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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Sixth periodic report submitted by Australia under article 19 of the Convention pursuant to the optional reporting procedure, due in 2018*, **, ***

[Date received: 16 January 2019]

* The combined fourth and fifth periodic reports of Australia (CAT/C/AUS/4-5) were considered by the Committee at its 1260th and 1263rd meetings, held on 10 and 11 November 2014 (see CAT/C/SR.1260 and 1263). Having considered the report, the Committee adopted concluding observations (CAT/C/AUS/CO/4-5).

** The present document is being issued without formal editing.

*** The annexes to the present report are on file with the Secretariat and are available for consultation. They may also be accessed from the web page of the Committee.

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Introduction

1. The Australian Government presents Australia's sixth periodic report to the United Nations Committee against Torture on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

2. This report demonstrates Australia's commitment to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereafter referred to as CIDTP). Australian, state and territory governments devote significant resources to preventing torture and CIDTP and realising the rights set out in the CAT.

Preparation and structure of the report

3. This report has been prepared in accordance with the harmonised treaty-specific reporting guidelines. The Committee adopted a list of issues prior to the submission of this report (LoIPR). Australia's replies to the LoIPR constitute its report under article 19 of the Convention. This report covers the period November 2014 to November 2018.

4. Headings with an asterisk (*) indicate where further information and/or supplementary data, including jurisdiction-specific information, are available in the appendices.

5. Australia has endeavoured to provide the information requested however, this was not always possible. Not all data for 2018 was available at the time of drafting.

Consultation with state and territory governments and non-government organisations*

6. The report was prepared by the Australian Government Attorney-General's Department in consultation with other Commonwealth departments and state and territory governments. The LoIPR was circulated to civil society, including Australia's national human rights institution, the Australian Human Rights Commission (AHRC), seeking their views on issues which should be addressed in the report. In August 2018, the Australian public were invited to present their views on the draft report.

I. Specific information on the implementation of articles 1 to 16 of the Convention, including with regard to the Committee's previous recommendations

Follow-up questions from the previous reporting cycle

Reply to the issues raised in paragraph 1 of the list of issues (CAT/C/AUS/QPR/6)*

7. Data on violence against women and their children varies across jurisdictions due to differing definitions of domestic and family violence, differences in legislation, and the division of responsibilities for key services such as education, policing and health. Not all data requested in issue 1(a) is available in a form that would enable a sufficient response; available data is provided at Appendix I.

8. To address inconsistencies in data collection, the Australian Bureau of Statistics (ABS) is leading work to obtain comparable data across jurisdictions.

National Data Collection and Reporting Framework

9. Australian governments have committed to developing and implementing a National Data Collection and Reporting Framework, led by the ABS, for domestic and family violence and sexual violence that informs the collection of administrative data.

10. Work on the National Data Collection and Reporting Framework will be progressed further under the Third Action Plan of the National Plan to Reduce Violence against Women and their Children 2010–2022 (National Plan).

Personal Safety Survey

11. The Personal Safety Survey (PSS) is a national survey conducted by the ABS. It collects detailed information from men and women aged 18 years and over about the nature and extent of violence experienced since the age of 15, including partner violence, emotional abuse and stalking. The PSS also collects detailed information on:

- Physical and sexual abuse before the age of 15;
- Witnessing violence between a parent and partner before the age of 15;
- Lifetime experience of sexual harassment; and
- General feelings of safety.

12. The PSS is the most comprehensive prevalence data source available in Australia. PSS data collected are publicly available.

