Services (2007) Indigenous Compendium, Steering Committee for the Review of Government Service Provision.

[17] J. Joudo, *Deaths in custody in Australia: National Deaths in Custody Program Annual Report 2005* (2005) AIC Technical and background paper series No. 21.

(b) Fifteen deaths were of Indigenous persons (seven in prison custody and eight in police custody and custody-related operations);

(c) Forty-seven males and seven females died in prison or police custody and custody-related operations (31 males and 3 females in prison custody and 16 males and 4 females in police custody and custody-related operations);

(d) The average age of persons who died in prison custody was 46 years with most deaths of persons aged between 40 and 54 years. For deaths in police custody and custody-related operations the average age was 31 years and most were aged between 25 and 39 years;

(e) There were 11 hanging deaths (one Indigenous) in prison and three hanging deaths (two Indigenous) in police custody and custody-related operations;

(f) Eight deaths occurred during motor vehicle pursuits (four Indigenous) and four deaths resulted from police shootings (all non-Indigenous);

(g) Violent offences were commonly the most serious offence committed immediately prior to the final period of custody in both prison and police custody and custody-related operations.

613. Additional data on deaths in custody is provided in the tables below.

Attachment A

Prison deaths by Indigenous status, 1980-2005					
	Indigenous		Non-Indigenous		Persons
	N	%	N	%	Total N
NSW	59	13.9	365	86.1	424
Vic	5	2.9	165	97.1	170
Qld	46	19.9	185	80.1	231
WA	45	29.6	107	70.4	152
SA	18	18.4	80	81.6	98
Tas	1	3.4	28	96.6	29
NT	17	73.9	6	26.1	23
ACT	0	0.0	3	100.0	3
Australia	191	16.9	939	83.1	(1 130)

Source: J. Joudo, *Deaths in custody in Australia: National Deaths in Custody Programme Annual Report 2005* (2005) AIC Technical and background paper series No. 21.

Prison custody deaths by Indigenous status and jurisdiction, 1990-2005					
	Indigenous		Non-Indigenous		Persons
	N	%	N	%	Total N
NSW	21	13.4	136	86.6	157
Vic	4	3.8	102	96.2	106
Qld	15	19.5	62	80.5	77
WA	31	56.4	24	3.6	55
SA	6	18.8	26	81.3	32
Tas	2	16.7	10	83.3	12
NT	16	55.2	13	44.8	29
ACT	0	0.0	6	100.0	6
Cwlth	0	0.0	2	100.0	2
Australia	95	20.0	381	80.0	476

Source: J. Joudo, *Deaths in custody in Australia: National Deaths in Custody Programme Annual Report 2005* (2005) AIC Technical and background paper series No. 21.

Deaths by Indigenous status, 1980-2005 (number)			
	Indigenous	Non-Indigenous	Total N
1980	5	25	30
1981	1	27	28
1982	4	21	25
1983	5	26	31
1984	4	27	31
1985	4	22	26
1986	1	16	17
1987	5	48	53
1988	6	36	42
1989	4	36	40
1990	5	28	33
1991	8	31	39
1992	2	34	36
1993	7	42	49
1994	11	42	53
1995	18	41	59
1996	12	40	52
1997	9	67	76
1998	10	59	69
1999	13	46	59
2000	11	51	62
2001	14	43	57
2002	8	42	50
2003	10	30	40
2004	7	32	39
2005	7	27	34
(Total)	(191)	(939)	(1 130)

Source: J. Joudo, *Deaths in custody in Australia: National Deaths in Custody Programme Annual Report 2005* (2005) AIC Technical and background paper series No. 21.

Prison deaths by year and jurisdiction, 1980-2005 (number)									
	NSW	Vic	Qld	WA	SA	Tas	NT	ACT	Total
1980	7	4	8	3	7	0	1	0	30
1981	8	8	8	2	2	0	0	0	28
1982	4	5	5	6	4	1	0	0	25
1983	12	7	5	5	2	0	0	0	31
1984	10	11	5	5	0	0	0	0	31
1985	9	4	8	1	2	0	2	0	26
1986	8	2	6	0	0	0	1	0	17
1987	18	19	5	4	4	2	0	1	53
1988	10	15	7	5	1	2	2	0	42
1989	20	3	7	4	4	2	0	0	40
1990	15	2	8	3	3	1	1	0	33
1991	15	4	6	8	4	2	0	0	39
1992	13	3	10	3	4	2	1	0	36
1993	23	8	8	3	6	1	0	0	49
1994	27	3	11	6	3	2	1	0	53
1995	22	6	13	5	11	1	1	0	59
1996	20	7	11	6	5	1	1	1	52
1997	36	8	12	11	4	2	3	0	76
1998	22	13	15	13	4	1	0	1	69
1999	26	5	14	8	1	4	1	0	59
2000	17	8	15	14	7	1	0	0	62
2001	20	5	15	10	4	0	3	0	57
2002	20	10	7	8	2	2	1	0	50
2003	15	1	12	7	4	0	1	0	40
2004	14	4	7	8	4	1	1	0	39
2005	13	5	3	4	6	1	2	0	34
(Total)	(424)	(170)	(231)	(152)	(98)	(29)	(23)	(3)	(1 130)

Source: J. Joudo, *Deaths in custody in Australia: National Deaths in Custody Programme Annual Report 2005* (2005) AIC Technical and background paper series No. 21.

Information regarding the death in custody of Mulrunji

614. Responding to the death in custody of Mulrunji is a matter for the Queensland Government. Please see the Queensland Government's response below.

State and Territory information

New South Wales

615. In the financial year 2005/06 there were five apparent unnatural deaths in custody, none of which were indigenous inmates, as compared with eight during 2004/05. This represented a continued decrease in deaths from unnatural causes with the rate per 100 inmates per year for 2005/06 falling below the national average for the previous year. Specific information detailing the sex, age, ethnicity and the cause of death has not yet been provided by NSW.

616. The decreasing rate is due to the significant efforts of custodial and Offenders Services and Programmes staff and Justice Health staff. Integral to this process is the Risk Intervention Team Protocol. Risk Intervention Teams form in each correctional centre whenever staff believe an offender may be at risk and in mandatory notification. In 2005/2006, almost 400 multidisciplinary staff received Risk Intervention Team training. A Mental Health First Aid training course was also introduced to build capacity among all staff to identify, respond and refer to appropriate services, offenders with symptoms of mental illness.

617. Scott Simpson, an inmate with paranoid schizophrenia, committed suicide at Long Bay Correctional Centre in 2004. The mother of Scott Simpson has recently instituted proceedings in the District Court of NSW against the Department of Corrective Services in relation to the death of Simpson and it is therefore not appropriate for the Department to comment on this matter.

Northern Territory - Deaths in custody 2004-2007

Name	DOD	Location of detention	Sex	Age	Ethnicity	Cause of death	Results of investigation	Measures to prevent reoccurrence
D Wayne	18/5/04	Public place, Alice Springs. Lost control of vehicle while being pursued by Police.	M	25	Aboriginal Australian	Blunt head trauma: deceased thrown from a motor vehicle he was driving.	The deceased lost control of the vehicle; he had a blood alcohol concentration of 0.385%; he was not wearing a seatbelt; he was thrown from the vehicle, and suffered immediate fatal injuries. The pursuit was commenced because the deceased failed to obey a police direction to stop. The first stage of the pursuit was appropriate, and consistent with the Urgent Duty Driving policy then applicable. Consideration ought to have been given to terminating the pursuit at the second stage when the deceased started driving very fast but such a decision at the point was highly unlikely to have changed the outcome. The Coroner recommended that practical mock pursuit training be reinstated in the police recruit driver training module, or alternatively, that it be taught as an advanced driver training module which is regularly available to members likely to engage in driving duties as part of their general or specialist duties.	Inclusion of the Pursuit Policy in the biennial refresher training of all members in the use of defensive tactics.

Name	DOD	Location of detention	Sex	Age	Ethnicity	Cause of death	Results of investigation	Measures to prevent reoccurrence
M Heri	28/4/05	Darwin Harbour on board fishing vessel "Gunung Mas Baru". Detained as illegal fisherman by Aust Fisheries Management Authority (AFMA) and Dept of Immigration, Multicultural and Indigenous Affairs (DIMIA)	M	37	Indonesian	Coronary Atherosclerosis.	No signs of foul play. Existing DIMIA guidelines at the time stipulated all crew be medically examined, preferably within 24 hours. The deceased had not been medically examined. The Coroner was of the view that the deceased's underlying heart condition would most probably not have been detected during the course of a general medical examination.	On the basis that all detained fishermen will be detained at the land based facility in Darwin, the Coroner recommended that such fishermen be thoroughly medically examined by a medical practitioner within 24 hours of reception into the facility. Confirmation of the implementation of this measure was referred to the Department of Immigration and Citizenship. It was confirmed that public health screening checks of fishermen are undertaken by Customs and the Australian Fisheries Management Authority before the fishermen are transferred to the Northern Immigration Detention Centre (NIDC). On entry to NIDC medical examinations are undertaken by the health provider on the same day or within 24 hours of arrival at the Centre. This has been confirmed with International Health and Medical Services (IHMS).

Name	DOD	Location of detention	Sex	Age	Ethnicity	Cause of death	Results of investigation	Measures to prevent reoccurrence
H Martin	13/3/05	Darwin Prison, Berrimah	M	37	Aboriginal Australian	Cerebrovascular accident, i.e. stroke with cirrhosis of liver and chronic alcohol toxicity	On arrival at Darwin Prison on 4/3/05 deceased was seen for "medical reception" and reported as suffering from alcohol withdrawal. He was treated by the prison doctor on 7/3/05 who noted to see him a week later. On 9/3/05 the deceased was seen again by the doctor due to vomiting and assessed as still in alcohol withdrawal and put on "medical observation". Prisoner placed in cell on his own equipped with observation camera. Prisoner observed by prison officer from communications room every fifteen minutes. Doctor saw prisoner when urgently called to cell on 10/3/05, with prisoner unresponsive to all testing. Admitted to Royal Darwin Hospital Intensive Care Unit where he died. The Coroner found that deceased was appropriately treated at all times by medical practitioners. The Coroner found the system of prison officers making medical observations via video screen an unsatisfactory system which did not assist the deceased on this occasion.	The system of medical observation of inmates was changed shortly after this death occurred. In December 2005 a procedure was implemented with "medical observation" taking place in prison clinic by a nurse.

Name	DOD	Location of detention	Sex	Age	Ethnicity	Cause of death	Results of investigation	Measures to prevent reoccurrence
F Peterson	24/7/05	Alice Springs Correctional Centre	M	30	Aboriginal Australian	Diffuse alveolar damage: complication of bacterial endocarditis.	The care, supervision and treatment of deceased prisoner was appropriate. Died from natural causes.	Nil required
P Heenan	16/9/06	Darwin Prison, Berrimah	M	50	Aboriginal Australian	Coronary Atherosclerosis: contributed to by diabetes mellitus, hypertension and chronic hepatitis suffered by deceased.	The care, supervision and treatment of the deceased prisoner was appropriate. Died from natural causes.	Nil required

Victoria

618. Please see the table below providing data for the past 10 years, including recommendations from coronial inquests.

Victoria - Deaths in custody

KEY:
Places of deprivation of liberty:
PPP: Port Phillip Prison
MAP: Melbourne Assessment Prison
FCC: Fulham Correctional Centre
MWCC: Metropolitan Women's Correctional Centre
DPFC: Dame Phyllis Frost Centre
Other:
ATSI: Aboriginal and Torres Strait Islander

Summary of Data by Financial Year – United Nations Committee Against Torture (at July 2007)

	Number of deaths	Prison	Sex	Ethnicity	Coronial recommendations	Cause of death	Comments
1997/98	13	8 x PPP 2 x Beechworth 1 x Barwon 1 x Loddon 1 x MAP	13 x male	8 x Australian 1 x Yugoslav 1 x Vietnamese 1 x Greek 1 x Italian 1 x English	x 4 One matter part heard	6 x suicide 3 x natural 3 x misadventure 1 x murder	See below for Coronial recommendations for x 1 Recommendations x 3 could not be obtained within the timelines.

	Number of deaths	Prison	Sex	Ethnicity	Coronial recommendations	Cause of death	Comments
							1 x part heard and adjourned, as alleged assailants appealed the murder conviction and sentence.
1998/99	9	4 x PPP 2 x MAP 1 x Beechworth 1x Bendigo 1 x MWCC	8 x male 1 x female	6 x Australian 1 x ATSI 1 x Lebanese 1 x Vietnamese	x 5	4 x suicide 3 x misadventure 1 x natural 1 x accidental	Recommendations could not be obtained within the timelines.
1999/2000	3	2 x PPP 1 x FCC	3 x male	3 x Australian	x 2	1 x natural 1 x murder 1 x suicide	See below for Coronial recommendations.
2000/01	11	6 x PPP 2 x Barwon 1 x Beechworth 1 x MAP 1 x MWCC	10 x male 1 x female	6 x Australian 2 x ATSI 2 x Vietnamese 1 x Italian	x 2	6 x natural 3 x suicide 2 x misadventure	See below for Coronial recommendations.
2001/02	6	2 x Ararat 2 x MAP 1 x Barwon 1 x PPP	6 x male	4 x Australian 1 x English 1 x Iraqi	x 1	4 x natural 1 x murder 1 x lethal force	See below for Coronial recommendations.
2002/03	5	2 x PPP 1 x Beechworth 1 x Loddon 1 x Tarrengower	4 x male 1 x female	3 x Australian 1 x New Guinean 1 x Spanish	x 1	3 x natural causes 2 x suicide	See below for Coronial recommendations.

	Number of deaths	Prison	Sex	Ethnicity	Coronial recommendations	Cause of death	Comments
2003/04	4	3 x PPP 1 x Barwon	4 x male	4 x Australian	Nil One matter part heard	2 x natural 1 x suicide 1 x not finalized (provisional cause suicide)	1 x has not been finalized.
2004/05	4	4 x PPP	4 x male	4 x Australian	Nil	4 x natural causes	
2005/06	5	3 x PPP 1 x DPFC 1 x Dhurringile	4 x male 1 x female	4 x Australian 1 x ATSI	Nil One matter part heard	3 x natural causes 1 x murder 1 x not finalized (provisional cause asthma attack)	1 x has not been finalized.
2006/07	2	1 x PPP 1 x Ararat	2 x male	2 x Australian	Nil	1 x natural causes 1 x not finalized (provisional cause heart attack)	1 x not yet finalized.
Summary	62	34 x PPP 6 x MAP 5 x Barwon 5 x Beechworth 3 x Ararat 2 x Loddon 2 x MWCC 1 x Dhurringile 1 x DPFC 1 x Bendigo 1 x FCC 1 x Tarrengower	58 x male 4 x female	44 x Australian 4 x ATSI 4 x Vietnamese 2 x Italian 2 x English 1 x Iraqi 1 x Spanish 1 x New Guinea 1 x Greek 1 x Lebanese 1 x Yugoslav		28 x natural 17 x suicide 4 x not finalized 8 x misadventure 3 x murder 1 x accidental 1 x lethal force	

Summary of Coronial Recommendations

Date of death	Prison	Inquest dates	Cause of death	Recommendations
16.5.1998	MAP	5.5.1999	Heroin toxicity	1. Passive detection dogs be used for screening of all visitors; 2. Consideration be given to including this screening for all persons entering a prison, including prison staff members.
11.11.1999	FCC	7.8.2002 and 4-11.7.2005	Incised injuries to chest and abdomen	1. That the Corrections Inspectorate, as a matter of urgency, undertake an assessment of whether the refinements to practices/ systems claimed to have addressed the identified problems are adequate.
29.3.2000	PPP	30.8.2002	Self inflicted wound to arm - suicide	No formal recommendations although Coroner identified the following key issues: 1. Information transfer between all of the custodial (including police) and related health agencies be as complete, timely and seamless as possible; 2. On-going physical health issues have potential to effect mental well-being and need to be cautiously managed by the health agencies and professionals working within the correctional system; 3. Warnings by police and judicial officers relating to health concerns need to be accurately recorded, given to those working within the correctional system (health agencies and related professionals) and actively used in the process to help identify and manage health problems;

Date of death	Prison	Inquest dates	Cause of death	Recommendations
				4. The concerns of family and friends (or lawyers) need to be recorded and factored into all areas of the management of a prisoner's risk profile and well-being. The health and related professionals need to ensure that family or lawyers' concerns are seriously considered and proactively used in the assessment process; 5. Court dates and medical related appointments should be managed so as not to create unnecessary conflict or the constant re-arranging of appointments; 6. The knowledge of health professionals about a particular prisoner's risk factors (or the development of changes) should be adequately communicated to those working within the correctional system (who are ultimately responsible for managing risk); 7. The Telecourt process needs to be reviewed to ensure prisoners have adequate time and opportunity to receive advice and support before and after the hearing. Careful attention by courts, correctional, health and related professionals need to be given to prisoner reactions and well-being following the hearing; 8. Good relationships between cellmates are potentially vital for prisoner well-being and safety (see also findings and recommendations in the case of Chereen Nichole Vale).

Date of death	Prison	Inquest dates	Cause of death	Recommendations
				The correctional authorities need to carefully manage prisoner placement and where concerns are raised the issues need to be followed up. Where cellmates are separated or moved for any reason, leaving an at risk prisoner alone in the cell, a risk review should be immediately undertaken. Prisoners also need to be encouraged to report any real concerns about a cellmate's health; 9. Ambulance agency calls from prison staff should be as accurate as possible, giving correct information as to the life threatening nature of the incident. Emergency access for the ambulance and other emergency vehicles should be managed so as to limit delays through the security procedures; and 10. Regular, cooperative audits should be undertaken on information collection and transfer by police, correctional and related health agencies. The audit process should hunt for errors in systems.
5.9.2000	PPP	28.2 and 6.5.2002	Heroin toxicity	1. Consideration be given to broadening the availability of methadone to prisoners; 2. The Assistant Manager, SMU must consult senior management where complex issues of the placement arise; 3. The Director, SMU review with all providers the process for classification of prisoners, to ensure that prisoner placement is not compromised; and

Date of death	Prison	Inquest dates	Cause of death	Recommendations
				4. Where there are strong views by prison management on placement of high profile prisoners, that these views are made known to the Director, Sentence Management.
30.11.2000	MWCC	14.6 and 10.7.2002	Hanging - suicide	1. The "buddy" system be subject to an extensive review; 2. The "buddy" system be the subject to regular internal and external audit; 3. That only cells designed to house two or more prisoners be used for the "buddy" system; 4. That the Commissioner consider establishing a database for collection of information on the use of the "buddy" system within prisons as a precursor to a research project monitoring the long term effectiveness of the system.
7.5.2002	MAP	8, 12, 15 and 17.11.2004	Gunshot injury to chest	1. Recommendations from the Comrie Review be promulgated without delay; 2. The expression "*Prisoners don't move*" be deleted and substituted with "*Stop or I'll shoot*"; 3. The Tactical Options Model be reviewed; 4. That at least those responsible for training undergo psychological assessment to determine their suitability for the important task; 5. Consideration be given that all Prison Officers (or are to be) firearm trained first undergo psychological profiling;

Date of death	Prison	Inquest dates	Cause of death	Recommendations
				6. Consideration be given to more sophisticated scenario training such as "shoot - don't shoot exercises".
21.11.2002	Beechworth	6 - 10.12.2004	Hanging - suicide	1. Prison authorities and officers remain vigilant to identifying potential hanging points and ensuring their prompt removal once identified; 2. That the various agencies within PPP, institute a system which will ensure that there exists a central information source to which health providers contribute and have access and which therefore contains a complete record of all issues which arise in relation to a particular prisoner transfer and which might impact upon the prisoner's welfare or management in the event of a transfer decision being considered and/or made; 3. That the Corrections Health Board and Department of Human Services Healthcare Unit investigate the appropriateness of the psychiatric rating system currently employed in Victorian prisons; 4. That CV give consideration to reviewing the resourcing, operation and effectiveness of the Alexander South Youth Unit with a view to the creation of similar units and programmes in other prisons.

Queensland

619. Under the *Coroners Act 2003* a death in custody occurs if, when the person died, the person was:

(a) In custody; or

(b) Escaping, or trying to escape, from custody; or

(c) Trying to avoid being put into custody.

620. Only the State Coroner, Deputy State Coroner or specifically appointed coroners can investigate deaths in custody under the Act. All investigations into deaths in custody have to include an inquest (public hearing). The State Coroner has a protocol with the Aboriginal and Torres Strait Islander Legal Service to advise of any reported death in custody. This "advice" ensures legal representation (for example, of family members) in appropriate cases.

State Coroner Guidelines

621. Section 14 of the Act provides that the State Coroner's Guidelines must deal with the investigation of deaths in custody and must have regard to the recommendations of the Royal Commission into Aboriginal Deaths in Custody. The State Coroner's Guidelines provide:

In principle

622. Deaths in custody warrant particular attention because of the responsibility of the State to protect and care for people it incarcerates, the vulnerability of people deprived of the ability to care for themselves, the need to ensure the natural suspicion of the deceased's family is allayed and public confidence in State institutions is maintained. Further, a thorough and impartial investigation is also in the best interests of the custodial officers.

In practice

623. All "*deaths in custody*" must undergo an inquest. Note the extended definition given to that term by s 10 of the Coroners Act.

624. All investigations into deaths in correctional centres are undertaken by officers from the QPS's Corrective Services Investigation Unit (the CSIU). In consultation with the State Coroner the Inspector in charge of the CSIU has settled a standard form investigation report that will be used in these cases. Investigations are to be completed within six months of the date of death unless delays are unavoidable. No presumption of self-inflicted death or natural causes should distract an investigator from conducting an exhaustive inquiry.

625. Queensland Corrective Services will investigate the matter either by the appointment of independent external inspectors if the death appears to be other than by natural causes, or by departmental officers in other cases. These reports should always be obtained and the

investigators called to give evidence at the inquest. All deaths in police custody or that occur during a police operation will be undertaken by officers from the State Homicide Investigation Group and overviewed by officers from the Crime and Misconduct Commission or the Ethical Standards Command of the QPS. Most cases will also be referred to a forensic pathologist for analysis. If the investigation is conducted in accordance with the policies of those agencies relating to such deaths it will be consistent with the recommendations of the RCADIC and these guidelines.

Summary

626. The investigation is primarily the responsibility of the Coroner to whom the death is reported. He/she should obtain whatever expert assistance is needed to effectively investigate the matter. The investigation must extend beyond the simple medical cause of the death and seek to establish the circumstances that contributed to the death occurring and consider whether any changes to law or practice would reduce the likelihood of deaths occurring in the future.

Investigation of death of Mulrunji

627. The findings of Deputy State Coroner Chris Clements in respect of Mulrunji's death, which were handed down on 27 September 2006, are available at http://www.justice.qld.gov.au/courts/coroner/findings/mulrunji270906.doc.> The Deputy State Coroner was also Acting State Coroner at the time the findings were handed down.

628. The "Queensland Government response to coroner's comments in the inquest into the death of Mulrunji", tabled in the Queensland Parliament on 2 November 2006, are available at http://www.parliament.qld.gov.au/view/legislativeassembly/tableOffice/documents/TP_PDFS/TP381-2006.pdf>.

629. On the day that the Acting State Coroner handed down her findings the then Attorney-General, the Honourable Ms Linda Lavarch MP, referred the matter to the Director of Public Prosecutions (the DPP) for consideration whether any criminal proceedings should be instituted against any person.

630. On 14 December 2006 the DPP announced the decision that no criminal proceedings would be instituted by her office against any person in relation to the death.

631. On 18 July 2007 the Attorney-General, the Honourable Kerry Shine MP, tabled his report under section 11 of the Attorney-General Act 1999 regarding his decision to present an indictment charging Senior Sergeant Christopher James Hurley. That report outlines the events leading to the presentation of the indictment against Senior Sergeant Hurley charging him with unlawful assault and manslaughter in relation to the death of Mulrunji, the trial and the jury's delivery of its verdict of "not guilty" on 20 June 2007. A copy of that report is available at <http://www.parliament.qld.gov.au/view/legislativeassembly/tableOffice/documents/TP_PDFS/TP1670-2007.pdf.>.

632. For further information on general measures to address deaths in custody, undertaken by the Queensland Government in response to the coroner's recommendations, please see information below under the heading "Measures to address deaths in custody".

633. There were cases of deaths in custody and cases of death as a result of or in the course of police operations reported to the State Coroner in 2006. The following cases have either been listed for hearing or are still under investigation.

Deaths in custody/police operations which occurred in 2006

Year	Deaths in custody	Deaths in police operation	Total
1995	23	14	37
1996	26	6	32
1997	41	15	56
1998	29	9	38
1999	27	7	34
2000	19	20	39
2001	21	16	37
2002	18	17	35
2003	17	21	38
2004	13	18	31
2005	11	16	27
2006	16	16	32

634. Of the 32 deaths reported during 2006 pursuant to Section 13A, Coroners Act 1980, 4 were Aboriginal.

Aboriginal deaths in custody/police operations during 1995 to 2006

Year	Deaths in custody	Deaths in police operation	Total
1995	7	0	7
1996	2	0	2
1997	6	2	8
1998	2	3	5
1999	3	1	4
2000	4	1	5
2001	5	-	5
2002	3	1	4
2003	1	2	3
2004	2	3	5
2005	1	3	4
2006	4	0	4

635. During 2006 14 “death in custody” inquests and 14 “police operation death” inquests were finalized. Findings were recorded as to identity, date and place of death, and manner and cause of death.

636. Information relating to the 28 deaths into which inquests were held.

637. Persons who died in custody:

(a) 8 by taking their own life by hanging;

(b) 3 of natural causes;

(c) 1 by stabbing;

(d) 1 by choking;

(e) 1 by fall.

638. Persons who died as a result of or in the course of police operations:

(a) 1 from natural causes;

(b) 4 from a motor vehicle accident;

(c) 4 from gun shot wounds;

(d) 1 from overdose of one or more drugs;

(e) 2 from drowning;

(f) 2 from injuries received as a result of a jump/fall.

639. In relation to measures to minimize unnatural deaths in custody, all recommendations of the Coroner are considered by the NSW Department of Corrective Services and are implemented where deemed appropriate and if funding permits.

Queensland police service statistics

Deaths in police custody - June 1997 to October 2004

Note: all deaths in custody reported to and overviewed by Australian Institute of Criminology

Place of death	Year	M/F	Age	Cause of death	Ethnicity	AIC form received
Ingham Watch house	1997	F	29	Asthma		YES
Townsville General Hospital	1998	M	22	Self-inflicted burns	Aboriginal	YES
Cairns Watch house	1998	M	28	Acute bronchitis due to multiple drug toxicity		YES
Princess Alexander Hospital Brisbane	1998	M	47	Unknown		YES
Royal Brisbane Hospital	1999	F	16	Police pursuit traffic accident.	Aboriginal	YES
Lutwyche Road, Windsor, Brisbane	1999	F	15	Police pursuit traffic accident.	Maori	YES
Maroochydore W'house	2000	F	43	Chronic Pancreatitis.		YES
Primary School Oval, Thursday Island.	2000	M	19	Police pursuit traffic accident.	Torres Strait Islander	YES
Main Terrace, Deception Bay.	2000	M	30	Shot in self defence by police		YES
Gympie Rd, Carseldine	2001	M	17	Police pursuit traffic accident.		YES
Royal Brisbane Hospital	2001	M	33	Cardiac arrest		YES
Maryborough Watch house	2001	M	32	Asphyxiated on inhaled vomit due to or as a consequence of intoxication.		YES
Caboolture River, Caboolture	2001	M	29	Drowned.	PNG	YES
Roma St, Brisbane	2002	M	32	Fell while escaping police custody		YES
Lane Queen and Elizabeth Sts, Brisbane	2002	M	53	Shot in self defence by police		YES

Place of death	Year	M/F	Age	Cause of death	Ethnicity	AIC form received
Burnett St, Bundaberg	2002	M	23	Shot in self defence by police		YES
Mooloolaba Rd, Buderim	2002	M	35	Shot in self defence by police		YES
South Brisbane	2003	M	40	Shot in self defence by police		YES
161 Walla Rd, Regents Park, Brisbane	2003	M	30	Shot in self defence by police		YES
Freedom Service Station, Warrego Hwy, HattonVale	2003	M	39	Unknown.		YES
Padded cell of Hervey Bay Police Station Watch house.	2003	M	40	Non mechanical asphyxiation due to hypoglycemia.		YES
Normanton	2003	M	42	Epileptic fit.	Aboriginal	YES
Coen	2003	M	49	Died in police pursuit		YES
Coen	2003	M	34	Died in Police pursuit		YES
Hopevale to Cooktown	2003	M	28	Suicide	Aboriginal	YES
Boonah	2004	M	37	Suicide		YES
Royal Brisbane Hospital	2004	M	49	Suicide		YES
Cinnabar nr Kilkivan	2004	M	30	Shot by Police in siege situation		YES
Highgate Hill	2004	M	26	Amphetamine overdose		YES

Queensland Corrective Services statistics

640. When a death in custody occurs QCS will investigate the incident as required by the *Corrective Services Act 2006*.

641. The number of deaths of sentenced and remand prisoners in QCS custody, the cause of death, and whether the prisoner was Indigenous is set out in the table below. This table covers financial years from July 1997 to June 2006. Over this period of time the number of deaths per year has reduced significantly with only 2 deaths of apparent natural causes recorded during the 2005/06 financial year.

Deaths in correctional services custody - June 1997 to June 2006

Apparent cause of death	1997-98		1998-99		1999-2000	
	Indigenous	Non-indigenous	Indigenous	Non-indigenous	Indigenous	Non-indigenous
Apparent unnatural						
Suicide	1	3	1	4	0	5
Murder/homicide	0	2	0	2	0	1
Misadventure/accident/ drug overdose	0	3	0	2	0	1
Total unnatural	1	8	1	8	0	7
Apparent natural						
Natural causes	0	2	3	7	1	6
Total natural	0	2	3	7	1	6
Total	1	10	4	15	1	13

Apparent cause of death	2000-01		2001-02	
	Indigenous	Non-indigenous	Indigenous	Non-indigenous
Apparent unnatural	0	0	0	2
Suicide	1	5	1	6
Murder/homicide	0	0	0	0
Misadventure/accident/ drug overdose	0	0	0	0
Total unnatural	1	5	1	8
Apparent natural	0	1	0	0
Natural causes	0	4	1	4
Total natural	0	5	1	4
Total	1	10	2	12

Apparent cause of death	2002-03		2003-04		2004-05		2005-06	
	Indigenous	Non-indigenous	Indigenous	Non-indigenous	Indigenous	Non-indigenous	Indigenous	Non-indigenous
Apparent unnatural								
Suicide	0	4	1	2	0	2	0	0
Murder/homicide	0	0	0	1	0	0	0	0
Misadventure/accident/ drug overdose	0	0	1	0	0	0	0	0
Subtotal	0	4	2	3	0	2	0	0
Apparent natural	3	0	3	5	0	2	0	2
Total	3	4	5	8	0	4	0	2

Measures to address deaths in custody

642. Following the 1992 Royal Commission into Aboriginal Deaths in Custody, the State has worked to progressively implement the nearly 300 recommendations, relevant to Queensland.

643. Recognizing that a significant number of deaths in custody are the result of self-harming behaviour, the Queensland Government operates independent cell visitor services. The service involves Indigenous community members being available on a part-time basis to attend a local watch house to offer comfort and support to detainees.

644. They provide assistance by observing and facilitating effective communication between detainees and watch-house staff and can play a part in preventing any attempt at self-injury and identifying symptoms that suggest the need for medical attention. They can also provide information and referral support services to detainees. It complements the diversion of people from custody programme and the provision of safe custody for those people who need to be detained, particularly in police watch houses.

645. QCS has an At-Risk Management Procedure to ensure prisoners who are at risk of self-harm or suicide are identified and managed appropriately. When such a prisoner is identified various actions are taken which may include a change in accommodation, regular observations by QCS staff, medical or psychological assistance and removal of any objects which may be used to self-harm. For Indigenous offenders special provision is made for contact with an Indigenous Support Officer or Indigenous Elder.

646. On 2 November 2006 the Queensland Premier tabled in Parliament the Government's response to the Acting State Coroner's findings in the inquest into the death of Mulrunji in the Palm Island watch house on 19 November 2004. The Queensland Government generally supports the coroners comments and is already addressing the coroner's recommendations:

(a) Arrest and policing: the Queensland Government has always supported the principle that police should use arrest as a last resort. The Police Powers and Responsibilities Act 2000 will be amended to insert an example to reinforce the principle. The Queensland Police Service's operational procedures manual will be likewise amended. Police training in arrest and custody issues, particularly relating to indigenous people, will also be reviewed;

(b) Diversionary centres and community patrols: the Queensland Government has already established a cell visitors' programme. An integrated diversionary services model, including community patrols, will also be developed;

(c) Health assessment, supervision and monitoring: the Queensland Police Service will review current processes and minimize situations where watch-house detainees are left unattended;

(d) Investigation: the Queensland Police Service had previously entered into an MOU with the State Coroner and the Crime and Misconduct Commission about the investigation of custodial deaths. The QPS will seek to review the MOU to take account of the coroner's findings.

647. The Queensland Government has requested the Crime and Misconduct Commission to conduct a review into policing issues in Aboriginal and Torres Strait Islander communities. Among other important issues, the CMC will investigate current practices relating to detention in police custody in remote communities, including the monitoring of detainees in watch houses and other police facilities in Aboriginal DOGIT communities.

648. The security and safety of persons held in watch houses will be enhanced as a result of current upgrades and/or installation of closed circuit digital recording facilities (CCTV) in all custodial areas of police stations in Aboriginal Deed of Grant of Trust communities over a 12 month period.

649. In relation to the installation of surveillance facilities in all watch houses, the Police Commissioner has undertaken to conduct an audit of all existing surveillance facilities in watch houses and identify overall priorities for upgrading facilities across Queensland's watch houses.

650. The Queensland Government remains committed to working to address the coroner's findings and preventing the occurrence of similar tragedies in the future.

Western Australia

651. The Professional Standards division is responsible for ensuring the WA Department of Corrective Services achieves the highest level of professionalism in all areas of practice, behaviour and service delivery. The division's services include corruption prevention, internal witness support, compliance testing, complaints administration, investigations and governance. It also coordinates reforms associated with recommendations from external and internal reviews. Including:

(a) Providing independent reports to the State Coroner for inquests into the deaths of offenders, and assists in the coordination of and preparation for these inquests; and

(b) Providing responses to reports and recommendations released by the Coroner.

652. All deaths are to be subject to a Coronial Inquest on a date determined by the WA Coroner and include deaths due to terminal illnesses as well as those attributed to suicide.

653. Between the 2004/05 and 2006/07 financial year in Western Australia there were 16 deaths in prison custody in Western Australia. The initial death in custody reports had indicated that of the 16, 10 were natural causes, 5 were suicide and 1 was misadventure. However, it is noted that the Coroner has only completed investigations into two of the deaths. All of the deaths in custody during this period were male. Eight of the 16 prisoners who died in custody were Indigenous.

Place of death in custody	No. of deaths
Casuarina	6
Acacia	2
Hakea	1
Albany	3
Wooroloo	1
Karnet	1
Broome	1
Roebourne	1

Ages	
<30	2
30-40	3
40-50	4
>50	7

654. For information on the results of the investigations and measures to prevent re-occurrence reports are available on the WA Coroners website <www.coronerscourt.wa.gov.au/>. The Professional Standards Division's Internal Investigations Unit conducts an investigation into every aspect of the prisoners' management up to the time of their death, and reports its findings to the Coroner, in addition to a WA Police inquiry.

South Australia

655. In the 2006–07 year, there were four deaths in custody reported:

Location of death	Sex	Age	Ethnicity	Cause of death	Date
Hospice	Male	75	Caucasian	Natural causes	21/12/2006
Adelaide Remand Centre	Male	34	Caucasian	Suicide	7/2/2007
Hospital	Male	66	Caucasian	Natural causes	25/4/2007
Adelaide Remand Centre	Male	30	Caucasian	Suicide	29/4/2007

Investigations into these deaths are ongoing

656. The Department has established an Investigations Review Committee, chaired by the Chief Executive that monitors the implementation of recommendations resulting from Coronial Inquiries and internal investigations. This is an effective way to ensure that corrective action is taken where required. Any systemic issues identified through this process are addressed through a change in policies.

657. From May 2006 to end June 2007, seven Coronial Inquiries relevant to the Department were handed down.

M.J. Hulsinga

Death in custody 4 October 2004 - Coroner's report handed down 1 May 2006

658. The Court found that the cause of death was from natural causes and was the result of a left temporal intracerebral haemorrhage due to arteriovenous malformation. The Coroner declined to make any recommendations in regard to this matter.

D.K. Walker

Death in Custody 2 June 2003 - Coroner's report handed down 1 May 2006

659. The Court found that the cause of death was a result of the consequences of hanging. The Coroner's recommendations and action that has been taken by the Department include:

(a) Recommendation 1 - That the Department for Correctional Services implement an audit system which facilitates regular inspections of all South Australian prisons to identify and eliminate potential hanging points where possible, not only within cells, but also in unsupervised areas and areas without clear camera surveillance;

(i) The Department for Correctional Services completed an audit of its prison facilities to identify potential hanging points consistent with the move toward "safe cells". As a result of that audit, work to remove hanging points in existing cells will continue in accordance with available funding. Removal of hanging points in other prisoner access areas, particularly in communal showers, is part of the consideration;

(ii) The Government recently announced that new prison infrastructure will comply with "safe cell" standards, as will any new cell accommodation in existing facilities;

(b) Recommendation 2 - That the Department for Correctional Services, in conjunction with the Prison Health Service, develop and implement a system by which prison nurses document relevant information about prisoners with health concerns and make this information available to corrections officers to assist them in the day-to-day management of those prisoners in their care;

(i) Health Services and Correctional staff have worked to address this matter. A range of system protocols have been implemented which greatly improve communication and the sharing of information; and

(ii) The Department for Correctional Services has also established special teams that include correctional staff and medical professionals to identify and target prisoners at risk and to plan for their management. Within these teams, the transfer of relevant information between correctional and medical staff is more effective;

(iii) The Department for Correctional Services is very aware of its duty of care responsibilities to prisoners and offenders. The new "safe cells" standards are the benchmark for future prison construction and have been adopted by all States and Territories for new facilities. Cells constructed under the "safe cell" standards are free of ligature points.

N.J. Brooks

Death in Custody 6 May 2003 - Coroner's report handed down 25 September 2006

660. The Court found that the cause of death was a result of suffocation by plastic bag. The Coroner concluded that "no criticism should be levelled at any individual officer of the Department for Correctional Services in this matter … that the individual prison officers all performed their various duties in an appropriate matter" (9.1). The Coroner was also satisfied that the actions taken in response to the recommendations made by the Department's investigation and report were appropriate (9.6).

661. The Coroner made one recommendation for the Department that:

(a) Recommendation - That the Department gives consideration to the introduction of measures of the kind referred to (in the conclusions).

662. Summary of Conclusions that are relevant for the Department and subsequent action taken:

(a) 9.2: The Coroner noted that Mr. Brooks was never the subject of one of the self-harm notification forms that existed at the time of his incarceration:

(i) The Coroner determined though that no great significance should be placed upon this. He noted that "… the forms are now, and even then were, somewhat obsolete, any prison officer who noticed this fact may have thought nothing of it";

(ii) The forms have been replaced by an improved system that has addressed the issue of staff notification of high risk status. This includes the implementation of the current yellow tag system and the High Risk Assessment Teams;

(b) 9.3: Contrary to the ordinary "doubling up" practice of prisoners assessed as "at risk", Mr. Brooks was in single cell accommodation and the Coroner considered that this may have hindered communication to custodial staff of Mr. Brooks' risk status:

(i) Mr. Brooks was single celled accommodated as part of the Department's duty of care. Although prisoners identified as "at risk" are often doubled up to reduce the risk of self-harm, a single cell was more appropriate for Mr. Brooks, given that he had partly undergone gender reassignment;

(c) 9.4: Toxicology reports indicate that Mr. Brooks has no recorded level of his prescribed antidepressant medication in his blood stream, though records specify that he was provided the medication daily, thereby suggesting that he had ceased taking the medication at some point; and

(d) 9.5: In the Coroner's opinion, "if medical advice is that medication is necessary for the prisoner's welfare, the custodial staff have the authority and duty to administer it by duress if necessary without any further authorization under the Mental Health Act":

(i) Staff, management and the Prison Health Service may not be aware that a prisoner has ceased taking medication. In the case that staff are aware of the refusal, to administer forcibly could potentially present an even greater safety risk to prisoners and staff. Medication management is a role of Prison Health Staff. It is the Department's position that the issue, distribution and management of all medication remains under the guidance and control of the Department of Health. Notwithstanding, the Department is seeking Crown Law advice in regard to the forceful administration of medication to prisoners;

(e) 9.8: The Coroner noted that "the Prison Health Service appears to operate in relation to a prisoner in much the same way that the mainstream health system operates in relation to ordinary members of the public"; and

(f) 9.9: In the Coroner's view, "this situation is not altogether satisfactory within the prison system and the Prison Health Service is not without restrictions". Although the Coroner acknowledged that the exchange of information between the custodial system and the Prison Health Service has improved greatly, he concluded that it remains "restricted in the same way, and for the same reasons, that exchange of information between medical advisers and persons other than their patients is restricted in the general community … something more than this is required of a Prison Health Service":

(i) As a result of Mr. Brooks' death, and up to and immediately following the death of another prisoner in January 2004, the Department and the Prison Health Service have worked to address this matter. A range of system protocols have been implemented which greatly improve communication and the sharing of information;

(ii) The Department has also established a formal process in every institution to assess, monitor and implement management strategies for "at risk" prisoners. Incumbent with this formal process is the ready exchange of information, both medical and custodial;

(iii) The Department is continuing discussions with the Department of Health to further improve and enhance the information sharing process;

(iv) This issue will be further addressed with new prison infrastructure where special needs units for prisoners identified as "at risk", as recommended previously in other Inquests by the Coroner's Court, will likely be provided;

(g) 9.10: The Coroner noted that the Prison Health Service is not subject to specific statutory recognition and a statutory codification of the existence and role of the Prison Health Service should be considered. In particular, a provision for the relaxation of the ordinary obligations of confidentiality imposed upon medical practitioners:

(i) The Department has been advised that the Department for Health has recommended that Crown Law advice be sought in regard to changing South Australian health legislation to legitimise the sharing of health information between prison health care providers and prison non-health service providers.