Data on domestic and family violence deaths

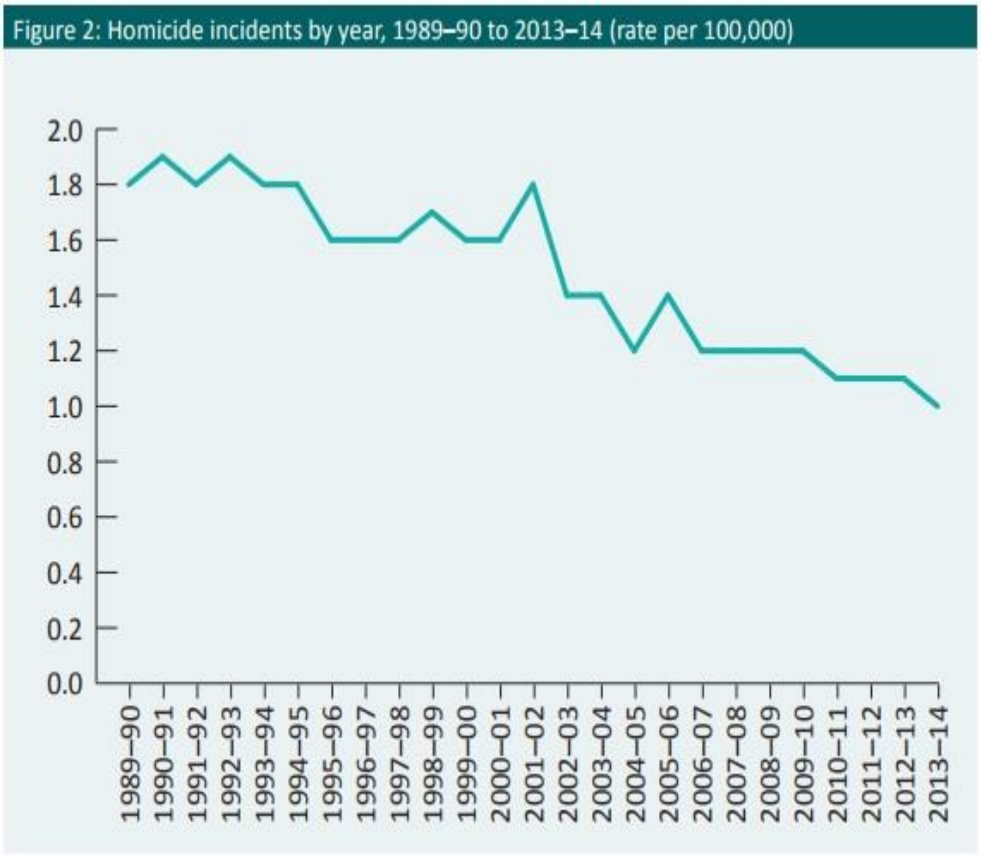
13. The Australian Domestic and Family Violence Death Review Network – a network of established Australian domestic and family violence death review teams – is leading the development of a coherent and centralised system for the collection and analysis of domestic and family violence related deaths across Australia. A detailed national data report was released in May 2018.

14. The report presents findings of a specialised national domestic and family violence homicide dataset regarding histories of domestic and family violence leading up to intimate partner homicides. It aims to enhance understandings of domestic violence homicide in Australia, and to enhance intervention and prevention efforts.

15. The Australian Government funds the National Centre for Crime and Justice Statistics at the ABS to manage and improve data collection on family, domestic and sexual violence. Improvements to data collection have included adding indicators for family, domestic and sexual violence into police, courts and corrections datasets from each jurisdiction. The "*Recorded Crime – Victims*", "*Recorded Crime – Offenders*" and "*Criminal Courts Australia*" publications now include chapters on family, domestic and sexual violence as demonstrated by the data provided at Appendix I.

16. The Australian Institute of Criminology regularly publishes National Homicide Monitoring Program (NHMP) reports on deaths related to family and domestic violence, disaggregated by victims' gender, homicide type and relationship to perpetrator. The most recent report was published in 2017 and covered the period 2012–13 to 2013–14. The report found that the overall number of homicide incidents continues to decline, with the incident rate reaching one per 100,000 people in 2013–14, the lowest rate since the NHMP data collection began in 1989–90.

17. Homicide incidents by year, 1989–90 to 2013–14 (rate per 100,000):[1]



Legal assistance

18. The Australian Government provides funding for legal assistance services for victims of family violence through a range of programs.

19. The Australian Government has committed $23.3 million over four years, from 2015 to 2019, for legal assistance providers to operate 18 specialist domestic violence units and five health justice partnerships to assist women experiencing, or at risk of experiencing, family violence. Under this program, providers are trialling the delivery of integrated legal and social support services to women in metropolitan, rural and regional areas across Australia. The services are designed to meet the diverse needs of vulnerable and disadvantaged women and many are co-located with other domestic and family violence support services. An evaluation of the pilot program was finalised in August 2018.

20. The Australian Government is also providing over $1.3 billion over five years (from 2015 to 2020) to jurisdictions to fund Legal Aid Commissions (LACs) and Community Legal Centres (CLCs) through the National Partnership Agreement on Legal Assistance Services 2015–20 (the Agreement). People experiencing or at risk of family violence are identified in the Agreement as one of the priority client groups, towards whom services should be directed. Included in this $1.3 billion is $39 million for CLCs over the 2017–20 period for front-line family law and family violence related services, as announced through the 2017 Budget.