B.M. Turner and T.M. Glennie

Deaths in Custody 9 February 2004 and 27 September 2004 - Coroner's report handed down 18 October 2006

663. A joint inquest was held into the deaths of Barry Michael Turner and Troy Michael Glennie because of common features surrounding their deaths. The Coroner stated in her report that although satisfied on the evidence of the circumstances surrounding both deaths, that the action of the Correctional Officers and the attempts to resuscitate were "appropriate and conducted in a timely fashion", the attending officers in both cases were not in possession of a "Hoffman" knife to assist in removing the ligature.

664. The Inquest found that Mr. Turner died at the Adelaide Remand Centre on 9 February 2004 as a result of neck compression due to hanging.

665. The Inquest found that Mr. Glennie died at the Adelaide Remand Centre on 27 September 2004 as a result of neck compression due to hanging.

666. The Coroner's recommendations and action that has been taken by the Department include:

(a) Recommendation 1 - That on the assumption that the Government has no intention in the foreseeable future of providing funding for the upgrade of prison cells to comply with "safe cell" principles, the Minister for Correctional Services seek funding to convert a portion of the existing facilities in such a way as to provide safe and humane "special needs" units in each custodial institution for the accommodation of those prisoners requiring this type of management:

(i) The Department does not have designated "special needs" units as recommended in the Coroner's report. Prisoners designated as "at risk" and showing a potential to self-harm may be placed either in Special Management Units or prison infirmaries. These units provide a safe environment for prisoners, until such time that they undergo any medical assessment and/or treatment, as may be required, prior to their return to the mainstream prison population;

(ii) Following the deaths of Mr. Turner and Mr. Glennie, changes and improvements to the Department's self-harm management system occurred to ensure that prisoners, whom medical staff consider require daily assessment, could be easily identified and not overlooked;

(iii) Specifically, the self-harm notification forms have been replaced by an improved system that has addressed the issue of staff notification of high risk status. There is now a formal process in every institution to assess, monitor and implement management strategies for "at risk" prisoners. Incumbent with this formal process is the ready exchange of information, both medical and custodial. This includes the implementation of the current yellow tag system and the High Risk Assessment teams;

(iv) Furthermore, those prisoners in this category are not left alone in their cell, but placed with another prisoner or in the infirmary as an interim measure;

(v) This recommendation is therefore considered to be adequately addressed in the current practices of the Department, though will be further addressed with the New Prisons Project where special needs units, as recommended by the Coroner, will likely be provided;

(b) Recommendation 2 - That all Correctional Services officers who have contact with prisoners in South Australian prisons and the Adelaide Remand Centre be provided with a Hoffman knife and have it in their possession ready for immediate use whenever they are working with prisoners:

(i) It is critical for the safety of all prisoners and staff that weapons be kept out of the hands of prisoners. Staff with potential weapons on their person, offer the ideal opportunity for prisoners to forcibly disarm them or steal their weapons and use them against other staff and prisoners;

(ii) For that reason, the Department, like many other correctional jurisdictions, does not allow weapons into a prison environment;

(iii) If this policy was extended and knives were issued to all officers, as has been recommended by the Coroner, it would be very difficult to maintain the security of a prison. Knives could be misplaced or stolen, and their presence in the hands of prisoners would present an even greater safety risk to prisoners and staff;

(iv) Given these circumstances, it is not the Department's intention to adopt the Coroner's recommendation in this instance;

(v) Notwithstanding, the Department recognizes that there must be a balance between prisoner safety and security. The use of Hoffman knives in prison for use in cases of emergencies are therefore an exception to this policy. One knife has been placed in every accommodation unit and is either carried by staff or is properly secured in the unit office. The knives are easily accessible to staff.

L.N. Harkin

Death in Custody 20 June 2003 - Coroner's report handed down 17 November 2006

667. The Court found that the cause of death was the result of ischaemic heart disease. The Coroner found that the actions taken by Correctional Services officers and ambulance officers in an attempt to revive Mr. Harkin were "commendable".

668. Although the Coroner noted that there is no evidence that wheelchair transport to the Infirmary would have any causal relevance to Mr. Harkin's death, it was concluded that it would be preferable to transport prisoners with chest pains complaints in this way. The Coroner recommended:

> That the Department for Correctional Services take the necessary steps to ensure that a wheelchair is available for use at each Correctional Institution to transport prisoners to the Infirmary in appropriate circumstances and that suitable guidance is provided to Correctional Service Officers concerning when wheelchairs are to be used.

669. The Department now has wheelchairs on site at all institutions, which included the purchase of two new wheelchairs to supply those institutions that did not previously have them.

670. A Director's memorandum relating to the appropriate circumstances and providing suitable guidance for the use of wheelchairs has been posted and communicated to all relevant custodial staff at all institutions.

S.M. Chalklen

Death in Custody 3 June 2005 - Coroner's report handed down 31 January 2007

671. The Coroner found that Mr. Chalklen died at the Adelaide Remand Centre on 3 June 2005 as a result of ischaemic heart disease due to severe atherosclerosis. The Coroner concluded that the events surrounding Mr. Chalklen's collapse and attempts to resuscitate by the Correctional Officers involved were conducted appropriately and in a timely fashion.

672. The Department's report to the Coroner included a recommendation related to first aid qualifications of institutional operational staff that has since been implemented. Specifically, General Managers must maintain a list of officers with current first aid certificates and ensure that at least one officer on each watch is first aid qualified.

J. Trenorden

Death in Custody 4 February 2004 - Coroner's report handed down 26 April 2007

673. The Court found that the cause of death was as a result of asphyxia caused by the combined effects of neck compression from hanging and suffocation from a plastic bag over the head. The Coroner concluded that Mr. Trenorden "was bent on taking his own life from an early point after the events of 31 January 2004. He was also astute to deceive all those in whose custody he was placed about his suicidal intentions."

674. The Coroner acknowledged that new processes put in place within the Department immediately following the death of Mr. Trenorden should prevent a repetition of the oversight or absence of previous information relating to risk status. The Department and the Prison Health Service has established a formal process in every institution to assess, monitor and implement management strategies for at risk prisoners. Incumbent with this formal process is the ready exchange of information, both medical and custodial.

675. The Coroner referred to previous inquest findings in relation to the adoption of "safe cell" principles and acknowledged the Department's audit of its prison facilities to identify potential hanging points consistent with the move toward "safe cells". As advised in reports of the Department previously tabled in Parliament, the audit resulted in the removal of hanging points and the refurbishment of certain existing cells in accordance with available funding.

676. The Government also announced that new prison infrastructure will comply with "safe cell" standards, as will any new cell accommodation in existing facilities.

677. The new "safe cell" standards are the benchmark for future prison construction and have been adopted by all States and Territories for new facilities. Cells constructed under the "safe cell" standards are free of ligature points.

678. The Coroner also refers to the time taken to finalize the design of "safe beds" ready for manufacture. Final drawings of the modified bunk beds were received by the Department in February 2007 and quotes are now being sought from Prison Rehabilitative Industries and Manufacturing Enterprises (PRIME) and external manufacturers. As the Coroner correctly noted, the ability of the Department to replace existing bunk beds throughout the prison system with the new design beds will depend on the "estimated cost and the availability of funds".

679. The Coroner made one recommendation:

(a) That the Minister for Correctional Services and the Chief Executive of the Department for Correctional Services give consideration to the issue of non-tearable blankets and sheets within South Australian prisons;

(b) The Department for Correctional Services has explored the issue of non-tearable blankets and sheets and determined that it would not be appropriate to adopt such a practice at this time;

(c) Canvas has been identified as the only available fabric for the purpose and would impact greatly on prisoners' comfort and be contrary to providing a "normalised" environment to prisoners during their period of incarceration;

(d) Notwithstanding, each institution has cells equipped with canvas bedding to allow such an alternative for prisoners that are identified as high risk of self-harm.

Tasmania

680. The findings and recommendations of the Coronial Inquest into five deaths in custody, and an investigation into Risdon Prison and the Prison Hospital, were handed down in early 2001. Implementation of these recommendations continued during 2005-2006.

681. The Operational Review Officer, appointed in November 2004 to monitor the implementation recommendations, provided two reports in 2005-2006. The reports dealt with the Prison Service's implementation of the Coroner's recommendations and the Ombudsman's recommendations about training, drugs, inmate health, safety and well-being and management. A report on the implementation of the Ombudsman's recommendations about prison security will be delivered in 2006-2007. The Prison Service expects that the implementation of both reports will then be finalized.

Australian Capital Territory

682. Since 2000, there have been no deaths in ACT correctional facilities. The last death in an ACT correctional facility was in 1998. Since then ACT Corrective Services has instigated a process in which all detainees are visually checked every 30 minutes day and night.

683. In 2002, a 48-year-old male died soon after being released from the City Watch House. He had broken a number of ribs as a result of a fall within the Watch House, however, an investigation did not identify any evidence of direct police involvement in the injuries.

Question 25

Please provide the Committee with statistics of mandatory sentencing cases according to location, sex, age and ethnicity. Please also comment on this aspect of the Concluding Observations of the Committee on the Rights of the Child of September 2005 (CRC/C/15/Add.268, paras. 72-74).

684. As a preliminary point, the Australian Government notes that it is arguable that this question lies outside the Committee's mandate, and that follow-up to comments of the Committee on the Rights of the Child should be done by that Committee. Nonetheless, to assist the Committee Against Torture, the Government provides the following information.

685. The first part of the response below provides Commonwealth statistics of mandatory sentencing cases. The second part of the response provides further detailed information from Western Australia, which is the only Australian State with mandatory sentencing laws relevant to Issue 25.

Commonwealth Government information

686. As a general rule, the criminal law of the Commonwealth gives a broad discretion to a sentencing judge, with the legislation proscribing only a maximum penalty for the offence in question.

687. The exceptions are sections 232A and 233A of the Migration Act 1958 which provide offences relating to bringing groups of non-citizens into Australia. These offences provide for maximum penalties of 20 years' imprisonment. Sections 233B and 233C of the Migration Act provide for mandatory sentences in relation to those offences. Section 233B operates to prevent "non conviction" based orders being given in relation to either of the offences. Section 233C basically provides that (unless a person is under the age of 18 at the time of the offences) the

court must impose a sentence of imprisonment of at least eight years if the conviction is for a repeat offence, and five years' imprisonment in any other case; and that the court must set a non-parole period of at least five years if the conviction is for a repeat offence, or a three year non-parole period in any other case.

688. Records held by the CDPP show that the following information relating to persons sentenced under these provisions:

Place of sentence	Sentence	Age at time of sentence	Sex
WA	5 years, non parole period of 3 years	29	Male
WA	7 years 6 months, non parole period 3 years and nine months	30	Male
WA	5 years, non parole period of 3 years	19	Male
WA	5 years, non parole period of 3 years	62/80*	Male
WA	5 years, non parole period of 3 years	32	Male
WA	5 years, non parole period of 3 years	18	Male
WA	5 years, non parole period of 3 years	19	Male

* Prosecution information that the defendant aged 62, defence maintained defendant aged 80.

689. The offence provisions were introduced in July 1999 and since that time, the CDPP has prosecuted 431 matters under these provisions.

690. The mandatory sentencing provisions came into force on 27 September 2001. Since that time, 120 defendants have been sentenced under the provisions. Not all of the matters completed after 27 September 2001 were affected by the mandatory sentencing provisions, however, the CDPP does not retain readily available statistical information about the matters affected by the mandatory sentencing provisions.

691. The CDPP does not retain readily available statistical information about the location, sex, age and ethnicity of the defendants in these matters.

692. The mandatory sentencing provisions under the Migration Act (which apply to people smuggling convictions) do not apply if it is established on the balance of probabilities that the person was aged under 18 years at the time of the offence.

Western Australia

693. The mandatory sentencing law (currently in s 401(4) of the Criminal Code (WA)) was introduced by the previous Western Australian Government as part of overall changes to WA legislation dealing with burglary, particularly with respect to home burglary, aggravated burglary and those offenders who repeatedly commit home burglary. This mandatory sentencing law only applies to a person convicted of burglary in respect of a place ordinarily used for human

habitation and if the person is a repeat offender at the time of committing that offence (that is, the person has on two previous occasions already been convicted of this offence of home burglary).

694. In the 11 years since 1997 there have been 334 cases in Western Australia where juveniles have been convicted and sentenced pursuant to mandatory sentencing legislation. Of these 334 cases, 278 have been in relation to Indigenous Australians and 56 in relation to Non-Aboriginals. There is no statistical information as to sex. However, it is no doubt the case that the majority of sentences under this legislation would be in relation to males. The annual break-up is shown in the table under.

Year of conviction	A	NA	Grand total
1997	45	12	57
1998	10	2	12
1999	25	10	35
2000	38	3	41
2001	27	8	35
2002	33	3	36
2003	34	2	36
2004	29	7	36
2005	11		11
2006	20	8	28
2007	6	1	7
Grand total	278	56	334

These figures relate only to juveniles.

695. Mandatory sentencing laws for home burglary impact on young Aboriginal people at a greater rate than any other group. In the juvenile justice area, regional youth represent approximately half of the young people dealt with by Community Justice Services and Juvenile Custodial Services, and of those regional youth in custody, 80-90 per cent is Aboriginal. Between 2000 and September 2005 there were 193 Juveniles that were sentenced under the mandatory sentencing laws, and 168 were Aboriginal. Approximately 145 of the 168 Aboriginal juveniles sentenced under the mandatory sentencing laws are from regional areas.

696. Section 401(4)(a) of the Criminal Code applies to adults as well as juveniles. However, mandatory sentencing legislation has no real application to adults because by the time the adults are subject to the mandatory sentencing regime the sentence to be imposed would be in excess of 12 months anyway.

697. The Committee on the Rights of the Child of September 2005 (CRC/C/15/Add.268, paras. 72-74 recommended in the recommendation in para. 74(f) that the Commonwealth should "take measures with a view to abrogating mandatory sentencing in the criminal law system of Western Australia". Western Australia considers that mandatory sentencing for home burglary for repeat offenders is an appropriate and proportionate penalty for Western Australia, including the need to protect people living in their homes and to provide them with a sense of safety and

security. There are currently no State Government proposals to amend s 401(4) of the Criminal Code. The WA Government believes that detention is an appropriate way to deal with very serious repeat offenders and does not support Commonwealth legislation being enacted to override the WA legislation as recommended by the Concluding Observation of the Committee on the Rights of the Child.

Question 26

Please advise the Committee whether the Immigration Detention Standards, applied to private contractors managing immigration detention facilities, make specific reference to the Convention and human rights law. Please also indicate how compliance with human rights norms within the immigration detention centers is monitored by the authorities.

698. The Immigration Detention Standards (IDS) do not explicitly refer to the Convention or to human rights law. However, they do make reference to an underlying principle that Australia's international obligations, such as those relating to human rights, inform the approach to delivery of the immigration detention function, and they make specific reference to access of people in immigration detention to the Human Rights and Equal Opportunity Commission (HREOC), the Commonwealth Ombudsman and the Australian Red Cross. Specific mention of the Convention is made in clause 1.24 of Schedule 2 to the Detention Services Contract, under the heading "General Legal and Policy Framework", and specific mention of Australian human rights legislation is made in clauses 4.1.12 and 4.1.14 of Schedule 2, under the heading "Dignity".

699. Compliance with human rights norms within the immigration detention centres is monitored in several ways. The Department of Immigration and Citizenship (DIAC) monitors the performance of the detention services provider to ensure that the IDS requirements are met and that an appropriate level of amenity is maintained in immigration detention facilities. DIAC:

(a) Receives from the services provider daily reports about incidents and complaints that occur within facilities;

(b) Obtains independent and expert opinion about the causes and/or consequences of any critical or major incident that occurs within the detention context;

(c) Conducts regular audits of services provider performance;

(d) Requires the services provider to develop and implement a programme of internal performance audits against the IDS;

(e) Requires the services provider to report monthly against the benchmarks described in the IDS;

(f) Conducts monthly management committee meetings with the services provider to discuss and address matters relating to delivery of detention services;

(g) Provides the services provider with formal, written quarterly assessments of the services provider's performance, based on an assessment of all aspects of the provision of detention services against the IDS; and

(h) Briefs the Minister regularly about the incidents occurring in detention facilities and about the services provider's overall performance.

700. HREOC is able to investigate an act or practice of the Australian Government that may be inconsistent with human rights, defined as rights recognized in the International Covenant on Civil and Political Rights and other relevant international instruments. HREOC can also inquire into and attempt to conciliate complaints of unlawful discrimination or harassment in various areas of public life, including discrimination on the basis of age, race, colour, descent, national or ethnic origin, sex, pregnancy, marital status or disability.

701. The Commonwealth Ombudsman has the authority under the Ombudsman Act 1976 to investigate administrative actions of the Department, either in response to a complaint or on the Ombudsman's own motion and the Department has referred matters of its own administration to the Ombudsman for investigation. In 2005 the Ombudsman Act 1976 was amended to give the Commonwealth Ombudsman additional powers in relation to the migration function and in relation to service providers to the Commonwealth such as the detention services provider. The Migration Act 1958 was amended similarly. For more details regarding these changes, see paragraphs 6 to 9 of the response to Issue 9.

702. Ombudsman staff regularly visit all mainland detention centres to take complaints directly and have established a process to ensure that complainants can contact the Ombudsman in private and without fear of repercussion. The Ombudsman has also established a programme of regular detention centre inspection visits.

703. The Ombudsman pays particular attention to the circumstances of any children who may be held in forms of alternative or community detention.

704. The Ombudsman investigates complaints regarding the provision of health care and mental health care for detainees. The Ombudsman enquires as to the adequacy of health-care services on inspection visits and has an observer on the multidisciplinary Detention Health Advisory Group. Where the need for mental health care becomes apparent to the Ombudsman in immigration matters, arrangements have been established to raise this immediately with DIAC or the detention services contractor.

705. People in immigration detention have a right to make complaints to HREOC under the Human Rights and Equal Opportunity Act 1986 and to the Commonwealth Ombudsman under the Ombudsman Act 1976. Moreover, the Detention Services Contract requires that any request by a person in immigration detention to make contact with HREOC or the Ombudsman is to be facilitated.

706. The Commonwealth Privacy Commissioner has the authority under the Privacy Act 1988 to investigate an act or practice of an agency that may breach an Information Privacy Principle and, where the Commissioner considers it appropriate to do so, to endeavour, by conciliation, to effect a settlement of the matters that gave rise to the investigation. The Commissioner also has the power to make reports to the Federal Parliament.

707. The Commonwealth Auditor-General has the authority under the Auditor-General Act 1997 to conduct performance audits of government agencies, including DIAC, and to conduct a review or examination of a particular aspect of the operations of the whole or part of the Commonwealth public sector, which would include the operations of immigration detention services. Where the Auditor-General conducts such a review, he must provide a report to both Houses of Parliament and to the relevant Minister or Ministers.

Question 27

In view of the concerns expressed by the United Nations Working Group on Arbitrary Detention (E/CN.4/2003/8/Add.2) and the HREOC relating to the mandatory detention of asylum-seekers and its impact upon their mental health, please inform the Committee of the number of reported incidents of self-harm, suicide attempts and suicides in immigration detention facilities since the last periodic review in 2000.

708. The Australian Government considers the Committee's duplication of work within the mandate of the United Nations Working Group on Arbitrary Detention to be unnecessary. It also considers that the Committee is not the appropriate forum for discussion of the specific concerns raised.

Question 28

Also in this respect, and in view of the findings of the report published by HREOC in January 2007 containing observations following the inspection of Mainland Immigration Detention Facilities, please provide further information on the mental health care available for detained asylum-seekers and comment on the follow-up that will be given to the recommendations by HREOC.

709. As a preliminary point, the Australian Government notes that it is arguable that the Committee's question lies outside its mandate, as it is unclear how the question relates to the implementation of Australia's obligations under article 11 of the Convention. However, to assist the Committee, the Australian Government provides the following information.

710. The HREOC report noted a positive change in attitude by staff who manage or deliver services at immigration detention centres (IDCs). The efforts by both the Department of Immigration and Citizenship (DIAC) and detention service provider staff to deal fairly and reasonably with clients in an open and accountable manner have been recognized.

711. The development of the detention health system since the report of the Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau, by Mr. Mick Palmer AO APM, July 2005 ("the Palmer Report"), is supported by the Detention Health Advisory Group, which consists of nominees from key Australian professional medical organizations. The Royal Australian College of General Practitioners has recently developed Detention Health Standards commensurate with Australian General Practice Standards to support this system.

712. DIAC has adopted a number of initiatives to improve the mental health and well being of people in immigration detention and is continuing to review the provision of health care more broadly to ensure that they are commensurate with those available to the general population in

Australia. DIAC will continue to monitor the health and mental health-care needs of all clients accommodated at IDCs to ensure that models of health care and health resources reflect client needs.

713. All health related recommendations made by HREOC are being addressed. The relevant recommendations are provided below with explanations of how these have been, or are being, addressed.

Mental health

714. **DIMA[18] should investigate the adequacy of the mental health staffing levels in the Northern centre, as a matter of urgency.**

Complete - DIAC reviewed hours of psychologists at the Northern Immigration Detention Centre (in Darwin) (NIDC) and increased hours to meet the workload. DIAC is continuing to review staffing based on the population.

715. **DIMA should review the adequacy and appropriateness of the current systems for routine mental health assessments and ongoing mental health monitoring in the Northern centre, as a matter of urgency. DIMA should provide the results of that review to HREOC once completed.**

Complete - DIAC consulted with health staff at NIDC and corporately with the health service provider to review the systems for routine mental health assessments and ongoing mental health monitoring at NIDC. It was agreed that the current arrangements provided appropriate support for the client group at NIDC.

716. **DIMA should ensure that the Suicide and Self-Harm (SASH) system is used only for the benefit of a detainee's mental health. The implementation of the SASH system should remain under the control of mental health staff rather than detention staff.**

Complete - Comprehensive SASH reviews are only undertaken by qualified mental health staff. DIAC has commenced a project with Forensicare of Monash University to undertake a review of the current suicide and self-harm instrument and protocol used in immigration detention centres.

717. **DIMA should consider building an observation area in Villawood that is not in Stage One and is close to medical staff.**

Complete.

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[18] Note: What was then the Department of Immigration and Multicultural Affairs (DIMA) is now the Department of Immigration and Citizenship.

718. **DIMA should consider providing access to phone counselling for detainees suffering mental health episodes at night.**

This is being considered as part of the health services delivery model. People in detention are able to access community mental health helplines such as Lifeline.

719. **DIMA should ensure the availability of an appropriately supported facility to transfer mentally unwell detainees who do not require treatment in a State-run mental health facility, but who can no longer sustain life in a detention centre.**

Placement decisions for people in detention are responsive to clinical advice. Community-supported placements and private hospital placements are available where clinically recommended.

Physical health

720. **DIMA should investigate and take prompt and appropriate remedial action regarding certain medical nurses in Villawood.**

No specific complaints have been received in respect to this assertion. However, the health service provider has reinforced with staff the importance of adhering to complaints management systems.

721. **DIMA should ensure prompt responses to recommendations made by doctors, especially where there are recommendations for external treatment.**

DIAC follows up on all medical recommendations made by the health service provider who coordinates medical advice from treating physicians. All recommendations for external treatment are followed within timelines commensurate with Australian community standards.

722. For information on services available for victims of torture the Committee is referred to the response to Issue 33, and for information on monitoring mechanisms of places of detention the Committee is referred to the response to Issue 41.

Question 29

The Committee, while noting the amendment to the Migration Act in July 2005 providing that the detention of children only be used as a measure of last resort, requests the State party to clarify the number of children in mandatory immigration detention since 2000 and to provide information, relating to each year, on the average length of time children spent in detention.

723. The Australian Government considers that this question lies outside the Committee's mandate.

Article 12

Question 30

Please provide updated detailed information on any specific cases of torture or cruel, inhuman or degrading treatment or punishment or similar offences committed by members of the armed forces and other personnel including contractors stationed abroad, notably in Afghanistan and Iraq, specifying the number of cases, their status, the authorities before which they are pending and the outcome of the investigations.

June 1997-October 2004

Iraq

724. Defence records indicate that no such complaints[19] falling within the criteria of torture or cruel, inhuman or degrading treatment or punishment arose from operations in Iraq within this period.

Afghanistan

725. Defence records indicate that no such complaints falling within the criteria of torture or cruel, inhuman or degrading treatment or punishment arose from operations in Afghanistan within this period.

Timor-Leste

726. Defence records indicate that there were 17 complaints falling within the criteria of torture or cruel, inhuman or degrading treatment or punishment during this period.

727. An investigation into four of the complaints was initially undertaken as an Australian Defence Force (ADF) service police investigation. As a number of personnel who needed to be interviewed were located in West Timor, and therefore not accessible by ADF Investigators, it was decided that the Australian Federal Police (AFP) should be requested to take over the investigation. The AFP subsequently conducted an investigation under the Criminal Code Act 1995 (Cth) between 2004 and 2006 but did not identify evidence to support any criminal charges and the cases were finalized. Twelve of the remaining complaints were the subject of ADF service police investigations. One complaint was the subject of a unit investigation.

728. Fifteen complaints were found to be unsubstantiated upon investigation. In one of these 15 complaints, one of the allegations concerning constant use of zip ties[20] as a restraining

[19] In the response to Issue 30, please note that the term ‘complaint’ does not refer to a complaint to a United Nations human rights body.

[20] A zip tie (also known as a cable tie) is a type of fastener, used especially for binding several electronic cables or wires together, and to organize cables and wires but could also be used as makeshift handcuffs. The use of zip ties has since been superseded by the development and issue of specially designed plastic handcuffs or PlastiCuffs which are more humane.

device was found to be substantiated but disciplinary action was not considered warranted because the practice was in accordance with current doctrine. The doctrine was, however, reviewed and amended as a result of the investigation to provide for more humane treatment in relevant cases. In another complaint, two of the allegations concerning lack of sleep and insufficient food were found to be substantiated but disciplinary action was not considered warranted because the practice was in accordance with current doctrine. The doctrine was, however, reviewed and amended as a result, to provide for more humane treatment.

Solomon Islands

729. Defence records indicate that no such complaints falling within the criteria of torture or cruel, inhuman or degrading treatment or punishment arose from operations in the Solomon Islands within this period.

October 2004-July 2007

Iraq

730. No complaints falling within the criteria of torture or cruel, inhuman or degrading treatment or punishment arose from operations in Iraq in this period.

Afghanistan

731. There were two complaints falling within the criteria of cruel, inhuman or degrading treatment or punishment arising from operations in Afghanistan.

732. One complaint was investigated by ADF service police. The other was the subject of a unit investigation. Both complaints were found to be unsubstantiated upon investigation.

Timor-Leste

733. There have been seven complaints falling within the criteria of cruel, inhuman or degrading treatment or punishment arising from operations in Timor-Leste.

734. Six complaints were investigated by the Australian National Command Headquarters and found to unsubstantiated. No further action has been required in relation to those. The remaining complaint is being managed by the Office of Director of Military Prosecutions and is the subject of further investigation.

Solomon Islands

735. Defence records indicate that no such complaints falling within the criteria of torture or cruel, inhuman or degrading treatment or punishment arose from operations in the Solomon Islands within this period.

Article 13

Question 31

Please provide data with respect to the number of reported cases, investigations carried out and persons tried and convicted at Federal and/or State/Territory level since the last periodic review in 2000, including the type of sanction imposed, for the crimes of torture, attempted torture and complicity or participation in torture.

736. There are no persons currently imprisoned under Division 268 of the Criminal Code for the offences of genocide, crimes against humanity or war crimes and the CDPP have not conducted any prosecutions for an offence against subsections 268.13 or 268.25 of the Criminal Code (torture as a crime against humanity, or torture as a war crime). The CDPP has also never prosecuted any matter under the Crimes (Torture) Act.

737. Further, the AFP and the Australian Customs Service have not received any complaints or allegations of torture against any of their officers.

738. At the State/Territory level, with the exception of Queensland, there have been no reported cases, investigations carried out and persons tried and convicted for the crimes of torture, attempted torture and complicity or participation in torture.

739. The Queensland Criminal Code contains a specific offence of torture. The following table contains data on people convicted of offences related to torture.

Number of defendants convicted of offences related to torture for all Queensland Supreme and District Courts for Calendar Years 2000-2006

Outcome Year	Defendant Convicted of	Order	Females								Males										Grand Total
			U/20	20-24	25-29	30-34	35-39	40-44	45-49	U	U/20	20-24	25-29	30-34	35-39	40-44	45-49	50-54	60-64	U	
2002	Torture	Imprisonment									2	1	2	1			1			1	8
	Torture	Intensive Rehabilitation Order	2																		2
2002 Total			2								2	1	2	1			1			1	10
2003	Torture	Imprisonment				1	1				1		1	2							6
	Torture	Totally Suspended														1					1
	Torture	Probation			1																1
2003 Total					1	1	1				1		1	2		1					8
2004	Torture	Imprisonment					1				1	2	1	6		2	1				14
	Torture	Intensive Correction Order													1						1
	Torture	Totally Suspended						1								1					2
2004 Total							1	1			1	2	1	6	1	3	1				17
2005	Torture	Imprisonment	2										2	6	1	1	2				14
	Torture	Intensive Correction Order									2										2
	Torture	Intensive Rehabilitation Order									2										2
2005 Total			2								4		2	6	1	1	2				18
2006	Torture	Imprisonment			1		1				1		1	1		1		1			7
	Torture	Intensive Correction Order		1																	1
	Torture	Totally Suspended									1										1
	Torture	Community Service Order	2								1										3
2006 Total			2	1	1		1				3		1	1		1		1			12
Grand Total			6	1	2	1	3	1			11	3	7	16	2	6	4	1		1	65

Source: Courts database maintained by OESR (Office of Economic and Statistical Research), Department of Treasury.

Notes: 1. Data includes both adults and juveniles.

2. A defendant is defined as a person or organization against whom one or more criminal charges have been laid and which are heard together as one unit of work by a court level. It should be noted that this method does not enumerate distinct persons or organizations. If a person or organization is a defendant in a number of criminal cases which are finalized on different dates, such a person or organization will be counted more than once in this statistical collection.

Date prepared: 19/07/07.

Article 14

Question 32

Please provide statistical information on compensation provided to victims of torture or cruel, inhuman or degrading treatment that occurred in Australia for the period between 2000 and 2006. Please indicate how this breaks down according to sex, age and ethnicity.

740. The States and Territories administer compensation funds and assistance for victims of torture. There have been no recorded cases of compensation provided by States and Territories to victims of torture or cruel, inhuman or degrading treatment between 2000 and 2006. There is no Commonwealth fund. Further, there is no record of any ex gratia payments for such matters.

Question 33

Please indicate in further detail (with reference to paragraphs 101-102 of the State party report):

(a) What services exist for the treatment of trauma and other forms of rehabilitation of torture victims and what is the capacity of these services;

(b) How many victims of torture in Australia and victims of torture prior to arrival to the country have been able to access these services;

(c) What financial allocations have been made by the State party for this purpose.

741. In each Australian jurisdiction services are provided to assist victims of trauma and torture. The first part of the response provides general Commonwealth information regarding questions (a), (b) and (c). This is followed by additional information from States and Territories.

Commonwealth Government information

742. All refugee and humanitarian entrants are eligible for short-term torture and trauma counselling as part of the Integrated Humanitarian Settlement Strategy. Those requiring further assistance beyond the period of Short-Term Torture and Trauma can then be referred to longer term counselling through providers contracted to the Department of Health.

743. The Integrated Humanitarian Settlement Strategy (IHSS) is a national settlement programme administered by the Department of Immigration and Citizenship (DIAC) and provides assistance to the 13,000 people each year who settle in Australia under the humanitarian programme with support and assistance to rebuild their lives.

744. The range of services provided to entrants under the IHSS includes:

(a) Case Coordination, Information and Referrals;

(b) On Arrival Reception and Assistance;

(c) Accommodation Services;

(d) Short-term Torture and Trauma Counselling Services.

745. IHSS services are usually available for six months, but can be extended for entrants with particularly complex needs.

746. Torture and trauma services provided through the IHSS programme are available to all refugees and humanitarian arrivals granted resettlement places from off-shore as well as visas asylum-seekers granted protection in Australia upon initial entry to the community.

747. Long-term torture and trauma services are also provided to these entrants, and the broader Australian community, through the Programme of Assistance for the Survivors of Torture and Trauma, which is administered by the Australian Government's Department of Health and Ageing.

748. Short-term Torture and Trauma specialist agencies contracted under the IHSS also deliver information and awareness training programmes as well as consultancy and support to other service providers, volunteers and professionals, such as doctors, dentists, social and welfare workers, who may come into contact with refugees and humanitarian entrants during the various stages of their settlement process. These agencies also have responsibility to assist mainstream and other specialist services to develop a more substantial role in the area of counselling and rehabilitation.

749. The IHSS has an annual Budget of over A$ 50 m.

750. The Department of Health and Ageing (DoHA) provides funding under the Programme of Assistance for Survivors of Torture and Trauma (PASTT) to assist the psycho-social recovery of humanitarian entrants to Australia who have experienced conflict and human rights abuses, which make them vulnerable to developing mental health problems. Approximately 2,500 clients each year are supported under the current Programme.

751. Over the past several years, particularly with the shift in focus of the Humanitarian Programme from Europe and the Middle East to Africa, there has been a substantial increase in the size of the client population and in the complexity of their support needs. This includes an increase in the numbers of children needing support, as many have experienced trauma as child soldiers and slaves. The demand for suitably qualified counsellors has increased, as has the need for related education and training for mainstream services, such as General Practitioners and schools.

752. In the 2007 Budget, additional funding of $12.2 million over four years was approved for the PASTT. The funding is to increase the capacity of the PASTT agencies so that an additional 1,800 humanitarian entrants per year can access medium- to long-term specialized counselling and related support services.

753. Total funding of approximately $5 million per year is currently provided to eight specialized agencies (one in each State and Territory) to deliver a range of services including:

(a) Direct counselling and related support services (including advocacy and referrals to mainstream health and related services) to individuals and/or families who are survivors of torture and trauma; and

(b) Education and training to mainstream health and related service providers, to assist them understand and respond to the needs of survivors of torture and trauma.

754. There is one specialized agency funded in each State and Territory to deliver services under the Programme of Assistance to Survivors of Torture and Trauma:

(a) NSW - NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors;

(b) QLD - Queensland Programme of Assistance to Survivors of Torture and Trauma;

(c) ACT - Companion House;

(d) VIC - Victorian Foundation for Survivors of Torture;

(e) TAS - Support Service for Survivors of Torture and Trauma;

(f) SA - Survivors of Torture and Trauma Assistance and Rehabilitation Service;

(g) WA - Association for Services to Torture and Trauma Survivors, Inc.;

(h) NT - Torture and Trauma Survivors Service of the Northern Territory.

755. The breakdown of funds for the reporting period and for the period subsequently is as follows.

2007-2008	
ACT	$222 182.18
NSW	$1 620 516.37
NT	$142 660.43
Qld	$499 357.07
SA	$495 161.12
Tas	$198 684.56
Vic	$1 426 848.75
WA	$534 889.50
Total 2007-2008 GST Inclusive	$5 140 299.98

2006-2007	
ACT	$153 848.42
NSW	$474 029.38
NT	$75 822.67
Qld	$178 633.07
SA	$167 617.67
Tas	$ 126 493.51
Vic	$474 029.38
WA	$185 425.90
Total 2006-2007 GST Inclusive	$1 835 900.00

2005-2006	
ACT	$267 189.34
NSW	$1 075 557.50
NT	$191 712.84
Qld	$400 017.64
SA	$378 877.84
Tas	$240 342.52
Vic	$1 035 052.26
WA	$413 053.30
Total 2005-2006 GST Inclusive	$4 001 803.24

2004-2005	
ACT	$150 348.00
NSW	$452 813.00
NT	$76 058.00
Qld	$176 880.00
SA	$159 192.00
Tas	$123 816.00
Vic	$452 813.00
WA	$176 880.00
Total 2004-2005 GST Inclusive	$1 768 800.00

2003-2004	
ACT	$146 605.80
NSW	$443 539.80
NT	$74 108.10
Qld	$169 544.10
SA	$159 341.60
Tas	$121 093.50
Vic	$443 539.80
WA	$175 828.40
Total 2003-2004 GST Inclusive	$1 733 601.10

2002-2003	
ACT	$143 163.90
NSW	$433 126.10
NT	$72 366.80
Qld	$165 563.20
SA	$155 601.60
Tas	$118 251.10
Vic	$433 126.10
WA	$171 700.10
Total 2002-2003 GST Inclusive	$1 692 898.90

2001-2002	
ACT	$137 024.80
NSW	$414 551.50
NT	$69 263.70
Qld	$158 462.70
SA	$148 929.00
Tas	$113 180.10
Vic	$414 551.50
WA	$164 336.70
Total 2001-2002 GST Inclusive	$1 620 300.00

2000-2001	
ACT	$133 449.80
NSW	$410 976.50
NT	$65 688.70
Qld	$154 887.70
SA	$145 354.00
Tas	$109 605.10
Vic	$410 976.50
WA	$160 761.70
Total 2000-2001 GST Inclusive	$1 591 700.00

1999-2000	
ACT	$120 982.00
NSW	$372 582.00
NT	$59 553.00
Qld	$140 418.00
SA	$131 775.00
Tas	$99 365.00
Vic	$372 582.00
WA	$145 743.00
Total 1999-2000 (Pre-introduction of GST)	$1 443 000.00

1998-1999	
ACT	$119 053.00
NSW	$366 644.00
NT	$58 603.00
Qld	$138 180.00
SA	$129 675.00
Tas	$97 781.00
Vic	$366 644.00
WA	$143 420.00
Total 1998-1999 (Pre-introduction of GST)	$1 420 000.00

1997-1998	
ACT	$105 856.00
NSW	$324 608.00
NT	$43 375.00
Qld	$122 793.00
SA	$114 941.00
Tas	$86 504.00
Vic	$324 608.00
WA	$128 315.00
Total 1997-1998 (Pre-introduction of GST)	$1 251 000.00

1996-1997	
ACT	$116 845.00
NSW	$350 680.00
NT	$60 908.00
Qld	$135 141.00
SA	$127 009.00
Tas	$96 515.00
Vic	$350 680.00
WA	$140 222.00
Total 1996-1997 (Pre-introduction of GST)	$1 378 000.00

State and Territory information

New South Wales

756. The NSW Government established the Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS) in 1988 to meet the needs of refugees and others in NSW who have been tortured or traumatized in their countries of origin, or in the process of fleeing those countries to Australia.

757. STARTTS is committed to supporting clients through the provision of services that establish safety, maintain confidentiality and respect the rights of those seeking assistance. Service provision includes early intervention, secondary prevention, research, community education and capacity-building strategies alongside clinical interventions at individual, family and group levels. These approaches are constantly expanding and developing in response to changing needs. STARTTS also plays an important role in providing training, support and consultancy to health and community services providers in order to increase their ability to work effectively with torture and trauma survivors.

758. Services are provided by a multidisciplinary clinical staff from a wide range of cultural and linguistic backgrounds who reflect the composition of the client group and cover more than 15 languages. Where a particular language is not available for a client, services are offered with the assistance of an interpreter. In addition to its counselling capacity, STARTTS also produce and deliver an extensive array of training programmes and materials.

759. STARTTS receives core funding from NSW Health to provide counselling, physiotherapy and psychiatry activities and additional funds for specialized interventions such as those to assist traumatized children. STARTTS also receives Commonwealth funding for specific programmes to assist newly arrived refugees e.g. the Early Intervention Programme (EIP) for newly arrived refugee and humanitarian entrants.

760. STARTTS plays a crucial role in raising awareness of refugee issues in the community at large, and in assisting other government and non-government agencies to improve the appropriateness and effectiveness of their services with refugee communities.

761. This role is provided through secondary consultation services to mainstream providers, including mental health services, hospitals, school counsellors and other community agencies with a counselling role. STARTTS provides the primary training in NSW for health and welfare agencies on the impacts of the refugee and migration experience as well as the consequences of torture and trauma. STARTTS performs a community development role in working with refugee communities to build their capacity for successful participation in Australia.

762. STARTTS has developed a range of specific resources and training programmes that add value to the capacity of other organizations' ability to work effectively with entrants. Examples of this "value adding" include:

(a) Development of Guidelines for General Practitioners Managing Survivors of Torture and Refugee Trauma:

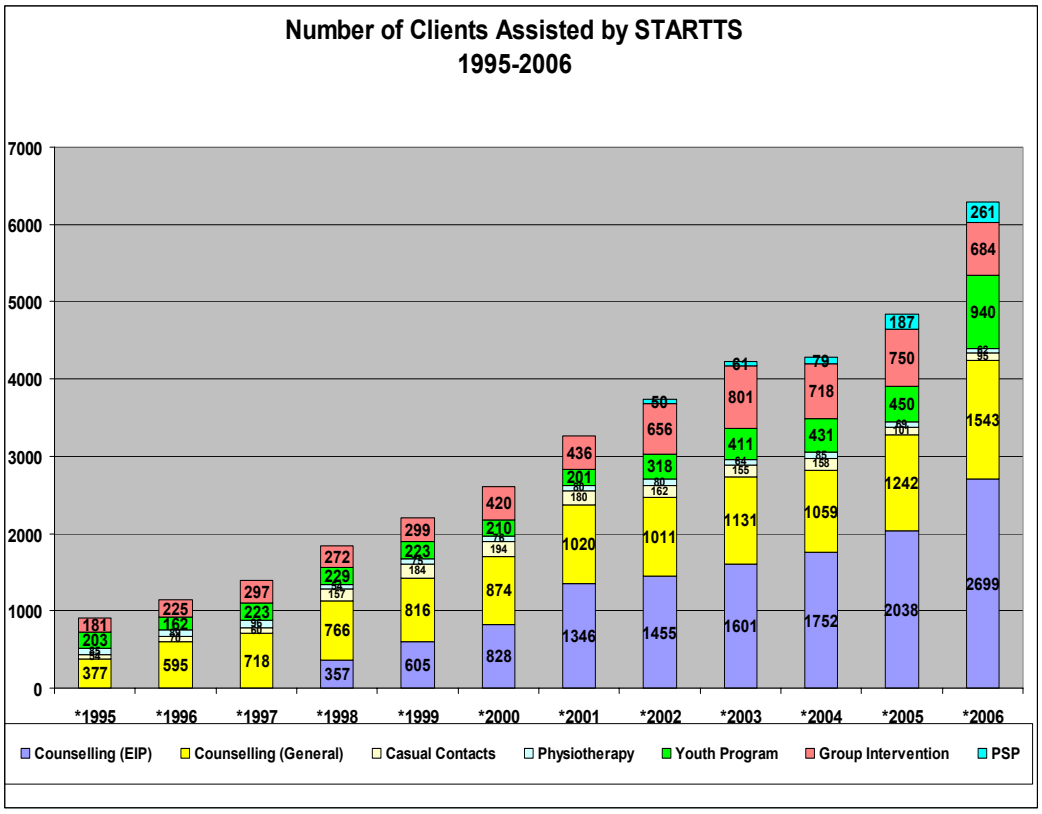
(b) Development of the "Settling In" group programme, a resource directed at schoolteachers and counsellors working with refugee and migrant students (the product of a long-standing partnership between STARTTS and schools in the South Western Sydney);

(c) Production of directed progressive relaxation resources in 11 languages (compact discs and tapes) for use by clients of STARTTS and other partner services (developed on the basis of relaxation techniques that clients have reported as useful within and outside counselling sessions).