Aboriginal and Torres Strait Islander Legal Services (ATSILS)

21. The Australian Government is providing $370.1 million over five years (2015–2020) to ATSILS through the Indigenous Legal Assistance Program. A review of the Indigenous Legal Assistance Program is underway to assess the effectiveness, efficiency

[1] Bricknell, S., and Bryant, W., 2017, *Homicide in Australia 2013–13 to 2013–14: National Homicide Monitoring Program report*, Australian Institute of Criminology, Canberra.

and appropriateness of the program in achieving its objectives. The review is expected to be completed in December 2018.

22. In addition, through the Indigenous Advancement Strategy (IAS), continued funding of $14.3 million has been provided for supplementary legal assistance for Indigenous people and $4.98 million for the Indigenous Women's Program that provides legal assistance specifically for Indigenous women (over four years to 30 June 2019).

23. Also through the IAS, $121.2 million is provided over five years (from 1 July 2015 to 30 June 2020) for 14 Aboriginal community controlled Family Violence Prevention Legal Services (FVPLS) to provide legal assistance services specifically to Aboriginal and Torres Strait Islander women who are victims of domestic violence.

24. This includes additional funding of $8 million through the Third Action Plan for six FVPLS organisations, including the National FVPLS Secretariat, to increase capacity to deliver holistic, case managed crisis support to Indigenous women and children experiencing family violence.

Crisis and transitional accommodation and services

25. Jurisdictions provide various forms of transitional and crisis accommodation for victims of domestic and other gender-based violence. This includes funding for crisis centres to provide counselling and other support services, as well as funding for specialist homelessness programs for women and children escaping violence.

26. Local medical, forensic and psychosocial responses are provided to victims of domestic and gender-based violence, including through emergency departments and specialist health services.

27. Strengthening safe and appropriate accommodation options for women and children escaping violence is a key action under the Third Action Plan.

Financial assistance for victims

28. Under Australia's federated justice system, victims' compensation is generally a matter for the states and territories. Each jurisdiction has a victims' compensation scheme which provide for counselling and financial assistance for compensable violent acts, as well as financial assistance for financial loss and compensable injuries that arise from a violent act. Victims of domestic violence are able to seek financial assistance through these schemes.

Service delivery for Indigenous women, women living in rural and remote areas and women with disabilities

29. The Australian Government recognises that rates of family violence are higher among marginalised women including Indigenous women, women living in regional, rural and remote areas and women with disabilities, compared with the general population.

30. In the 2018–19 Budget, the Australian Government focused on reducing violence against women and their children, committing an additional $54.4 million including:

- $11.5 million for 1800RESPECT, the national counselling, information and referral service for sexual, domestic and family violence;
- $6.7 million for DV-alert, a national, accredited training program for community frontline workers such as teachers, early childhood educators, volunteers and medical practitioners;
- $14.2 million over four years for the world leading Office of the eSafety Commissioner to help make cyber space safe for women; and
- $22 million in funding over four years to tackle elder abuse.

31. In September 2015, the Australian Government committed $100 million to the Women's Safety Package, which includes a range of activities to keep women safe from

violence. The Package includes $21 million for activities specifically targeting Indigenous families.

32. In October 2016, the Australian Government committed $25 million under the Third Action Plan for Aboriginal and Torres Strait Islander-specific activities to address family violence. $19 million of this funding has been invested in eight Indigenous community-controlled organisations across Australia to deliver a range of services, including trauma-informed therapeutic services for children and intensive family-focused case management.

33. The Third Action Plan contains measures and key actions specifically targeted to women living in rural and remote locations and women with disability. Australian, state and territory governments are working together to better identify, support and respond to women living in rural and remote locations and women with disability experiencing, or at risk of, domestic, family and sexual violence. This includes:

- Research to address domestic, family and sexual violence in rural Indigenous communities; and
- Enhancing and expanding video and online options for "real-time" counselling and support, including through 1800RESPECT, and exploring how technology can be harnessed to provide safe and relevant services for women in rural, remote and isolated communities and for women with disability.

34. National Priority Area 3 of the Third Action Plan contains key actions aimed at providing greater support and choice for women to report acts of violence. This includes improving support pathways to provide appropriate assistance and reducing barriers that may prevent women from reporting acts of violence. Initiatives include:

- Improving the quality and accessibility of services for women with disability, culturally and linguistically diverse women and Aboriginal and Torres Strait Islander women;
- Developing a national workforce agenda to improve frontline service responses to respond to violence against women and their children; and
- Strengthening accommodation options and supports for women and children escaping violence.

35. The National Plan has six outcomes. The primary sources to measure progress against the outcomes are the PSS and the National Community Attitudes on Violence against Women and their Children Survey.

36. The success of the National Plan over its 12-year lifespan is also being measured through:

- An independent process evaluation of progress made over the life of each Action Plan every three years, the findings of which are publicly available and inform the development of subsequent action plans;
- An annual report, made publicly available, to demonstrate progress against Action Plans; and
- A final evaluation report to be completed at the end of the 12-year lifespan.

Reply to the issues raised in paragraph 2 of the list of issues

37. In October 2017, the Australian Government gave in-principle support for the Senate Legal and Constitutional Affairs Legislation Committee's recommendation on justice mapping.

38. The Australian Government, in partnership with states and territories, funds a number of activities consistent with the principles of justice reinvestment. Work to identify additional opportunities to take a place-based, data-driven approach to the delivery of tailored, client-focused services to address offending in at-risk communities is ongoing.

39. There is also significant work being undertaken in Australia on data collection and evaluation of justice reinvestment initiatives, led by academic organisations and

government agencies, such as the New South Wales (NSW) Bureau of Crime Statistics and Research, the Australian Institute of Criminology and the Indigenous Justice Clearinghouse.

40. In December 2016, the Council of Australian Governments (COAG) released the Prison to Work Report. The report outlines possible actions to address barriers to employment for Indigenous prisoners and to support Indigenous people as they transition from incarceration to employment. Australian, state and territory governments are implementing action plans, over four years from 2017–2021, in response to the report's findings. These actions will support transitions from prison to employment by improving the coordination of government services, especially in-prison training and rehabilitation programs, employment and health and income support services.

41. Table 8A.5 – Imprisonment and community corrections population rates per 100,000 adults[2]

	NSW	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*ACT*	*NT*	*Aust*
Crude imprisonment rate (b)									
2016-17									
Male	404.1	275.4	399.2	576.1	421.8	263.8	273.4	1 577.1	398.0
Female	33.2	19.4	37.8	64.2	30.5	23.5	20.8	141.3	34.2
Aboriginal and Torres Strait Islander	2 259.4	1 751.7	1 998.5	4 027.3	2 736.5	662.6	1 945.5	2 846.2	2 411.5
Non-Indigenous	165.3	131.3	151.9	205.9	165.4	119.0	112.7	197.2	156.6
Ratio of crude Aboriginal and Torres Strait Islander/Non-Indigenous rate	13.7	13.3	13.2	19.6	16.5	5.6	17.3	14.4	15.4
Total crude imprisonment rate									
2016-17	215.3	144.6	215.7	321.4	222.5	141.9	144.9	904.3	213.3
2015-16	206.4	134.7	201.2	291.2	213.8	129.8	131.6	921.7	201.0
2014-15	187.4	138.0	194.3	271.1	198.5	116.7	113.5	884.9	190.3
Age standardised imprisonment rate (d)									
2016-17									
Aboriginal and Torres Strait Islander	1 827.4	1 346.8	1 582.6	3 132.0	2 136.3	540.4	1 354.3	2 249.5	1 903.6
Non-Indigenous	177.0	135.5	161.1	210.2	186.8	147.3	108.9	184.3	165.5
Ratio of age-standardised Aboriginal and Torres Strait Islander/Non-Indigenous	10.3	9.9	9.8	14.9	11.4	3.7	12.4	12.2	11.5
Crude community corrections rate									
2016-17									
Male	536.5	498.1	823.3	388.5	791.2	709.2	555.4	1 059.0	595.8
Female	94.4	102.4	235.6	114.0	165.3	199.5	125.8	279.0	136.4
Aboriginal and Torres Strait Islander	3 009.4	2 816.9	3 512.4	2 500.8	4 212.3	1 748.6	3 580.2	1 969.8	2 987.8
Non-Indigenous	235.8	268.7	417.9	179.8	392.4	387.1	268.0	228.8	289.4
Ratio of crude Aboriginal and Torres Strait Islander/Non-Indigenous rate	12.8	10.5	8.4	13.9	10.7	4.5	13.4	8.6	10.3
Total crude community corrections rate									
2016-17	311.7	296.0	524.9	251.9	473.1	450.7	337.0	693.5	362.7
2015-16	292.7	287.4	481.6	227.8	449.5	475.6	299.2	629.2	340.9
2014-15	278.9	235.0	442.7	208.6	422.1	494.6	319.6	644.7	312.5
Age standardised community corrections rate (d)									
2016-17									
Aboriginal and Torres Strait Islander	2 409.8	2 162.1	2 719.2	1 923.2	3 264.3	1 415.4	2 539.8	1 525.0	2 333.6
Non-Indigenous	240.3	265.0	420.8	174.8	421.3	449.9	248.4	203.5	291.2
Ratio of age-standardised Aboriginal and Torres Strait Islander/Non-Indigenous	10.0	8.2	6.5	11.0	7.7	3.1	10.2	7.5	8.0

[2] Productivity Commission, 2018, *Report on Government Services 2018: Chapter 8, Corrective Services*, Commonwealth of Australia, Canberra.