763. STARTTS services all of metropolitan Sydney through established centres at Auburn, Liverpool and Fairfield and through 17 outreach services in the metropolitan area. Workers are also based in Newcastle and Wollongong servicing the Hunter and Illawarra areas and a base was recently established in Coffs Harbour to service the north west of NSW.

764. Outreach services are established whenever a need is demonstrated and local partnerships with health and other services can be formed. STARTTS organizes training of health and related staff in an area, provides direct services through visiting staff and uses technology such as telephones and video-conferencing to reach more isolated services.

765. Since 1988, STARTTS has provided counselling services to over 5,000 families and individuals through its General Counselling Services programme, and assessed and assisted close to 6,000 individuals through its Early Health Assessment and Intervention (counselling) programme. STARTTS has assisted over 1,500 young people and over 2,000 adults through its group programmes, and played a central role in increasing awareness about the health and psychosocial issues affecting torture and trauma survivors.



Medical rehabilitation

766. Since 1999 (coinciding with release of the document *Strategic Directions for Refugee Health Care in NSW*), NSW Health has funded a dedicated Refugee Health Service (RHS). The aim of this Service is to protect and promote the health of people of refugee background in NSW, including survivors of torture and other refugee trauma, through increasing health literacy, access to appropriate health care, and targeted health promotion initiatives.

767. Health assessment clinics are run weekly in Sydney, with over 1,300 consultations for people of refugee background in 2006/2007. Some of the attendees are asylum-seekers awaiting the outcome of their refugee claim. These clinics act to provide initial assessments and management, and to facilitate access to ongoing care needs. The Service receives many of its referrals from STARTTS.

768. Several clinics now exist in rural and regional locations of NSW to assist refugee settlers there (e.g. Newcastle and Coffs Harbour). Children can be seen with adults at all the above services. Additionally, one major children's hospital (Children's Hospital Westmead) runs weekly clinics for refugee children. One large dental hospital (Westmead Centre for Oral Health) had a dedicated weekly clinic for refugees.

769. The NSW Refugee Health Service also provides educational programmes and resources to inform newly arrived refugees about how to better access health care in NSW.

770. The RHS runs education programmes across NSW to increase awareness and skills of General Practitioners and staff of the public health system, relating to health care for survivors of refugee trauma. These programmes highlight the physical effects of torture and other human rights abuses, including the impact of female genital mutilation on refugee women and girls.

Victoria

771. Victorian Foundation for Survivors of Torture Inc. (VFST) is funded by the Department of Human Services to provide the following to survivors of torture and trauma:

(a) Mental health treatment and psychosocial rehabilitation support;

(b) Health services;

(c) Suicide prevention;

(d) Health promotion.

772. The agency is also funded to provide training, advice and support to assist generic providers to better respond to the needs of this target group.

773. The Department of Human Services allocated $1,710,706 to the VFST in 2007-08. Funding is allocated on an hourly rate of service and the agency is to deliver 13,480 hours of support per year.

Queensland

774. The Queensland Programme of Assistance to Survivors of Torture and Trauma (QPASTT) is a community-based service, which provides services which address a range of physical, psychological and social needs that refugee survivors of trauma and torture may have. The organization provides a range of flexible and culturally-sensitive services to people who have been tortured or who have suffered refugee-related trauma prior to migrating to Australia.

775. QPASTT provides assistance to people who have:

(a) Undergone torture;

(b) Witnessed or experienced the torture of someone close to them;

(c) Experienced trauma during flight from their homes and countries;

(d) Experienced victimization due to membership of a political, ethnic or religious group; or

(e) Experience war, political upheaval and fear for life.

776. Services include:

(a) Individual counselling and advocacy;

(b) Family based counselling;

(c) Community development;

(d) Support for young people;

(e) Information and education;

(f) Capacity building and networking.

Western Australia

(a) What services exist for the treatment of trauma and other forms of rehabilitation of torture victims and what is the capacity of these services;

777. *The Association for Services to Torture and Trauma Survivors Inc. (ASeTTS)* represents Western Australia's specialized service for survivors of torture and other human rights abuses. Services include counselling, support and supervision to individuals and groups, education services, comprising preparation, delivery and evaluation of workshops, interpreter and translation services and information sessions to health and welfare professionals.

(b) How many victims of torture in Australia and victims of torture prior to arrival to the country have been able to access these services; and

778. For the financial year July 2006-June 2007, ASeTTS provided services to 1,542 clients. This figure represents clients serviced through the counselling service supported by the Department of Health contract and clients serviced through counselling and community programmes. (All ASeTTS clients have experienced trauma, either as a result of direct physical torture, or by witnessing and being confronted with torture or other forms of life-threatening experiences).

779. Public mental health services provide assessment, urgent response, counselling and intervention for children and adults that have an identifiable mental health issue. Public mental health services are located in metropolitan and rural areas across Western Australia.

(c) What financial allocations have been made by the State party for this purpose.

780. In 2006/07, $409,110 recurrent.

South Australia

781. In South Australia, Mental Health Services do not currently collect specific statistics of the capacity of trauma and rehabilitation services for trauma and torture victims or how many victims have accessed the services. The Mental Health Unit has developed a Minimum Data Set Reporting Template to assist non-governmental organizations (NGOs) in data collection. Introduction of the template commenced on 1 July 2007. The data set will collect information about country of origin and interpreter use i.e. language spoken and the source of referral.

782. In 2005, the SA Government allocated grant funding of $25 million over three years to NGOs for services (which included services to culturally and linguistically diverse and Aboriginal populations). In June 2007, the Government allocated another $36.8 million over the next four financial years to NGOs.

783. Services available to immigration detainees, refugees and other vulnerable persons include:

(a) Migrant Resource Centre

784. The Migrant Resource Centre (MRC) holds the contract with the Commonwealth Government for resettlement services and provides ongoing assistance and support to migrants and refugees during their first five years of settlement in South Australia. Services are provided in a one-to-one or group context and also via the telephone and include information and referral to other service agencies, mediation, client advocacy, crisis intervention, migration advice and consumer information.

(b) Migrant Health Service

785. The Migrant Health Service (MHS) provides high quality multidisciplinary health services for Humanitarian entrants using face-to-face interpreters for all medical and other health-care

services. The MHS also coordinates care with other relevant health service providers to ensure that all health-care needs are effectively met during settlement and provides a managed transition to ongoing mainstream primary health care.

786. The MHS has a proven track record in providing complex case health care for the range of humanitarian entrants with exceptional needs such as women at risk and their families, very large families and those who have experienced significant torture and trauma among other criteria for complex case care and support. It acknowledges the other factors that impact on successful settlement including English tuition, housing, education and cultural adjustment and is able to work collaboratively given these competing demands.

787. The MHS sees approximately a third of new arrival refugees for initial comprehensive health assessments, intervention with presenting problems, immunization catch up, health education and a supported/brokered transition to a General Practitioner (GP) along with a care plan, usually within six months of initial contact.

788. The MHS also takes referrals from other providers (GPs, hospitals etc.) of recent arrivals with high and/or complex needs who may have been in the country for a year or more. Most other new arrivals are seen in private practice GP clinics on referral from the Migrant Resource Centre under a settlement contract with the Commonwealth.

789. The MHS has a counselling team (2.3 FTE with a full-time Senior Psychologist and some part time social workers) with a focus primarily on counselling support for problems associated with the refugee experience and settlement difficulties including family relationships and visa-related problems.

790. Where there is evidence of active mental illness, MHS refers to the Mental Health Assessment Crisis Intervention Service and/or hospitals (as relevant). MHS also provides primary health-care services to counselling clients as required.

791. The MHS spent $160,000 on interpreter services in the 2005/06 financial year.

792. Clients who require treatment and rehabilitation for torture are referred to community agencies expert in the provision of services such as Survivors of Torture, Trauma and Rehabilitation Service.

(c) Survivors of Torture, Trauma and Rehabilitation Service

793. The Survivors of Torture, Trauma and Rehabilitation Service (STTARS) provides free specialist torture and trauma counselling for refugees and other migrants who have experience torture and trauma.

794. The STTARS is a not-for-profit non-governmental organization with no religious or political affiliations and runs a number of groups for men, women and young people. STTARS also provides health information, support and advocacy and have health assessment and referral services. STTARS provides education and training for people working with refugees including health workers, schools and other agencies.

795. The majority of STTAR's funding comes from the Commonwealth Department of Health and Ageing, however, the SA Department for Families and Communities provides additional funding of $30,000 per annum.

796. The SA Department of Health provides recurrent funding to STTARS of $187,000 per annum and the identified and agreed services that are provided include:

(a) 500 occasions of service through face-to-face/telephone counselling services together with 16 occasions of service through group counselling (being two groups that meet eight times each);

(b) Up to 250 occasions of service through individual advocacy, subject to need; and

(c) Initiatives with other service providers, provision of information and education.

797. The CNAHS also funds one half-day consultant psychiatry session to STTARS with the aim of establishing a pathway into mainstream specialist mental health services.

(d) The Parks

798. The Parks Community Health Centre has newly arrived refugees as one of their priority populations. The Parks Community Health Centre employs a Somali worker and contract some African youth workers as consultants. The Parks provides clinical services and some health assessments and a number of community development/socialization programmes including:

(a) A new arrivals playgroup - largely African preschoolers and their mothers which provides an opportunity for the children to socialize and the mothers to connect to services;

(b) A youth group - the programme runs over a term and features information and counselling regarding drug and alcohol, relationship and sexual health matters.

(e) Child, Adolescent Mental Health Services (CAMHS)

799. Northern CAMHS works with STTARS in providing mental health care for child and adolescent refugees. In the first quarter of 2006, 127 referrals were received and demand continues to increase.

800. Southern CAMHS worked with the Bellevue Heights Primary School to develop a culturally appropriate system response for recent arrivals from Sudan (Dinka) and other African countries.

(f) Shared Care with General Practitioners (GP)

801. The Shared Care with GPs programme is aimed at the most seriously mentally ill people from culturally and linguistically diverse (CALD) populations including elderly migrants and new arrivals and refugees. Funding of the Shared Care with GPs programme is recurrent over four years and will allow placement of nurses or allied health professionals in general practices across South Australia.

802. Three CALD shared care positions will commerce in 2007-2008 in the Riverland, Adelaide Central and Adelaide Western Divisions of General Practice catchment areas.

Additional information relating to immigration detainees

803. The primary responsibility for immigration detainees rests with the Department of Immigration and Citizenship (DIAC). Since 2001, the South Australian Department of Health has provided a range of services to small numbers of immigration detainees, upon request from DIAC.

804. The immigration detainees who may or may not be detained under the Mental Health Act 1993, are placed across a range of inpatient units of the Central Northern Adelaide Health Service (CNAHS) at the Royal Adelaide Hospital (RAH) and the Glenside Campus.

805. In April 2005, the numbers of immigration detainee referrals for inpatient care to CNAHS health units from the Baxter Immigration Detention Facility suddenly increased significantly (up to 15). As a result of this increased demand, an unused six-bed unit at the Glenside Campus was re-opened temporarily to accommodate the overflow of patients. The unit became known as the Special Stay Unit.

806. The numbers of immigration detainees referred to South Australia for specialist inpatient treatment in recent months have declined significantly and it has been possible to accommodate immigration detainees who have been referred for inpatient treatment in existing inpatient facilities. Discharge is a clinical decision and the discharge planning process for immigration detainees takes into account accommodation requirements.

807. A significant proportion of Counselling Programme clients at the Migrant Health Service (a public health service) are former asylum-seeker detainees. The Migrant Health Service responds largely to mental health needs arising from flight, detention, the lengthy process of seeking permanent residency and difficulties arising in family reunification once residency is granted and family members are resettled in Australia. In cases where the experience of torture and trauma is a significant factor, clients are referred to Survivors of Torture, Trauma and Rehabilitation Service (STTARS) for more specialist attention. There is close collaboration between the Migrant Health Service and STTARS to effectively address clients' needs.

Tasmania

808. In Tasmania, the Phoenix Centre programme, auspiced by the Migrant Resource Centre, provides support services for survivors of torture and trauma. The Migrant Resource Centre is a non-governmental, non-profit organization run by a volunteer committee of management and is part of a national network of migrant resource centres.

809. The Phoenix Centre programme provides services to people suffering from complex trauma associated with torture and other human rights violations. The majority of clients are refugees and humanitarian entrants. Under the programme, assessment and counselling support is available to eligible clients and families. Services may also include massage and natural

therapies, music therapy, family therapy, community development activities, health referrals and/or case management and advocacy with other services. Pre-referral advice and support is also offered to other workers involved with clients under the programme.

810. The Phoenix Centre receives funding from the Department of Health and Ageing, the Department of Families, Community Services and Indigenous Affairs, and under the Home and Community Care Programme (HACC). During 2007/08, the Migrant Resource Centre will receive funding of $403,746 (excl. GST) to provide HACC services including the operation of a day centre, involving the provision of meals, social support and counselling and advocacy services.

811. The Tasmanian Government waives hospital and community services fees for asylum-seekers who are not permitted to work in Australia.

Australian Capital Territory

812. If a torture offence occurred in the ACT, victims are eligible for Victims Services Scheme assistance. The Scheme is established under the *Victims of Crime Act 1994* (ACT), which also creates the office of the Victims of Crime Coordinator whose role is similar to that of an ombudsman. Under the Victims Services Scheme, a range of multidisciplinary psychological and physical therapeutic interventions are provided to victims of crime or their family members to help them to continue to take part in the social, economic and cultural life of the community. More than a quarter of the scheme's clients are under the age of 18.

813. The OCYFS Family Support Programme provides funding to Companion House, a community-based organization for refugee and migrant children and young people and their families who may have experienced war trauma, human rights violations and/or torture. The services provided include:

(a) Assessment and interventions to assist children and young people with settlement and rehabilitation;

(b) Therapeutic interventions with children and young people and their families;

(c) Consultancy and liaison with other services and support groups.

814. Funding provided in 2007/08:

Children's Intervention Service	$61,643.91
Community Development	$66,064.37
	$127,708.28

Northern Territory

815. Northern Territory public Mental Health Services take referrals from refugee organizations such as Melaleuca Refugee Centre and from primary health services for individuals suffering from Post-Traumatic Stress Disorder and other severe mental health issues requiring specialist mental health intervention arising as a result of torture or other trauma experienced prior to their arrival in Australia.

Question 34

Please advise the Committee on the compensation awarded and measures undertaken to prevent similar violations upon the decision of the case C v. Australia by the Human Rights Committee in 2002, resolving that the State party had incurred in violation with article 7 of the International Covenant on Civil and Political Rights.

816. As the Committee Against Torture has noted, the matter of *C v. Australia* (Communication No. 900/1999) has already been the subject of consideration by the Human Rights Committee. As the issues involved related to alleged breaches of the International Covenant and Civil and Political Rights (ICCPR), and not the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), it is the Australian Government's view that addressing the matter again in the Committee Against Torture is not appropriate. However, in order to assist the Committee Against Torture the Government provides the following information in response to Issue 34.

817. No compensation has been awarded to the author of the case *C v. Australia*, because as noted in the Australian Government's formal response to the Views of the Human Rights Committee, lodged on 16 August 2006, the Australian Government does not accept the views of the Human Rights Committee that Australia breached any articles of the ICCPR, including article 7. The Government therefore cannot provide any information on "similar violations" as phrased by the Committee in Issue 34 of the List of Issues.

818. As explained in our response to Question 8, Australia is fully committed to upholding its non-*refoulement* obligations under international law, and considers that our processes adequately assess the risks to a person who is to be removed from Australia to another country.

819. For information on "Medical and psychological rehabilitation after acts of torture or other cruel, inhuman or degrading treatment or punishment" in Australia, the Committee is referred to paragraphs 101-103 of Australia's Fourth Report, (pp. 27-28), and paragraphs 137-138 of Australia's Second and Third Report.

820. The Committee is also referred to the Government's responses to Issues 23, 28 and 33.

Article 15

Question 35

Please specify the legislation and practice relating to the prohibition of derivative evidence and the use of information obtained under torture in proceedings.

821. Various statutory and common laws in each Australian jurisdiction ensure that evidence obtained under torture, threat, coercion or duress is inadmissible. The first part of the response provides information regarding federal law and practice relating to the prohibition of derivative evidence and the use of information obtained under torture in proceedings. This is followed by information regarding law and practice in the States and Territories.

Commonwealth Government information

822. The Committee is referred to Part 5.1 of Australia's Second and Third Report under the Convention, which outlines the legislation regarding the use of statements induced by torture.

823. *The Evidence Act 1995* (Cth) applies to all proceedings in federal courts or ACT courts. "Federal courts" include a person or body (other than a court or magistrate of a State or Territory) that is required to apply the laws of evidence. In proceedings in State courts, the laws of evidence in that State apply, even if the matter is a federal matter (for example, prosecution of a federal offence in a State court).

824. The Evidence Act contains a very clear statement that excludes evidence of admissions influenced by violence and certain other conduct. Subsection 84(1) states:

> *Evidence of an admission is not admissible unless the court is satisfied that the admission, and the making of the admission, were not influenced by:*
>
> *(a) Violent, oppressive, inhuman or degrading conduct, whether towards the person who made the admission or towards another person; or*
>
> *(b) A threat of conduct of that kind.*

825. Section 84 applies in both criminal and civil proceedings.

826. Section 90 of the Evidence Act gives the court a discretion to refuse to admit evidence of an admission if, having regard to the circumstances in which the admission was obtained, it would be unfair to the defendant to admit it.

827. There is also a general discretion to exclude improperly or illegally obtained evidence under s 138 of the Evidence Act. Evidence that is obtained improperly or in contravention of an Australian law, or as a consequence of that, is not to be admitted unless the desirability of admitting the evidence outweighs the undesirability of admitting evidence obtained in that way. "Australian law" means a law of the Commonwealth, a State or a Territory. There is a non-exclusive list of factors which the court must take into account in determining that issue, including the nature of the relevant offence or action, the gravity of the impropriety or contravention, whether the impropriety or contravention was deliberate or reckless and whether it was contrary to the International Covenant on Civil and Political Rights.

828. Sections 84 and 138, in combination with other provisions of the Evidence Act, replace the common law rule that confessions must be voluntary.

829. The *Foreign Evidence Act 1994* (the FEA) provides for a "superior court" (including the High Court, the Federal and Family Courts, and the Supreme Courts of the States when exercising federal jurisdiction), on application by a party to a proceeding before it, or a party to a proceeding in an inferior court within its jurisdiction, to make an order for the examination of a witness outside Australia or its external territories.

830. The FEA provides that the court may then, on such terms (if any) as it thinks fit, permit a party to tender the evidence in the proceeding. It states that evidence obtained under such an order made by a court would not be admissible if either (a) the court is satisfied at the time of the hearing that the person who gave the evidence was available to attend the hearing, or (b) that the evidence would not have been admissible had it been adduced at the hearing. This effectively means that the requirements of Australian law regarding the collection of the evidence would apply, regardless of where it was actually taken.

State and Territory information

New South Wales

831. There are a range of provisions contained in the Evidence Act 1995 (NSW) (the Evidence Act) which prohibit the use of evidence obtained by torture and cruel, inhuman and degrading treatment. These include ss 84, 85, and 138 of the Evidence Act.

832. Section 84(1) of the *Evidence Act* provides that evidence of admissions, which are influenced by "violent, oppressive, inhuman or degrading conduct", or by threats of "violent, oppressive, inhuman or degrading conduct" are inadmissible. There is no definition of "oppressive" contained in the Act, however, in *Wily v. Fitz-Gibbon*,[21] Justice Hill adopted the ordinary meaning of "oppressive" as outlined in the Macquarie Dictionary which defines "oppressive" as the exercise of authority or power "in a burdensome, cruel or unjust manner". Further, in *Higgins v. The Queen*,[22] Justices Sully, Bell and Hoeben noted that the concept of oppression "should not be limited to physical or threatened physical conduct but can encompass mental and psychological pressure".

833. The terms "inhuman" and "degrading conduct" in s.84(1)(a) are based on the language of the Convention Against Torture and the European Convention on Human Rights. Case law from the European Commission of Human Rights indicates that "inhuman" and "degrading conduct" means conduct that deliberately causes severe mental or physical suffering or gross humiliation.[23]

834. Section 85 of the Evidence Act applies to criminal proceedings in relation to evidence of admissions made by defendants in the course of official questioning or "as a result of an act of another person who is capable of influencing the decision whether a prosecution of the defendant should be brought or should be continued". Section 85(2) of the Evidence Act provides that evidence of admissions made by defendants is only admissible if it was made in circumstances so as to make it "unlikely that the truth of the admission was adversely affected".