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Aust
Total daily average population									
Aboriginal and Torres Strait Islander									
2016-17	3 141	573	2 605	2 457	699	109	92	1 377	11 052
2015-16	2 987	503	2 444	2 220	652	88	92	1 396	10 382
2014-15	2 615	508	2 284	2 124	606	74	68	1 365	9 644
Non-Indigenous									
2016-17	9 703	6 181	5 524	4 031	2 186	463	341	262	28 691
2015-16	9 220	5 703	5 078	3 629	2 153	433	300	268	26 784
2014-15	8 216	5 773	4 882	3 278	1 959	394	267	234	25 004
Crude imprisonment rate									
Aboriginal and Torres Strait Islander									
2016-17	2 259.4	1 751.7	1 998.5	4 027.3	2 736.5	662.6	1 945.5	2 846.2	2 411.5
2015-16	2 209.4	1 588.2	1 930.4	3 745.4	2 624.1	552.0	2 027.3	2 954.9	2 330.4
2014-15	1 962.0	1 631.1	1 830.8	3 635.0	2 473.4	471.1	1 520.3	2 924.5	2 196.1
Non-Indigenous									
2016-17	165.3	131.3	151.9	205.9	165.4	119.0	112.7	197.2	156.6
2015-16	158.2	122.4	140.6	186.1	163.4	111.7	99.7	201.1	147.2
2014-15	143.1	126.3	137.0	169.5	149.8	102.3	89.9	174.6	139.4
Age-standardised imprisonment rate									
Aboriginal and Torres Strait Islander									
2016-17	1 827.4	1 346.8	1 582.6	3 132.0	2 136.3	540.4	1 354.3	2 249.5	1 903.6
2015-16	1 788.0	1 223.5	1 531.1	2 903.8	2 045.6	449.7	1 408.5	2 316.3	1 837.9
2014-15	1 590.4	1 259.7	1 454.2	2 810.3	1 924.9	383.2	1 447.9	2 273.0	1 731.0
Non-Indigenous									
2016-17	177.0	135.5	161.1	210.2	186.8	147.3	108.9	184.3	165.5
2015-16	169.4	126.5	148.7	189.0	184.1	137.6	96.1	187.2	155.4
2014-15	153.0	130.4	143.9	170.1	167.8	125.1	85.7	160.3	146.6

42. Mandatory sentencing laws are still in force, to varying degrees, in all jurisdictions.

43. Sentencing laws that include minimum sentencing, minimum non-parole periods and life sentences for certain serious offences are in force in NSW, Victoria, Tasmania, Queensland and South Australia (SA). Western Australia (WA) has mandatory sentences of imprisonment for certain, limited offences but does not have mandatory non-parole sentences. The Australian Capital Territory (ACT) does not have mandatory sentences of imprisonment.

44. Mandatory sentences do not apply to any federal offences committed by children. Most jurisdictions do not apply mandatory sentences for children.

45. In jurisdictions where mandatory sentencing schemes apply to children (in the Northern Territory (NT) and WA), they apply in limited circumstances, for limited offences. In all cases, the judge has discretion as to whether the sentencing provisions apply to an individual child's circumstances.

46. The NT will consider options for repealing mandatory sentencing for assaults, property, drug and repeat breach of domestic violence order offences, some of which apply to youths, and for amending the mandatory non-parole period for murder. At the time of writing this report, amendments had not yet been considered.

47. There are no current plans to review mandatory sentencing laws in other states or territories.

48. The Australian Government funds seven ATSILS to deliver culturally appropriate legal assistance services at over 100 permanent sites, court circuits and outreach locations in urban, rural and remote areas. This includes an investment of more than $370 million

over five years until the 2019–20 financial year for the delivery of Indigenous legal assistance. See also paragraphs 21–24.

49. In March 2018, the Australian Law Reform Commission (ALRC) released the "Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples" report. The report made 35 recommendations designed to reduce the disproportionate rate of incarceration of Aboriginal and Torres Strait Islander peoples and improve community safety, covering key issues such as justice reinvestment, mandatory sentencing and access to justice. The Australian Government is currently considering the recommendations.

Reply to the issues raised in paragraph 3 of the list of issues[3]

50. Australia is committed to meeting its international obligations, including its *non-refoulement* obligations.

51. Robust assessment arrangements are in place to ensure people are not returned to situations where doing so would be inconsistent with Australia's *non-refoulement* obligations. Each person has an opportunity to explain their reasons for seeking to travel to Australia and thus an opportunity to raise claims for protection. Persons are interviewed by a trained officer.

52. Recommendations are provided to a separate assessment officer for consideration. The process utilises current and comprehensive country information developed specifically for the purposes of determining protection status.

53. Australia is not currently intending to change legislative or policy settings in regards to merits review of on-water screening.

54. Section 197C, introduced to the Migration Act by the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* (Cth) (RALC Act), provides that, for the purposes of removal from Australia of an unlawful non-citizen, Australia's *non-refoulement* obligations are irrelevant. The provision is intended to make clear that removal powers are separate from, unrelated to and completely independent of, any provisions in the Migration Act that are interpreted as implementing Australia's *non-refoulement* obligations, ensuring that Parliament is able to control how those *non-refoulement* obligations are implemented domestically.

55. Australia will continue to meet its *non-refoulement* obligations through mechanisms other than the removal powers in section 198 of the Migration Act, including:

- Consideration of whether the applicant meets the definition of a refugee or the complementary protection criteria under the Migration Act as part of the Protection Visa process, including, for the vast majority of applicants, merits review by an independent review tribunal of adverse decisions;
- All protection visa applicants who have received a refusal decision have access to judicial review on points of law;
- Referral to the relevant Minister for consideration of the use of his personal powers under the Migration Act to intervene and grant a more favourable outcome to the applicant if that Minister thinks it is in the public interest to do so; and
- Consideration of whether there is any risk that a person's proposed removal would breach Australia's *non-refoulement* obligations through a pre-removal clearance process. If a pre-removal clearance identifies a risk, a further protection obligations assessment may be conducted to determine whether that person engages any of Australia's *non-refoulement* obligations.

[3] "Relevant Minister" refers to the Minister administering the relevant Act. The Minister for Home Affairs and the Minister for Immigration, Citizenship and Multicultural Affairs (as well as the Assistant Minister) are all legally able to administer the Migration Act, the Citizenship Act and the IGOC Act. Which one does so for each power is a matter of preference/practice of those ministers and can change over time.

56. These mechanisms ensure that *non-refoulement* obligations are addressed before a person becomes ready for removal under section 198 of the Migration Act.

57. In relation to consideration of *non-refoulement* obligations in the context of interceptions at sea, see paragraphs 50–53.

58. The *Migration Amendment (Protection and Other Measures) Act 2015* (the POM Act) amended the Migration Act to increase efficiency and enhance integrity in the onshore protection status determination process. The measures introduced by the POM Act in April 2015 unequivocally put the onus on asylum seekers to:

- Provide all details of their claims to show that Australia owes them protection;
- Provide sufficient evidence to establish those claims; and
- Take these actions as soon as possible.

59. Changes to the Migration Act brought about by the POM Act strengthen complementary measures that were introduced in April 2015 with the passage of the RALC Act.

60. The RALC Act measures were intended to enhance the integrity of Australia's protection status determination framework and improve the efficiency and cost effectiveness of merits reviews, mainly for the Illegal Maritime Arrival legacy caseload.

61. The RALC Act introduced the fast track assessment process for *fast track applicants*[4] which entails a full and comprehensive assessment of their protection claims by a protection visa decision maker and in most cases, a limited form of independent merits review of refusal decisions by the Immigration Assessment Authority (IAA). The fast track assessment process places emphasis on applicants providing their claims early and in full, and allows applications to be finalised more expeditiously, yet thoroughly and consistently with Australia's international obligations.

62. The POM Act measures support the intention of the fast track assessment process by clearly establishing protection visa applicant's obligations in regards to their claims, and their consideration at review if referred to the IAA, following a refusal decision. Under the fast track assessment process, any new information provided will only be considered by the IAA if exceptional circumstances exist. The IAA uses its discretion to determine whether exceptional circumstances exist, on a case-by-case basis, noting there is no exhaustive statement of what constitutes exceptional circumstances.

63. Fast track reviewable decisions must be referred by the relevant Minister to the IAA for merits review. A decision is referred when the relevant Minister, by their delegate, refuses to grant a protection visa to a fast track review applicant.

64. The IAA must only consider the review material and must not consider any new information, except in exceptional circumstances. The IAA does not have a duty to seek out or accept new information, but may do so if the IAA considers it may be relevant. This discretionary power must be exercised reasonably.

65. If the applicant is an excluded fast track review applicant, they will not have access to merits review of the decision in either the Administrative Appeals Tribunal (AAT) or IAA.