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[21] Unreported judgement, Federal Court of Australia, NSW District Registry, 2 March 1998.

[22] [2007] NSWCCA 56.

[23] *A v. UK*, ECHR, 13/10/86.

835. Section 85(3)(b) provides that the nature of the questions and the manner in which they were put and the nature of any threat, promise or other inducement made to the person questioned may be taken into account when considering where the truth of an admission has been adversely affected.

836. With regards to s 85(3)(b)(i), evidence is inadmissible if "there is any suggestion of intimidation, persistent importunity or sustained or undue insistence or pressure".[24]

837. Further, s 138(1) provides that if evidence is obtained improperly or in contravention of an Australian law or in consequence of an impropriety or of a contravention of an Australian law then there is a judicial discretion to exclude it. The test, under s 138(1), to be applied is whether "the desirability of admitting the evidence outweighs the undesirability of admitting evidence that has been obtained in the way in which the evidence was obtained". This is the statutory form of the common law test, which is whether the evidence "was obtained at too high a price such as to offend against a sense of fair play or immediately to arouse feelings of moral outrage".[25] Clearly, any form of torture would satisfy this test and therefore be excluded.

838. Section 138(2) provides instances in which evidence will be taken to have been obtained improperly, and is therefore excludable under s 138(1). Section 138(2)(a) provides that doing or omitting to do an act which is likely to lead to the person being questioned responding to questions irrationally will cause the evidence to be taken to have been obtained improperly. Thus, as torture is likely to make a person being questioned respond irrationally, evidence obtained under torture would be excludable under s 138(2)(a).

839. Also of relevance is s 138(3)(f) which provides that one of the considerations to be taken into account when making the decision to exclude evidence under s 138(1) is "whether the impropriety or contravention was contrary or inconsistent with a right of a person recognized by the International Covenant on Civil and Political Rights".

840. As discussed above torture would be criminalized by a number of offences under the *Crimes Act 1900* (NSW) and, therefore, under s.138(1) of the Evidence Act , evidence obtained by these forms of torture is subject to a judicial discretion to exclude. Forms of torture which constitute offences under the Crimes Act include but are not limited to:

(a) Section 33 (wounding etc. with intent to do bodily harm or resist arrest);

(b) Section 35 (malicious wounding or infliction of grievous bodily harm);

(c) Section 35A (maliciously cause dog to inflict grievous bodily harm or actual bodily harm);

(d) Section 37 (attempts to choke etc. (garrotting));

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[24] *R v. Clarke* 97 A Crim R 27.

[25] *R v. Salem* (1997) 96 A Crim R 421, 430 per Hidden J.

(e) Section 39 (using poison etc. so as to endanger life);

(f) Section 41 (administering poison etc. with intent to injure or annoy);

(g) Section 59 (assault occasioning actual bodily harm);

(h) Section 545B (intimidation or annoyance by violence or otherwise).

841. The common law requirement in regards to the prohibition of evidence obtained by torture and cruel, inhuman and degrading treatment is that of "voluntariness", that is, that confessions must be voluntary to be admissible. However, this has been replaced by ss 84, 85 and 142 of the Evidence Act.

Victoria

Charter of Human Rights and Responsibilities Act 2006

842. This Act affords protection from torture and cruel, inhuman or degrading treatment (s 10). Section 10 provides that:

"A person must not be -

(a) Subjected to torture; or

(b) Treated or punished in a cruel, inhuman or degrading way; or

(c) Subjected to medical or scientific experimentation or treatment without his or her full, free and informed consent."

Current evidence laws

843. The *Evidence Act 1958* holds that evidence of a confession will not be inadmissible on the ground that a threat has been held out to the confessor, unless the court is of the opinion that the inducement was really calculated to cause an untrue admission of guilt (s 149).

844. However, the Act also protects the courts power to exclude any type of evidence that is obtained illegally (s 5). Well-established principles governing the exercise of the discretion to exclude illegally obtained evidence have been enunciated by the High Court of Australia (*Bunning v. Cross* (1978) 141 CLR 54). Issues to be considered include:

(a) Whether the unlawful conduct was inadvertent or deliberate;

(b) The ease with which the law might have been complied with; and

(c) The nature of the evidence charged.

Proposed evidence laws

845. Victoria is currently working toward adopting a uniform evidence law (consistent with most other Australian jurisdictions). The *Uniform Evidence Act* clearly states that evidence of an

admission (such as a confession) is not admissible unless the court is satisfied that it was not influenced by: "violent, oppressive, inhuman or degrading conduct, whether towards the person who made the admission or towards another person, or a threat of that kind" (s 84).

Queensland

846. In general, an individual has the right to refuse to provide information that is self-incriminatory. In some cases this individual right must be weighed against the public interest of ensuring investigators can access information in certain circumstances. Where the law specifically abrogates the privilege against self-incrimination, it is usually accompanied by restrictions on the use of the information. In most cases, the self-incriminatory information may not be used in proceedings against the individual. In some cases, the information may also not be used to uncover other evidence against the individual.

847. Section 10 of the *Criminal Law Amendment Act 1894* (Qld) provides that "no confession which is tendered in evidence on any criminal proceeding shall be received which has been induced by any threat or promise by some person in authority, and every confession made after such threat or promise shall be deemed to have been induced thereby unless the contrary be shown".

848. Section 98 of the *Evidence Act 1977* (Qld) gives a court the discretion to reject any statement or representation "if for any reason it appears to it to be inexpedient in the interests of justice that the statement should be admitted".

The *Legislative Standards Act 1992 (LSA)*

(a) Section 4(1) of the LSA states that fundamental legislative principles are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law. The section goes on to state that these principles include requiring that legislation has sufficient regard to rights and liberties of individuals.

(b) Section 4(3)(f) of the LSA provides that whether or not Queensland legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation provides sufficient protection against self-incrimination.

(c) Section 7 of the LSA provides that a function of the Office of the Queensland Parliamentary Counsel is to advise on the application of fundamental legislative principles to proposed legislation.

The Scrutiny of Legislation Committee (SLC)

(a) The SLC is a statutory committee established under the Parliament of Queensland Act 2001;

(b) The SLC's area of responsibility includes the application of fundamental legislative principles to particular Bills and particular subordinate legislation by considering all Bills and subordinate legislation before the Parliament.

Western Australia

849. There is no specific Western Australian legislation prohibiting the use of evidence obtained under torture. The laws of evidence provide that where it is established that evidence is obtained under torture or any other inappropriate method then it may be disallowed or given the appropriate weight at the discretion of the court.

South Australia

850. South Australian law prevents evidence that is obtained illegally or by improper investigative practice from being used in court.

851. In the uniform evidence jurisdictions (Federal Courts, ACT, NSW and TAS) there is a general exclusionary provision for evidence which is obtained improperly or in contravention of Australian law.[26]

852. The exclusion of evidence in South Australia is governed by the common law.[27] This discretion may be exercised on wide grounds of public policy to prevent the use of evidence that has been improperly or illegally acquired. It is the defendant who bears the onus of proving that the evidence has been improperly obtained through such methods and that the balancing test requires the exclusion of that evidence.

Tasmania

853. Relevant prohibitions are contained in the *Evidence Act 2001*, s 84 (Exclusion of evidence influenced by violence and certain other conduct), quoted above at Article 2, Question 2, and s 90 (Discretion to exclude admission) which states:

In a criminal proceeding, the court may refuse to admit evidence of an admission, or refuse to admit the evidence to prove a particular fact, if -

(a) The evidence is adduced by the prosecution; and

(b) Having regard to the circumstances in which the admission was made, it would be unfair to a defendant to use the evidence.

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[26] Section 138 of the *Evidence Act 1995* (CTH, NSW, TAS) provides that evidence "that was obtained improperly…is not to be admitted unless the desirability of admitting the evidence outweighs the undesirability of admitting evidence" given the way it was obtained. One relevant factor is whether the impropriety or contravention was contrary to or inconsistent with a right in the ICCPR (s138(3)(f)).

[27] See *Bunning v. Cross* (1978) 141 CLR 54 and *Ridgeway v. R* (1995) 84 CLR 19.

Australian Capital Territory

Evidence Act 1995 (Cth)

854. The admissibility of evidence in ACT Court proceedings is largely governed by the *Evidence Act 1995* (Cth).

855. Section 84 of the Evidence Act provides that evidence of an admission is not admissible unless the court is satisfied that the admission was not influenced by violent, oppressive, inhuman or degrading conduct, or a threat of such conduct.

856. Section 85 of the Evidence Act provides that evidence obtained during "official questioning" or as a result of an act of another person capable of influencing how the defendant will be dealt with, is not admissible unless it is unlikely that the truth of the admission was adversely affected. In determining whether it is likely that the truth of the admission was likely adversely effected, the court is to have regard to the age, personality, and educational level of the accused; any mental, intellectual or physical disability to which the person is subject; the nature of the questions asked and the manner in which they were put; and the nature of any threat, promise or other inducement made to the person.

857. Section 90 of the Evidence Act gives the court a discretion to refuse to admit evidence of an admission if, having regard to the circumstances in which the admission was obtained, it would be unfair to the defendant to admit it.

858. Section 138 of the Evidence Act provides that where evidence has been obtained as a consequence of illegal or improper action, it is not to be admitted unless the desirability of admitting the evidence outweighs the undesirability of admitting evidence that has been obtained in the way in which the evidence was obtained.

859. In determining whether the desirability of admitting the evidence outweighs the undesirability of admitting the evidence, regard must be had to:

(a) The probative value of the evidence; and

(b) The importance of the evidence in the proceeding; and

(c) The nature of the relevant offence, cause of action or defence and the nature of the subject-matter of the proceeding; and

(d) The gravity of the impropriety or contravention; and

(e) Whether the impropriety or contravention was deliberate or reckless; and

(f) Whether the impropriety or contravention was contrary to or inconsistent with a right of a person recognized by the International Covenant on Civil and Political Rights; and

(g) Whether any other proceeding (whether or not in a court) has been or is likely to be taken in relation to the impropriety or contravention; and

(h) The difficulty (if any) of obtaining the evidence without impropriety or contravention of an Australian law.

860. This section applies not only to admissions, but also any other evidence obtained as a result of torture. So if, for example, officials were to torture a person (person A), and as a result of this torture person A disclosed to officials the whereabouts of an implement used by another person (person B) in the commission of an offence, if person B was prosecuted for an offence they could object to the admissibility of the implement under s 138.

ACT Terrorism (Extraordinary Temporary Powers) Act 2005

861. Section 96 of the ACT *Terrorism (Extraordinary Temporary Powers) Act 2005* provides that in a proceeding under the Act evidence that is obtained either directly or indirectly from torture is inadmissible. This section applies irrespective of where the torture occurred. For the purpose of this section, the definition of torture is that which is contained in the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, article 1, paragraph 1.

Northern Territory

862. The Northern Territory rules of evidence ensure that incriminating statements obtained by violent, oppressive, inhuman or degrading conduct are not admissible as evidence. Courts ultimately have discretion to deal with all evidence which comes before them under the guidance of the common law and legislation.

863. The Northern Territory *Evidence Act* confirms at s51(4) the power of a court in a criminal proceeding to exclude evidence that has been obtained illegally or would, if admitted, operate unfairly against the defendant.

Article 16

Question 36

As a follow-up to the concluding observations of the Committee on the Rights of the Child (2005), please inform the Committee of measures undertaken to prohibit the use of corporal punishment in all schools (private and public), detention centres and alternative care settings in all states and territories.

864. As a preliminary point, the Australian Government notes that this Issue duplicates the work of the Committee on the Rights of the Child, and that follow-up to comments of that Committee should be undertaken by that Committee. Nonetheless, the Australian Government provides the following information to assist the Committee against Torture.

Commonwealth Government information

865. Under the Australian Constitution, the State and Territory education authorities are legally responsible for the duty of care of students. Similarly, child protection intervention services are the responsibility of the community services department in each State and Territory. However, the Australian Government, through the Department of Families, Community Services and Indigenous Affairs, promotes best practice nationally in the areas of child abuse prevention and early intervention and prevention.

866. The Australian Government does not endorse corporal punishment as an approach to developing values and respect in students. The Australian Government advocates an approach that supports a safe and collaborative learning environment. This approach is embodied in the "National Safe Schools Framework", which was endorsed by Commonwealth, State and Territory Education Ministers in July 2003. It is an Australian Government legislated requirement that the National Safe Schools Framework had to be implemented in every Australian school by 1 January 2006. This applies equally to Catholic, government and Independent schools. The Framework consists of a set of nationally agreed principles for a safe and supportive school environment. It includes appropriate responses which schools can adopt to address issues of bullying, violence, harassment, and child abuse and neglect. In implementing the Framework, the Australian Government has encouraged all schools to undertake audits or surveys of their school populations in order to respond effectively to incidences of abusive and violent behaviours in schools. To date, the Australian Government has provided $6.5 million to support the implementation of the NSSF. Further information on the NSSF is available at: <www.dest.gov.au/schools/nssf>.

867. In addition, the Australian Government is working in collaboration with the state and territory government and non-government jurisdictions to support safe schools through the "Bullying. No Way!" website (<www.bullyingnoway.com.au>). This is an interactive website that provides valuable information for parents, students and teachers on strategies to address bullying, harassment and violence.

Immigration detention

868. Schedule 3 to the Department's Detention Services Contract provides that corporal punishment is not permitted in the immigration detention environment, and this applies both to children and to adults.

State and Territory information

New South Wales

869. Corporal punishment was prohibited in 1986 as an inappropriate and ineffective means of maintaining high standards of discipline and continues to be prohibited in government and non-government schools.

870. As part of the *Student Discipline in Government Schools and related Core Rules in NSW Government Schools 2006*, schools are required to review their discipline code in conjunction with their local school communities. Each school's discipline code must set out clear expectations for student behaviour. Teachers are also provided with a wide range of strategies to support appropriate student conduct and maintain high standards of discipline.

871. Section 35(2A) of the *Education Act 1900* provides that the guidelines and codes of government schools must not permit corporal punishment of students attending government schools. Section 47(h) of the Education Act outlines the registration requirements for non-government schools and requires that non-government school policies relating to discipline of students attending the school are based on principles of procedural fairness, and do not permit corporal punishment of students.

872. Clause 65(2) of the *Children's Services Regulation 2004* (NSW) requires that the licensee and the authorized supervisor of children's services ensure: child management techniques do not include physical, verbal or emotional punishment, including punishment that humiliates, frightens or threatens the child; and the child is not isolated for any reason other than illness, accident or pre-arranged appointment with parental consent.

Victoria

Schools

873. In accordance with the requirements of the *Education and Training Reform Act 2006* (the Act) and the related *Education and Training Reform Regulations 2007* (the Regulations), all schools in Victoria are prohibited from using corporal punishment, as specified in the following provisions:

(a) Section 4.3.1(6)(a) of the Act states that schools (government and non-government) cannot be registered unless the Authority is satisfied that "the school policies relating to the discipline of students are based on principles of procedural fairness and do not permit corporal punishment";

(b) Regulation 14 of the Regulations states that: "A member of the staff of a Government school must not administer corporal punishment to any Government school student";

(c) Clause 17(c) of Schedule 3 of the Regulations requires that for a school to be registered (government and non-government) documentation must be provided that shows the school's policies relating to student behaviour and that, "in accordance with s 4.3.1(6)(a) of the Act, these policies must be based upon procedural fairness and do not permit the use of corporal punishment".

Detention centres

874. In Victoria the corporal punishment of children in youth remand centres youth residential centres, youth justice centres or where a child is detained in a police gaol is prohibited under the *Children, Youth and Families Act 2005*, s 487.

Police custody

875. The *Corrections Act 1986* and the *Victorian Charter of Human Rights and Responsibilities 2006* demonstrate that corporal punishment is prohibited in Victoria.

Queensland

Schools

876. Queensland State School policies do not permit the use of corporal punishment. Any incidents of physical abuse, violence or threats of violence by a teacher towards a student breach the Department's Code of Conduct and are investigated.

877. There is no legislative basis on which to ban corporal punishment from non-state schools. However, it would be an offence under the Queensland *Criminal Code* to inflict corporal punishment on a child (in a state or non-state school) unless the circumstances were such that there is exemption under s 280. Section 280 provides that:

> *It is lawful for a parent or a person in the place of a parent, or for a schoolteacher or master, to use, by way of correction, discipline, management or control, towards a child or pupil, under the person's care such force as is reasonable in the circumstances.*

878. In addition, non-state schools are now required to have written processes about the appropriate conduct of staff and students that accord with legislation applying in the State about the care or protection of children. These must include a process for reporting harm and the definition of harm includes physical abuse.

Detention centres

879. Queensland does not employ corporal punishment in any of its youth detention centres. The operations of youth justice detention centres are governed by the requirements of the *Juvenile Justice Act 1992* and the *Juvenile Justice Regulation 2003*. Where intervention is required, the Act and regulation prescribes the conditions under which the use of any physical restraint is permitted. All youth detention centre staff receive extensive training in appropriate methods for dealing with young offenders including de-escalation procedures.

Alternative care settings

880. For children who have been taken into the care of the Queensland child protection system because of abuse or neglect, the use of corporal punishment is prohibited by legislation. Section 122 of the *Child Protection Act 1999* contains a statement of the standards that the chief executive must ensure for the care of any child who is in the chief executive's custody or guardianship. The standards specifically provide that "techniques for managing the child's behaviour must not include corporal punishment or punishment that humiliates, frightens or

threatens the child in a way that is likely to cause emotional harm". These standards apply whether the child is in the care of a foster carer, a residential care service licensed by the Queensland Department of Child Safety or in any other care setting.

881. In addition, the use of corporal punishment is not endorsed by Queensland Corrective Services. Corrective services officers are only permitted to use reasonable force in the circumstances outlined in the *Corrective Services Act 2006*.

Western Australia

882. The Western Australian Department of Education and Training prohibits the use of corporal punishment in public schools. The *School Education Act Regulations 2000* Regulation 40(2) state that a student at a public school is not to be disciplined by way of corporal punishment. Corporal punishment in Western Australian public schools has not been permitted since 1987.

883. The *Behaviour Management in Schools* policy further supports the use of sanctions for inappropriate behaviour, which do not include measures of a physical nature. These sanctions may include withdrawal from school activities, detention, suspension from attending school and partial or whole exclusion. Schools receive extensive support from district education offices to further promote the use of proactive strategies to manage behaviour in public schools.

884. The *Children and Community Services Act 2004* ("the Act") makes provisions about the protection and care of children. The following provisions of the Act are relevant to the prohibition of the use of corporal punishment in alternative care settings.

(a) Section 6(a) includes as an object of the Act "to promote the well-being of children, other individuals, families and communities".

(b) Section 9 outlines the principles that must be observed in the administration of the Act. They include the principles that:

(i) Every child should be cared for and protected from harm;

(ii) Every child should live in an environment free from violence;

(iii) Every child should have stable, secure and safe relationships and living arrangements.

(c) The Act empowers the Department to take a child into provisional protection and care where there is an immediate and substantial risk to the child's well-being (s 37).

(d) The Act enables an officer in charge of a hospital to keep a child under 6 years of age in hospital for the purpose of observation, assessment or treatment where the officer believes that the child is in need of protection (s 40).

(e) Section 101 of the Act provides that it is an offence for a person who has the care or control of a child to engage in conduct, either knowing that the conduct may result in the child suffering harm as a result of physical abuse, or reckless as to whether the conduct may have that result.

(f) Under s 78 of the Act, the CEO of the Department must prepare, and promote compliance with, a Charter of Rights for all children in the CEO's care. The Charter of Rights includes that the child has the right to be respected and the right to be safe.

885. In 2004, the (then) Minister for Community Development commissioned an independent expert in child protection, Ms Gwenn Murray, to examine the (then) Department for Community Development's responses when children are harmed in care. Ms Murray's report, presented to the Government in December 2005, showed some changes were needed to protect these children. A Strategy for implementing the recommendations in Ms Murray's report was completed in August 2006. The outcomes for the actions identified in the Strategy are measured against performance indicators and evaluated on an ongoing basis to ensure they achieve improved outcomes for children in care.

886. A Departmental policy for the "*well-being and safety of the maltreated child*" was introduced in 2004. This policy focuses on children who are in need of protection and care because of maltreatment. Maltreatment in the policy refers to when a child or young person has been subjected to physical, sexual, emotional, psychological abuse and/or neglect, the severity and/or persistence of which has resulted in, or is likely to result in, significant harm. The Department also employs an Advocate for Children in Care who provides help to children with problems or complaints. This includes giving the children information and advice about how they should be treated.

887. Corporal punishment is not practised in the prisons or detention centres in Western Australia.

South Australia

888. The SA Department of Education and Children's Services amended education regulations in June 1991 to abolish formally corporal punishment in South Australia's State schools.