66. Home Affairs, formerly the Department of Immigration and Border Protection, has processes in place to ensure Australia does not remove a person in contravention of its *non-refoulement* obligations. These processes may have regard to any new information or claims that are presented where a Protection Visa application has been previously refused.

67. The relevant Minister may issue a conclusive certificate in relation to a delegate's decision if that Minister believes it would be contrary to Australia's national interest to change the decision or for the IAA to review the decision. Although the delegate's decision is not then eligible for merits review, the applicant may apply for judicial review.

[4] The term "fast track applicant" is defined in subsection 5(1) of the Migration Act.

68. The nature of judicial review is limited to considering whether a decision maker has made a jurisdictional error. It is not the role of the Court to re-assess an applicant's protection claims on their merits.

69. The majority of fast track applicants have access to merits review and all fast track applicants, whether lawfully or unlawfully in Australia, have their protection claims fully assessed and are able to access judicial review. This satisfies the obligation in article 13 of the International Covenant on Civil and Political Rights (ICCPR) to have review by a competent authority where an alien lawfully in the territory is to be expelled.

70. There is no express requirement under the ICCPR or the CAT for merits review in the assessment of *non-refoulement* obligations. The United Nations High Commissioner for Refugees (UNHCR) recognises that it is for each State to establish the most appropriate procedures for processing claims, including review mechanisms.

71. It is the Australian Government's position that there are sufficient procedural safeguards in place for ensuring all fast track applicants are afforded an opportunity to have their claims determined in an open and transparent assessment process while ensuring priority is given to identifying applications that present legitimate claims and in turn, asylum seekers who require Australia's protection.

72. The Australian Government provides extensive immigration information, on the Home Affairs website, including advice on visa pathways and has invested in a range of client service initiatives including simplified online application forms, to make the protection process accessible.

73. For individuals with significant vulnerabilities, the Australian Government funds access to qualified and independent immigration professionals, which:

- Ensures Australia meets its *non-refoulement* obligations;
- Encourages people with an unresolved immigration status to engage with Home Affairs to resolve their status; and
- Supports the relevant Minister's guardianship responsibilities for unaccompanied minors under the *Immigration (Guardianship of Children) Act 1946* (IGOC Act).

74. This funding is delivered through two programs, the Primary Application Information Service (PAIS) and the Immigration Advice and Application Assistance Scheme (IAAAS).

75. The PAIS, which provided application assistance to vulnerable unlawful arrivals, including Illegal Maritime Arrivals, closed to new visa applications on 30 June 2017.

76. The IAAAS is available to vulnerable lawful arrivals who are either seeking to engage Australia's protection obligations or are minors for whom the relevant Minister is the guardian under the IGOC Act. The IAAAS provides access to immigration advice and application assistance through a contract arrangement between Home Affairs and Settlement Services International. The IAAAS application assistance services for those seeking protection is available up until a decision is made by Home Affairs and extended to merits review for minors for whom the relevant Minister is the guardian under the IGOC Act.

77. Per paragraph 19, the National Partnership Agreement on Legal Assistance Services 2015–20 (the Agreement) provides over $1.3 billion over five years to jurisdictions to fund CLCs and LACs to ensure the most vulnerable people in Australia have access to legal services.

78. The Agreement sets out some general priority law types including civil law matters (and more specifically migration matters) as well as priority client groups to guide the prioritisation of legal assistance services. Services are expected to focus on clients experiencing financial disadvantage.

79. Under the Agreement, state and territory governments are responsible for allocating and distributing Australian Government funding to individual CLCs, alongside state funding contributions, using evidence-based collaborative service planning processes.

Under the Agreement, state and territory governments are also responsible for the distribution of Australian Government funding to LACs.

Reply to the issues raised in paragraph 4 of the list of issues[5]

80. The Australian Government considers immigration detention an essential component of effective border control. Australia's strong immigration and border protection policies have increased public confidence, enabling Australia to have one of the world's most generous humanitarian systems.

81. Since 2008, Australian Government policy has required that held detention be a last resort for the management of unlawful non-citizens who have not yet been granted permission to stay in Australia.

82. Under section 198B of the Migration Act, a transitory person can be brought to Australia for a temporary purpose (medical treatment) but is expected to return to a regional processing country at the conclusion of their temporary stay in Australia. Some individuals have been granted a final departure Bridging E Visa to allow them to reside in the community temporarily until they can return to a regional processing country or to any country where they have a right of residence:

- Transfers to Australia should only be for compelling medical reasons involving life or death situations, or situations involving the risk of lifetime injury or disability;
- Home Affairs' Transitory Persons Committee considers all requests for transfer to Australia, under the guidance of Medical Officers of the Commonwealth.