Tasmania

889. Corporal punishment is not permitted in prisons or detention centres.

890. Section 82A of the *Education Act 1994* prohibits the use of corporal punishment in schools.

891. Staff are made aware of their obligations under the Act through the publication of policy and guidelines.

892. Child Protection Services expressly prohibits the use of physical punishment, emotional abuse and verbal abuse in the management of children in care. Information published by the Department of Health and Human Services for foster carers, support workers and others clearly states that the use of physical punishment is a prohibited practice. The information also includes other tactics and approved practices for carers in terms of discipline and managing poor behaviour. These tactics include: identifying triggers for poor behaviour; focusing on a child's strengths; distracting and diverting a child's attention away from poor behaviour; and what consequences, such as time outs, are acceptable. Providing further guidance, the Department's foster carer training programme, *Step by Step* includes information for potential carers, regarding the discipline of children or young people in out of home care. The Training Handbook states:

> *Carers are expected to work closely with staff of Child Protection Services in developing appropriate discipline strategies for the child or young person in their care. Potential carers must demonstrate an ability to effectively discipline children without the use of physical, psychological or emotional punishments. It is very important that children are disciplined in a way that sends a strong message to them that they are valued in spite of their behaviour. Experience has shown that hitting or other physical punishment is not effective in dealing with children who may have experienced abuse and/or neglect. Many of these children have not experienced consistent parenting by a caring adult. Child Protection Services has behaviour management guidelines to help carers discipline children appropriately.*

893. Further, the Tasmanian Commissioner for Children has also proposed a model for the establishment of an Official Visitor's Scheme in out of home care scenarios. The proposal would provide children in care with an independent mechanism to report incidents of the use of physical punishment. The Department is currently in discussions with the Office of the Commissioner for Children with regard to the proposal.

Australian Capital Territory

894. Corporal punishment is prohibited in any school in the ACT pursuant to s 7(4) of the *Education Act 2004*. Accordingly, any use of corporal punishment in an ACT school would constitute assault. Section 366(4) of the *Children and Young People Act 1999* creates an offence, punishable by 50 penalty units or 6 months' imprisonment, of subjecting children in day care centres to discipline that is unreasonable in the circumstances. If a person was to subject a child to discipline that was unreasonable in the circumstances, not only would they be liable for this offence, but also to the offence of assault. Although the common law defence of reasonable chastisement may authorize the corporal punishment of children by people acting in *loco parentis* [see *Mansell v. Griffin* [1908] 1 KB 160], which might include correctional staff, it is the practice of ACT corrections staff not to administer corporal punishment under any circumstances.

895. A Standing Order addressing the use of force has been developed for the Youth Detention Centre. This Standing Order addresses use of force by staff at a Detention Centre and permits the use of force only in response to an unacceptable risk of escape or immediate harm to the resident or other children, young people, visitors or staff within the centre. While this Standing Order does allow for action to be taken in particular circumstances, it does not include corporal punishment. This Standing Order is written with the understanding that residents are likely to be particularly vulnerable with high levels of early trauma and adversity and high rates of mental disorder. Residents are also highly likely to have specific difficulties in interpersonal functioning, understanding and control of emotional states and impulses.

896. The standards of out of home care provide the policy regarding corporal punishment in out of home care. The policy outlines that corporal punishment, or any punishment, which takes the form of immobilization or force-feeding, is unacceptable.

897. The education model used in the ACT Youth Detention Centre is through current programmes offered by the Hindmarsh Education Centre (HEC). Age appropriate and strengths based programmes are provided that meet the diverse academic and vocational education and training needs of both the long- and short-term clients of the Centre. These programmes have been developed in preparation for the move to the new Bimberi Youth Justice Centre in July 2008.

Northern Territory

898. Corporal punishment in all Northern Territory Government schools was prohibited effective from 23 August 2005. The *Youth Justice Act* (NT) provides guidelines prohibiting the use of corporal punishment and a complaints section. Sections of the Act provide guidelines on access to the Official Visitor, Ombudsman and the complaints process. The Youth Justice Regulations provide guidelines on the complaints process and the maintenance of a complaints register. Youth have access to a Social Worker who advocates and assists youth to access the appropriate channels of complaint. The Youth Detention Centre Instructions and Procedure Manual sets up a process for complaints.

Question 37

Please provide information, disaggregated by sex, age, ethnicity or origin of victims, on the number of investigations, convictions and sanctions that have been applied in cases of human trafficking and commercial sexual exploitation. Please inform the Committee of the number of Witness Protection Visas issued to victims of trafficking and how many victims of trafficking have benefited from recovery assistance.

899. The first part of the response provides information on investigations, convictions and sanctions applied in cases of human trafficking and commercial sexual exploitation, as well as the number of Witness Protection Visas issued to victims of trafficking and the numbers of victims that have benefited from recovery assistance. This is followed by further information from New South Wales, Victoria and Queensland.

Commonwealth Government information

900. The following table provides the official human trafficking statistics from January 2004 to September 2006.

Number of individuals	
Criminal investigations	117
Victim support programme	66[a]
Arrests	23
Prosecutions	14
Convictions	4[b]

Source: Putt 2007 "Human trafficking to Australia: a research challenge" T&I no. 338.

[a] 44 have been issued with criminal justice stay visas.

[b] At the time of writing three convictions were under appeal.

Data sourced from Australian Federal Police.

901. Since the commencement of the Commonwealth legislation prohibiting people trafficking was enacted, the CDPP has been referred 28 briefs of evidence for consideration. Broadly speaking, of the 28 defendants, 16 defendants have faced sex slavery offences, 8 have faced sexual servitude type offences, 2 have faced non-sex slavery offences, 1 has faced deceptive recruiting type offences and 1 has faced labour trafficking type offences.

902. There are currently eight people trafficking matters before the Courts in Australia. Of those, one is a deceptive recruiting matter, one is a labour trafficking matter, and six are slavery/sexual servitude matters. One of the slavery matters does not involve the trafficking of women for the purpose of their working in the sex industry; the rest of the slavery matters are linked to trafficking in women from South East Asia for work in the sex industry.

903. Since the commencement of the legislation, there have been three convictions for people trafficking in Australia. All of the convictions have been for slavery/sexual servitude offences under the Criminal Code. One of those defendants entered a plea of guilty, and two of the defendants have appealed their convictions. (Those appeals are still on foot.) In another matter, the defendant was found guilty (and convicted) of slavery offences. That defendant successfully appealed to the Court of Appeal in Victoria and the convictions were quashed. The CDPP is appealing to the High Court in that matter.

904. In the matter where the defendant entered a plea of guilty, the defendant was ultimately sentenced to six years' imprisonment with a non-parole period of two and a half years. In the

two matters where the defendants were convicted and the convictions are under appeal, one of the defendants was sentenced to 4 years' imprisonment with a non-parole period of two years, and the other was sentenced to five years' imprisonment to serve two and a half years.

905. All of the victims of the sexual slavery/servitude offences have been women. None of the matters prosecuted by the CDPP have involved children. Of the people trafficking matters which are not related to the sex industry, one victim is male, and one victim is female.

906. As at 2 August 2007, 14 persons have been granted temporary Witness Protection (Trafficking) visas.

907. As at 3 July 2007, 81 people have received support for Victims of People Trafficking Programme.

State and Territory information

New South Wales

Commercial sexual exploitation

908. The NSW Judicial Information Research System (JIRS) provides a general guide to the pattern of sentences handed down by NSW courts for particular offences. JIRS outlines the convictions and the corresponding sanctions issued by the NSW courts. JIRS does not provide information in relation to the victims of particular offences.

909. Sections 80D and 80E of the *Crimes Act 1900* provide that it is an offence to cause sexual servitude and to conduct a business involving sexual servitude respectively. There have been no recorded convictions for these offences in the past three years.

910. Section 91A of the Act provides that it is an offence to procure a person for prostitution and s.91B of the Act provides that it is an offence to procure a person for prostitution by means of any fraud, violence, threat, or abuse of authority, or by the use of any drug or intoxicating liquor. JIRS indicates that between January 2003 and December 2006 there was one successful prosecution in relation to s 91A which attracted a penalty of a fine. There was also one successful conviction under s 91B in which the offender was given a s 9 Bond (a good behaviour bond) in the same time period.

911. Section 91D, 91E and 91F make it an offence to promote or engage in acts of child prostitution, obtain benefit from child prostitution or to use premises for child prostitution, respectively. JIRS indicates that between January 2000 and December 2006 there were 5 convictions under s 91D(1)(a) all of which received a term of imprisonment ranging from 12 months to 9 years. There were two convictions under s 91E in this period. In one case a suspended sentence was issued and in the other, a prison term of 36 months. There were also two convictions under s 91F in this period. One offender received a suspended sentence of 24 months and the other a prison term of 24 months.

Victoria

912. Whilst there are Victorian offences for sexual servitude and forced prostitution, Victoria Police have not laid any State charges but rather have engaged in joint operations with the Australian Federal Police.

Queensland

913. The *Queensland Criminal Code* does not contain offences relating to human trafficking. Should a case be reported to or identified by the Queensland Police Service, the Australian Federal Police would be contacted to have the matter investigated. Offences under ss 270 or 271 (relating to "Sexual Servitude") of the Commonwealth *Criminal Code* would be applied.

914. Information relating to convictions for commercial sexual exploitation is contained in the following tables.

Number of defendants convicted of offences relating to commercial exploitation of children for all Queensland Supreme and District Courts for calendar years 2000-2006[1]

Outcome year	Defendant convicted of	Order	Females								Males							Grand total
			20-24	25-29	30-34	35-39	40-44	45-49	55-59	U	25-29	35-39	40-44	45-49	50-54	55-59	65-69	
2000	Having an interest in premises used for the purposes of prostitution, etc.	Community Service Order	1							1								2
	Having an interest in premises used for the purposes of prostitution, etc.	Monetary fine		1														1
	Having an interest in premises used for the purposes of prostitution, etc.	Totally suspended														1		1
2000 total			1	1						1						1		4
2001	Having an interest in premises used for the purposes of prostitution, etc.	Monetary fine		1			1										1	3
	Obscene publications and exhibitions	Community Service Order										1						1
2001 total				1			1					1					1	4
2002	Having an interest in premises used for the purposes of prostitution, etc.	Community Service Order				1												1
	Having an interest in premises used for the purposes of prostitution, etc.	Monetary fine	1	1		1	2											5
	Having an interest in premises used for the purposes of prostitution, etc.	Totally suspended						1										1
	Procuring prostitution	Monetary fine							1			1						2
2002 total			1	1		2	2	1	1			1						9
2003	Having an interest in premises used for the purposes of prostitution, etc.	Monetary fine		1														1
	Procuring prostitution	Monetary fine												1				1
2003 total				1										1				2
2004	Having an interest in premises used for the purposes of prostitution, etc.	Imprisonment									1							1
2004 total											1							1

Outcome year	Defendant convicted of	Order	Females								Males							Grand total
			20-24	25-29	30-34	35-39	40-44	45-49	55-59	U	25-29	35-39	40-44	45-49	50-54	55-59	65-69	
2005	Knowingly participating in prostitution	Monetary fine											1			1		2
	Procuring prostitution	Imprisonment													1			1
2005 total													1		1	1		3
2006	Distributing child exploitation material	Imprisonment												1				1
	Knowingly participating in prostitution	Monetary fine			1							1						2
	Procuring prostitution	Imprisonment			1													1
2006 total					2							1		1				4
Grand total			2	4	2	2	3	1	1	1	1	3	1	2	1	2	1	27

Source: Courts database maintained by OESR (Office of Economic and Statistical Research), Department of Treasury.

Notes:

1. Information is only available for Supreme and District Court centres as a computerised criminal information system was implemented in that centre. As it has not been practicable to undertake manual searches of all criminal files, information is available in the following centres for the following time periods:

Brisbane: Information available for Supreme and District Court for the whole period 2000 to 2006;

Cairns, Townsville, Rockhampton: Information available for Supreme and District Courts from 1 July 2002 to 2006;

All other Queensland Supreme and District Courts: Information available from 1 March 2005 to 2006.

2. Data includes both adults and juveniles.

3. A defendant is defined as a person or organization against whom one or more criminal charges have been laid and which are heard together as one unit of work by a court level. It should be noted that this method does not enumerate distinct persons or organizations. If a person or organization is a defendant in a number of criminal cases which are finalized on different dates, such a person or organization will be counted more than once in this statistical collection.

4. In Queensland, offences relating to commercial exploitation of children can be dealt with in the Supreme, District and Magistrates Courts. Data in the table above includes defendants dealt with in the Supreme or District Courts only.

Date prepared: 19/07/07.

Number of defendants convicted of offences relating to commercial exploitation of children for all Magistrates Courts for calendar years 2001-2006

Outcome year	Defendant convicted of	Order	Females										Males											Unknown			Grand total
			U/20	20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	U/20	20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	65-69	70-74	U	20-24	25-29	
2001	Having an interest in premises used for the purposes of prostitution, etc.	Good behaviour														1	1											2
	Having an interest in premises used for the purposes of prostitution, etc.	Monetary fine			3	3	1	1	1							2	1	2	1		1							16
	Knowingly participating in prostitution	Probation															1											1
	Knowingly participating in prostitution	Good behaviour			2																	2						4
	Knowingly participating in prostitution	Monetary fine	1	3	3	7	1	3	4	1					4	1	3	3	2	2	2							40
	Procuring prostitution	Monetary fine			1																							1
2001 Total			1	3	9	10	2	4	5	1					4	4	6	5	3	2	3	2						64
2002	Having an interest in premises used for the purposes of prostitution, etc.	Imprisonment																	1									1
	Having an interest in premises used for the purposes of prostitution, etc.	Monetary fine			2	1	1	2			1				1	1		2	2				1					14
	Knowingly participating in prostitution	Good behaviour				2	1			1																		4
	Knowingly participating in prostitution	Monetary fine		5	6	7	7	2	1			1		1	1	2			1									34
	Knowingly participating in prostitution	Convicted not punished	1			1																						2
	Procuring prostitution	Good behaviour							1																			1
	Procuring prostitution	Monetary fine							1					1														2
2002 total			1	5	8	11	9	4	3	1	1	1		2	2	3		2	4				1					58

Outcome year	Defendant convicted of	Order	Females										Males											Unknown			Grand total
			U/20	20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	U/20	20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	65-69	70-74	U	20-24	25-29	
2003	Having an interest in premises used for the purposes of prostitution, etc.	Monetary fine				1	1	3			1					1	1		1									9
	Knowingly participating in prostitution	Good behaviour	1	1	1	1		2														1						7
	Knowingly participating in prostitution	Monetary fine	2	8	14	14	16	9	3	3					1	1	6	3	2		1							83
	Knowingly participating in prostitution	Convicted not punished		3																		1						4
	Procuring prostitution	Good behaviour																						1				1
	Procuring prostitution	Monetary fine			1																							1
2003 Total			3	12	16	16	17	14	3	3	1				1	2	7	3	3		1	2		1				105
2004	Having an interest in premises used for the purposes of prostitution, etc.	Monetary fine																				1						1
	Knowingly participating in prostitution	Imprisonment							1																			1
	Knowingly participating in prostitution	Good behaviour		2	5	1	1			2	1				1					1								14
	Knowingly participating in prostitution	Monetary fine		1	7	5	7	3	5		1		2	2	3	2	3	4	2	2	2	1	1			1		54
	Knowingly participating in prostitution	Convicted not punished		1		2		1																				4
	Procuring prostitution	Monetary fine				1												1	1									3
2004 Total				4	12	9	8	4	6	2	2		2	2	4	2	3	5	3	3	2	2	1			1		77
2005	Having an interest in premises used for the purposes of prostitution, etc.	Monetary fine																	1									1
	Knowingly participating in prostitution	Imprisonment																		1								1
	Knowingly participating in prostitution	Good behaviour								1													1					2
	Knowingly participating in prostitution	Monetary fine	3	6	7	13	3	6	4	1	1	1		2		1		1	3	1		1					1	55
	Knowingly participating in prostitution	Convicted not punished							2																			2

Outcome year	Defendant convicted of	Order	Females										Males											Unknown			Grand total
			U/20	20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	U/20	20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	65-69	70-74	U	20-24	25-29	
	Obscene publications and exhibitions	Monetary fine															1											1
	Procuring prostitution	Monetary fine				1											1					1			1			4
2005 Total			3	6	7	14	3	6	6	2	1	1		2		1	2	1	4	2		2	1		1		1	66
2006	Having an interest in premises used for the purposes of prostitution, etc.`	Monetary fine			1						1					1					1							4
	Knowingly participating in prostitution	Imprisonment						1																				1
	Knowingly participating in prostitution	Good behaviour				2												1										3
	Knowingly participating in prostitution	Monetary fine	1	2	5	7	4	7	7	4				1		1	1	1	1	1		2						45
	Knowingly participating in prostitution	Convicted not punished						1																				1
	Procuring prostitution	Monetary fine																			1							1
2006 total			1	2	6	9	4	9	7	4	1			1		2	1	2	1	1	2	2						55
Grand Total			9	32	58	69	43	41	30	13	6	2	2	7	11	14	19	18	18	8	8	10	3	1	1	1	1	425

Source: Courts database maintained by OESR (Office of Economic and Statistical Research), Department of Treasury.

Notes:

1. Data includes both adults and juveniles.

2. A defendant is defined as a person or organization against whom one or more criminal charges have been laid and which are heard together as one unit of work by a court level. It should be noted that this method does not enumerate distinct persons or organizations. If a person or organization is a defendant in a number of criminal cases which are finalized on different dates, such a person or organization will be counted more than once in this statistical collection.

3. In Queensland, offences relating to commercial exploitation of children can be dealt with in the Supreme, District or Magistrates Courts. Data in this table includes defendants dealt with in the Magistrates Court only.

4. Magistrates Court data is only available for 2001 onwards.

Date prepared: 19/07/07.

Western Australia

915. There have been no reported cases.

South Australia

916. There have been no cases reported from South Australia to the Federal Government.

Tasmania

917. No data is available.

Australian Capital Territory

918. In the ACT, there have been three investigations into commercial sexual exploitation in the period 2000-2007, namely sexual servitude. None of these investigations resulted in charges being laid.

Northern Territory

919. Since 2002, the Northern Territory Criminal Code (at Part VI, Div 6A) contains offences with substantial penalties (e.g. up to life imprisonment where children are involved) for persons who cause others to enter or continue in sexual servitude; conduct a business involving sexual servitude; or engage in deceptive recruiting for sexual services.

920. The Northern Territory Police has no recorded cases of human trafficking or commercial sexual exploitation.

Question 38

With reference to paragraph 22 of the State party report, please inform the Committee of the number of cases of female genital mutilation that have been reported and prosecuted.

921. Female Genital Mutilation is a matter governed by State and Territory legislation.

New South Wales

922. There has been no change to the legislation relating to female genital mutilation in NSW. Female genital mutilation is prohibited under s 45 of the *Crimes Act 1900* (NSW). This section attaches a maximum penalty of seven years to the offence. Section 45(1)(b) of the *Crimes Act* also provides that a person who aids, abets, counsels or procures a person to perform female genital mutilation on another person is also liable to imprisonment for seven years. The legislation extends to acts occurring outside NSW where the person subject to the offence is ordinarily resident in NSW. Consent is not allowable as a defence under the Act.

923. As indicated above, the Judicial Information Research System provides a general guide to the pattern of sentences handed down by NSW courts for particular offences. There have been no recorded convictions for this offence. Further enquiries would need to be made with NSW Police to establish the number of cases of female genital mutilation reported to police.

924. The *Children and Young Persons (Care and Protection) Act 1998*, states that reporting is mandatory for children under the age of 16 at risk of harm and the NSW Interagency Guidelines for Child Protection Intervention list female genital mutilation as an indicator of physical child abuse.

925. The practice of female genital mutilation in NSW is reportable to NSW Police in the case of children and young people. Should women over the age of 18 either request or be subjected to female genital mutilation by other parties this also is illegal and should be reported to police.

926. NSW Department of Health works closely with health professionals and relevant community groups to prevent the practice of female genital mutilation and to support the care of affected women through the State-wide NSW Education Programme on female genital mutilation. This programme has been in operation since 1997 and is funded by NSW Department of Health and auspiced by Sydney West Area Health Service.

927. The NSW Female Genital Mutilation Programme takes a human rights approach to empower female genital mutilation affected communities to help them recognize a woman's right to bodily integrity, and the health and social effects of female genital mutilation for women and girls. The programme implements a comprehensive programme incorporating:

(a) Education and training programmes for health professionals working with women affected by female genital mutilation;

(b) A community development programme which works with older and newly arrived communities who come from female genital mutilation practicing countries;

(c) The development and distribution of supporting resources for both community and professional education.

Victoria

928. Female genital mutilation is an alleged abuse type recorded by the Department of Human Services (DHS) in child protection notifications. Very few cases have been recorded to date. DHS have established protocols with Victoria Police to notify one another about cases of female genital mutilation.

929. Victoria Police advise that, whilst female genital mutilation is an emerging issue, it is difficult to quantify the number of prosecutions. There is not a specific offence for it and offenders may be charged with a range of other offences for this conduct.

Queensland

930. Female genital mutilation is an offence under Queensland's *Criminal Code*. During the last three years, the Child Safety and Sexual Crime Group has only investigated one such complaint and following investigations there were no charges laid.

Western Australia

931. There have been no cases of female genital mutilation reported or prosecuted since the relevant legislation (section 306 of the Criminal Code) commenced in 2004.

South Australia

932. The South Australia Government is committed to the prohibition of female genital mutilation. Since 1995[28] the practice of female genital mutilation has been a criminal offence to send a clear and unequivocal message that female genital mutilation will never be in the public interest, nor is it medically justified.

933. The *Criminal Law Consolidation Act 1935*[29] contains two criminal offences in relation to female genital mutilation. The first offence specifically targets those who actually perform these operations and clearly states that the consent of the victim or the victim's parents or guardians is no answer to the charge. The second offence is aimed at preventing and deterring the export of children offshore to places where the operation is more freely available. It contains a reverse onus clause in relation to the intention to have the child subjected to the procedure, but that reverse onus clause does not come into operation unless the child has been taken from the State and the operation has actually been done.

934. Provisions in the *Children's Protection Act 1993*[30] are aimed at the prevention of female genital mutilation rather than penalizing people after the event, when it is already too late for the child. If the Youth Court is satisfied that there are reasonable grounds to suspect that a child may be at risk of female genital mutilation, the Court may make orders for the protection of the child.[31] In proceedings relating to female genital mutilation, the Court is required to assume that it is in the child's best interests to resist pressure of racial, ethnic, religious, cultural or family origin that might lead to genital mutilation of the child.

Tasmania

935. No cases of female genital mutilation have been prosecuted in Tasmania.

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[28] The *Criminal Law Consolidation Act 1935* and the *Children's Protection Act 1993* were amended by the *Statues Amendment (Female Genital Mutilation and Child Protection) Amendment Act 1995*.

[29] See sections 33, 33A and 33B.

[30] See sections 26A and 26B.

[31] For example the Court may make an order preventing a person from taking the child from the State or provide for the periodic examination of the child to ensure that the child is not subjected to female genital mutilation.

Australian Capital Territory

936. Section 74 of the *Crimes Act 1900* (ACT) prohibits female genital mutilation, and s 75 prohibits removal of children from the ACT for the purposes of female genital mutilation. There have been no cases of female genital mutilation reported or prosecuted in the ACT.

Northern Territory

937. Female genital mutilation is prohibited under ss186A-186D of the Northern Territory Criminal Code. There have been no cases of female genital mutilation reported in the Northern Territory.

Other

Question 39

Please indicate whether there is legislation in your country aimed at preventing or prohibiting the production, trade, export and use of equipment specifically designed to inflict torture or cruel, inhuman or degrading treatment. If so, please provide information about its content or implementation. If not, please indicate whether the adoption of such legislation is being considered.

938. The Australian Government is not aware of any legislation that specifically addresses the issues raised in this question, nor are there any proposals to introduce controls on the production, trade, export or use of equipment specifically designed to inflict torture or cruel, inhumane or degrading treatment. As torture is a crime against humanity (section 268.13 of the Criminal Code), the use of any equipment used in torture would likely become forfeit as an instrument used in a serious criminal offence.

939. The *Customs (Prohibited Imports) Regulations 1956* regulate the importation of certain goods based on the nature of the goods themselves rather than what their potential end use might be. Almost any ordinary item can be used for the purpose of inflicting torture and it may be difficult to identify equipment which is specifically designed for that purpose. The importation of certain weapons and strategic goods require a licence from the Minister for Justice and Customs. For example, Schedule 2 of the Regulations includes the following goods:

> *Item 9: Daggers or similar devices, being sharp pointed stabbing instruments (not including swords or bayonets):*
>
> *(a) Ordinarily capable of concealment on the person; and*
>
> *(b) Having:*
>
> *(i) A flat blade with cutting edges (serrated or not serrated) along the length of both sides; or*
>
> *(ii) A needle-like blade, the cross section of which is elliptical* or *has three or more sides; and*

(c) Made of any material.

Item 10: Dog collars incorporating:

(a) Apparatus designed to cause an electric shock; or

(b) Protrusions designed to puncture or bruise an animal's skin.

Item 12: Hand-held electric devices that are designed to administer an electric shock on contact, other than cattle prods designed exclusively for use with animals.

Item 13: Acoustic anti-personnel devices that are designed:

(a) To cause permanent or temporary incapacity or disability to a person; or

(b) To otherwise physically disorientate a person.

940. Further, as certain drugs or illicit narcotics may be used in torture, the production, possession, use etc. of certain drugs or illicit narcotics may be regulated domestically and/or at the border. However, these substances are regulated because of the nature and harmfulness inherent in the goods themselves, and not necessarily because they may be used in torture per se.

941. The *Customs (Prohibited Exports) Regulations 1958* regulate the export of certain goods from Australia, prohibiting exports without the permission of the Minister for Justice and Customs. Regulated goods include, among other things, military and dual use goods (the latter are those that may have a weapons of mass destruction application), as identified in the Defence and Strategic Goods List (DSGL). The DSGL implements international arms control regimes. In addition, consistent with United Nations Security Council sanctions, the exportation of paramilitary goods to certain sanctions-designated destinations is controlled under the Regulations.

State and Territory information

942. There are no provisions in State and Territory legislation specifically dealing with equipment designed to inflict torture or cruel, inhuman or degrading treatment.

Question 40

Please indicate what measures are taken to ensure that individuals detained by Australian forces stationed overseas, notably in Afghanistan and Iraq, are not treated in a manner which would violate the Convention when handed over to other forces.

General

943. The Australian Defence Force (ADF) would not transfer any person from its custody to the custody of another country unless it was satisfied that the person would not be subject to torture or any other form of cruel, inhuman or degrading treatment.

944. Before and during their deployment, all ADF personnel receive training in human rights law and the law of armed conflict. ADF personnel receive specific instruction on the handling of persons who have been detained. This instruction is based on Force Detention Standing Operating Procedures or Instructions which contain orders and guidance derived from and consistent with, Australia's international and domestic legal obligations and policy requirements. Deployed ADF forces have clear reporting requirements for all allegations of abuse of detainees and any such allegations are investigated promptly, effectively and impartially. Legal officers and policy advisers are deployed on operations to provide deployed Commanders with legal and policy advice respectively on Australia's international and domestic legal obligations and policy requirements.

Iraq

945. The majority of ADF combat forces in Iraq operate under the Multinational Division - South East (MND(SE)) in partnership with the United Kingdom. However, there is also a Security Detachment based in Baghdad. The UK is the lead MND(SE) nation where the majority of Australian forces are based. Australia's policy in Iraq is to transfer detainees to the UK. Australia has sought certain assurances from the UK regarding the treatment of detainees.

Afghanistan

946. ADF elements in Afghanistan operate under the International Security Assistance Force (ISAF), in partnership with the Netherlands. The Netherlands is the lead ISAF nation in Oruzgan province, where the majority of Australian forces are based. Australia's policy in Afghanistan is to transfer detainees to the Netherlands for on-forwarding to Afghanistan. Australia has arrangements in place with the Netherlands regarding the handling of ADF detainees. These arrangements are consistent with ISAF policy and Australia's domestic and international legal obligations.

Timor-Leste

947. ADF elements in Timor-Leste operate as part of the International Security Force (ISF), with New Zealand. The ISF transfers any detainees directly to the United Nations Police, unless other arrangements are made with the United Nations and the Government of Timor-Leste. Australia has understandings in place with the United Nations on detainees.

Solomon Islands

948. ADF personnel deployed to the Solomon Islands provide military security support to the Participating Police Forces (PPF) in order to support the maintenance of law and order. The ADF transfers any detainees directly to the Solomon Islands Police Force/PPF as soon as possible. Treatment of detainees is governed by Solomon Islands' law, which includes the prohibition against torture enshrined in the Constitution. Section 7 of the *Constitution of Solomon Islands* states that "no person shall be subjected to torture or to inhuman or degrading punishment or other treatment".

Question 41

Please inform the Committee on whether - after the report of the Independent Joint Standing Committee on Treaties of March 2004 - there is any further development about the State party's position with respect to the ratification of the Optional Protocol to the Convention. In this respect please clarify whether there is any monitoring mechanism or body with a mandate that permits it to enter into State, federal and territory prisons and other places of detention and receive complaints of alleged human rights violations from person's deprived of their liberty.

Commonwealth Government information

949. The Australian Government has not yet made a formal decision on becoming a party to the Optional Protocol.

950. The Australian Government has stated on numerous occasions that it has procedural and substantive concerns with the Optional Protocol. The Optional Protocol was adopted by vote not consensus. It is the Australian Government's strong preference for human rights treaties to be adopted by consensus, rather than by vote, to ensure they are broadly supported.

951. The Optional Protocol establishes a Sub-Committee of the Committee against Torture to visit places where people are deprived of their liberty in countries which are parties to the Protocol. Becoming a party to the Optional Protocol would constitute a standing invitation to the Sub-Committee to visit.

952. The Committee Against Torture already has the power to visit States parties to the CAT with a party's consent. The Australian Government considers that the Optional Protocol's standing invitation is therefore unnecessary.

953. In accordance with its ongoing treaty-body reform initiatives, the Government believes that United Nations resources should be targeted to achieve maximum beneficial effect. The creation of a new sub-committee to tour countries who are already parties to the CAT would not achieve this goal.

954. The Australian Government's policy is to agree to all visit requests by human rights committees and special procedures unless there is a compelling reason not to do so. Australia considers it important that it retains the right to consider the merits of visit requests on a case-by-case basis.

955. Domestically, Australia has a strong independent judiciary that deals with allegations of torture as they would constitute a criminal offence if proven.

956. The Human Rights and Equal Opportunity Commission (HREOC) is also able to investigate an act or practice of the Australian Government which is inconsistent with human rights, including the prohibition on torture in the International Covenant on Civil and Political Rights (ICCPR).

957. HREOC's powers do not extend to the investigation of acts or practices of an intelligence agency. Complaints alleging breach of human rights by an intelligence agency are referred to the Inspector-General of Intelligence and Security.

958. The Commonwealth Ombudsman is empowered to investigate complaints about the administrative actions of Australian Government departments and agencies.

Monitoring mechanisms in prisons and detention centres

959. There are no federal prisons in Australia. Under Australia's Constitution the States and Territories are responsible for the imprisonment of both State and federal offenders and the conditions under which they are held.

960. HREOC has the power to consider complaints from federal prisoners that an act or practice of the Commonwealth is contrary to a human right.

961. All people in immigration detention have the right to lodge complaints about the management of an immigration detention centre or their treatment while in immigration detention. They are able to pursue their complaints freely and without fear of adverse consequences for doing so.

962. People in immigration detention can lodge a complaint with:

(a) The detention services provider or departmental staff at the centre;

(b) The Commonwealth Ombudsman;

(c) The police;

(d) State and Territory Child Welfare agencies; and

(e) Other external agencies such as HREOC.

963. Immigration detention is also subject to continuing scrutiny from external agencies such as Parliamentary Committees, HREOC, the Commonwealth Ombudsman, the United Nations High Commissioner for Refugees (UNHCR) and the Immigration Detention Advisory Group (IDAG) to ensure that people in immigration detention are treated humanely, decently and fairly. Additionally, Federal Parliamentarians and Parliamentary Committees regularly visit IDCs and Immigration Residential Housing (IRH) and report on conditions.

964. The Commonwealth Ombudsman and HREOC have statutory rights to obtain information for the purposes of investigating complaints, as well as being able to undertake their own inquiries into aspects of immigration detention.

965. Relevantly, section 14 of the *Ombudsman's Act 1976*, provides that the Commonwealth Ombudsman has the power to enter, at a reasonable time of the day, any place that is occupied by a department or service provider of the Commonwealth to investigate complaints and carry

out their own inquiries. This includes all immigration detention facilities. Additionally, the *Human Rights and Equal Opportunity Commission Act 1986* provides that the Commissioner may obtain information from government agencies.

966. Further information relating to the Commonwealth Ombudsman and HREOC can be found in the response to Issue 26 above.

Monitoring mechanisms at State and Territory levels

967. All States and Territories also have their own monitoring mechanisms to prevent torture in prisons and similar facilities. These include training and scrutiny of police and prison officers. The conduct of police officers is monitored and reviewed by independent Ombudsmen and human rights in prisons, as well as other government bodies. A list of Federal, State and Territory administrative review bodies is included in Australia's CAT Report (1997).

968. A set of Standard Guidelines for Correctional Centres in Australia has been in place since 1996 and the current version can be accessed at <http://www.aic.gov.au/research/corrections/standards/aust-stand_2004.pdf>. The Guidelines reflect the United Nations Standard Minimum Rules for the treatment of prisoners, and the Council of Europe Minimum Rules, with some modifications to accommodate Australian conditions. Although they are not legally binding they provide guidance to legislatures and to prison authorities, including on matters relevant to the protection of human rights in prisons, including:

(a) The prohibition of prolonged solitary confinement, corporal punishment, reduction of diet and other cruel, inhumane or degrading punishments;

(b) The provision of written and verbal information concerning all matters relevant to the prisoner's imprisonment in a language and form which the prisoner can understand;

(c) The opportunity to make complaints or requests to a designated authority;

(d) The entitlement to inform families of their detention and to ongoing telephone access and visits;

(e) The right to seek assistance and to have legal visits;

(f) The provision of suitable accommodation and of the necessary facilities to maintain general hygiene;

(g) The prohibition of collective punishment;

(h) Restriction on the use of instruments of restraint and chemicals, save for control where other measures have failed;

(i) The provision of punishment for prison offences only in accordance with relevant laws and regulations, and subject to proper process;

(j) The provision of proper clothing, bedding, food and water, including special dietary food, where necessary for medical reasons, or for compliance with religious duties;

(k) The provision of proper health (medical and dental) services, and access to specialist and psychiatric care.

New South Wales

Official visitors

969. Official Visitors are appointed by the Minister for Justice under section 228 of the Crimes (Administration of Sentences) Act 1999 Act. Employees of the Department of Corrective Services or any person responsible for the management of, or who is employed at or in connection with a correctional centre or periodic detention centre is not eligible for appointment.

970. The Act requires Official Visitors to visit the centre to which they are appointed at least monthly. They receive and deal with complaints from inmates (other than Category AA male inmates and Category 5 female inmates) and staff, and examine the centre. They report to the Minister every six months.

971. The Regulation requires General Managers to advise inmates and staff of the date and time the Official Visitor will be visiting the centre.

Judges and magistrates

972. Any Judge of the Supreme Court or District Court, and any Magistrate, may at any time visit and examine any correctional complex, correctional centre or periodic detention centre (section 229 of the Act).

Ombudsman

973. Visits to correctional centres by representatives of the Ombudsman occur throughout the year. Prior to the visit, notices are displayed to inform inmates of the date and time of the visit, and inmates may make a complaint at this time. (At all times, inmates also have free and unmonitored telephone access to the Ombudsman.)

974. On the day of the visit the General Manager or delegated officer must ensure that all inmates who have requested to see the Ombudsman's representative are readily available. Throughout the day the Ombudsman's representative may contact the general manager with enquiries or matters requiring attention and resolution, if possible and appropriate.

Victoria

975. The following agencies/organizations enter Victorian prisons receiving complaints on alleged human rights violations:

(a) Corrections Inspectorate;

(b) Official Visitor's (managed by the Corrections Inspectorate);

(c) Ombudsman Victoria;

(d) Victorian Human Rights and Equal Opportunity Commission;

(e) Victoria Police;

(f) Victorian Auditor-General.

Queensland

976. The purpose of the Office of the Chief Inspector within Queensland Corrective Services is to provide expert, independent, external scrutiny regarding the treatment of offenders, and the application of standards and operational practices within Queensland's corrective services facilities. Such scrutiny assists Queensland Corrective Services to: act in a transparent and accountable manner; securely, safely and humanely contain prisoners; and provide rehabilitation programmes and vocational and educational training for prisoners.

977. The Office of the Chief Inspector also coordinates the Official Visitors Scheme. Official Visitors are drawn from the community and are appointed by QCS pursuant to the Corrective Services Act 2006. The Official Visitor Scheme plays an important role in the Queensland corrections system by ensuring a regular, easily accessible, independent programme of visitation to assist prisoners to manage and resolve their complaints. As community representatives they provide a further mechanism for ensuring that administrative decisions made within corrective services facilities are open and accountable. The Official Visitors report directly to the Chief Inspector on the outcome of investigations and other issues relating to the discharge of the position. These reports assist the Chief Inspector to identify systemic issues and inform the process of Centre Inspections. Further information on these mechanisms can be found at: <http://www.dcs.qld.gov.au/Publications/Corporate_Publications/Miscellaneous_Documents/Chief%20Inspector.pdf>.

978. Another mechanism is the Queensland Ombudsman's Office. This is an independent complaints investigation agency and its key role is to make sure that public agencies (State government departments and bodies, and local councils) act fairly and make the right decisions for Queenslanders. The Queensland Ombudsman is permitted by the *Corrective Services Act 2006* to access a corrective services facility. A prisoner's correspondence with the Ombudsman is privileged mail within the terms of the *Corrective Services Act 2006* and can only be opened in limited circumstances. Prisoners can place telephone calls to the Ombudsman's Office at scheduled times free of charge. Further information can be found at: <http://www.ombudsman.qld.gov.au/cms/index.php?option=com_content&task=view&id=24&Itemid=22>.

Western Australia

979. The West Australian MHA provides for a number of monitoring mechanisms independent of the mental health service to enable the protection of people with a mental illness who have been made detained involuntary patients.

980. The Mental Health Review Board (MHRB) reviews the involuntary status of detained patients either on request or at regular intervals on a mandatory basis. In order to conduct these reviews the MHRB has full access to the authorized hospital and may speak to patients, carers and clinicians.

981. The Council of Official Visitors (COV) may advocate for involuntary detained patients and assist them at an MHRB review or to progress any complaint. Official Visitors have full access to any part of an authorized hospital at any time of the day or night.

982. The Chief Psychiatrist is responsible for the medical care and welfare of all involuntary patients including those detained and the standards of care provided in mental health facilities including authorized hospitals. In that capacity the Chief Psychiatrist or staff from the Office of the Chief Psychiatrist have full access to all authorized hospitals in the State. The Chief Psychiatrist monitors the standards of service to involuntary detained patients at regular intervals through a clinical governance framework.

983. For further information regarding the Western Australia Inspector of Custodial Services, the Committee is referred to the input from Western Australia in relation to Issue 22 on the List of Issues.

South Australia

984. In South Australia, there are several monitoring bodies that are permitted to enter all South Australian prisons to receive and attend to complaints from prisoners. These are:

(a) The Visiting Inspectors, who are appointed by the Minister and visit each prison and talk to the prisoners weekly;

(b) The visiting chaplains;

(c) The Ombudsman;

(d) The Correctional Services Advisory Council, an independent body that reports directly to the Minister to monitor and evaluate the administration and operation of the *Correctional Services Act 1982*;

(e) The Minister;

(f) Aboriginal Prisoner and Offenders Support Services; and

(g) Aboriginal Legal Rights Movement.

Tasmania

985. In February 2006 the Tasmanian Government, through the *Mental Health Act 1996*, established the Official Visitors Scheme Tasmania as an independent body to visit the States Secure Mental Health Unit, the Wilfred Lopes Centre for Forensic Mental Health, to assess the adequacy of patient care and investigate complaints made by persons receiving care or treatment for mental illness.

986. The Ombudsman has jurisdiction to review administrative actions taken by or on behalf of a public authority. This includes review of administrative decisions relating to the detention of persons in the prison system.

Australian Capital Territory

987. The *Corrections Management Act 2007* provides that the Office of the Official Visitor is able to inspect detention facilities and talk to detainees and investigate complaints. In relation to juvenile detainees, the appointment of an Official Visitor is made under section 41 of the *Children and Young People Act 1999*. The role of the Official Visitor is to visit and inspect shelters and institutions for children and young people, visit children and young people receiving therapeutic protection and hear, investigate or refer complaints about the care, detention or treatment of those children or young people. Complaints received by the Official Visitor generally address the social and environmental needs of the young people residing in the Youth Detention Centre. Similarly, the Ombudsman may review the actions of police and correctional authorities and make recommendations.

988. The *Terrorism (Temporary Extraordinary Powers) Act 2006* provides that the Human Rights Commissioner and the Ombudsman are to be informed of the detention of people under a preventative detention order, and the Ombudsman can hear complaints from detained people.

989. The *Human Rights Act 2004* provides that the ACT Human Rights Commission. Under the Human Rights Act the Human Rights Commission has power to review the effect of laws, including conducting human rights audits. In 2005 the ACT Human Rights Commissioner conducted an audit of the Quamby Youth Detention Centre under the Human Rights Act. The audit found several violations, including strip-searching detainees routinely rather than where there was “reasonable suspicion” of residents possessing dangerous goods or contraband, and mixing of the behaviour management system with remission. The ACT Government, through the Office for Children, Youth and Family Support, is implementing a wide range of recommendations to improve conditions of detention. (For further information see answer to Q23 above.)

990. Following commencement of the Human Rights Act in July 2004, the Discrimination Commissioner was also appointed as the Human Rights Commissioner. Since that time the Human Rights Office has expanded to become the Human Rights Commission, also encompassing roles filled by additional Commissioners for disability and community services, and children and young people. Under the *Human Rights Commission Act 2005*, the respective commissioners have broad functions of handling complaints and overseeing promotion of systemic improvement in service provision for vulnerable children and young people.

991. Advocacy on behalf of particular individuals is the role of the Public Advocate (formerly known as the Community Advocate). The Public Advocate is a statutory office. Staff visit the Youth Detention Centre on a monthly basis through a Memorandum of Understanding and when appropriate, will address complaints of a serious nature based on the best interests of the child or young person.

Northern Territory

992. The Department of Justice operates an Official Visitor Programme (OVP) in all adult and juvenile detention facilities. The OVP provides independent monitoring on a monthly basis in accordance with legislation, namely the Prisons (Correctional Services) Act - Part V - ss 22 to 26 and Youth Justice Act - Part 9, ss 169 to 172. The objectives of the programme are to ensure inmates' rights are maintained in accordance with the Government's intentions.

993. Official Visitors are trained and kept abreast of changes in standards and requirements as incremental improvements are made to inmate circumstances and conditions following prison management's addressing of systemic issues.