Medical Transfers to Australia from Nauru

83. As at 30 September 2018, there were 164 medical transfers to Australia from Nauru who were accommodated in immigration detention. Of these:

- 22 medical transfers were detained in held detention where the average timeframe of detention was 755 days; and
- 142 medical transfers were in the community on a residence determination where the average time in the community on a residence determination and held detention was 607 days.

84. The decision to restrict a person's liberty is significant and is not made lightly. Section 189 of the Migration Act requires an officer to detain a person, where an officer knows or reasonably suspects that a person in the migration zone is an unlawful non-citizen (a non-citizen in Australia who does not hold a visa that is in effect) until the health, identity and security risks which they present to the Australian community are resolved.

85. Under the Migration Act, detention is not limited by a set timeframe; rather, it ends when the person is either granted a visa or is removed from Australia. The timeframe associated with either of these events is dependent upon numerous factors, including identity determination, developments in country information, and the complexity of processing due to individual circumstances relating to health, character or security matters. These assessments are completed as expeditiously as possible to facilitate the shortest possible timeframe for detaining people in immigration detention facilities.

86. Australian immigration law allows the relevant Minister the flexibility to release persons from detention by granting them a visa under section 195A of the Migration Act, or to place them in a residence determination arrangement (community detention) under section 197AB of the Migration Act, depending on the circumstances of the case.

87. The Australian Government's position is that arbitrary immigration detention is not acceptable. The lengths and conditions of immigration detention, including the appropriateness of both the accommodation and services provided, are subject to regular review by senior officers of Home Affairs, the Commonwealth Ombudsman and the AHRC.

[5] See endnote 4.

88. Australia takes seriously its human rights obligations, including those related to the rights of personal liberty and freedom from arbitrary detention. These rights may be subject to reasonable and proportionate limits as set out in law, in particular where it is necessary to protect national security or the rights and freedoms of others in the community. Accordingly, Australia is entitled to take measures, including detention, to uphold Australia's national security.

89. Detention of children is always a last resort and children are detained for the shortest practicable time and in alternative places of detention (APOD) wherever possible. It is the Australian Government's policy that minors are not held in immigration detention centres, but are accommodated in APODs, with the priority that unaccompanied minors and families with minor children are referred to the relevant Minister for a residence determination decision for their prompt removal into the community subject to the completion of identity, health and security checks. This is to ensure they are able to freely participate in the community as soon as possible.

90. An APOD is a place of immigration detention – other than an Immigration Detention Centre or places identified as part of a residence determination (also known as "community placement"). APODs include:

- Immigration transit accommodation which provides semi-independent living in hostel-style accommodation. Individuals are able to attend appointments in the community under supervision; and
- Places in the broader community that can be designated as places of immigration detention, such as leased private housing, hotels and motels, and hospitals including mental health facilities.

91. Home Affairs has developed a Child Safeguarding Framework, launched on 17 October 2017, which is the blueprint for how the department will continue to build and strengthen its policies, processes and systems to protect children in the delivery of immigration programs to maintain a child's safety and wellbeing. The framework outlines a set of safeguarding principles, reinforcing that the best interests of the child is a primary consideration in any action involving a child, and that children are only to be taken into held detention as a last resort. In some circumstances, including airport turnarounds or, where there are criminal or security issues, children may transit through held immigration detention. These policies assist in ensuring that the immigration detention of children is not arbitrary by checking that the form of detention is reasonable, necessary and proportionate given their vulnerability.

92. The IGOC Act and associated Regulations set out the Minister's responsibilities as the legal guardian of certain unaccompanied minors in Australia who fall within the ambit of the legislation.

93. The IGOC Act specifies the circumstances in which a minor will come under the guardianship of the relevant Minister. The relevant Minister's guardianship automatically applies to those minors who fall within those circumstances and that Minister is the guardian "to the exclusion of all other guardians". The IGOC Act recognises the relevant Minister has the same rights over IGOC minors as a "natural guardian" (or parent) of a child. In this way, the IGOC Act functions differently from most state and territory child protection laws. It operates in a "positive" manner, that is, no child protection notification or other adverse event/safety concern is required for the IGOC Act to operate. In addition, no court orders are required for the operation of the IGOC Act.

94. Home Affairs refers to the Australian Security Intelligence Organisation (ASIO) for security assessments of those visa applicants or visa holders whose entry into or continued stay in Australia may present a threat to security. All non-citizens applying to enter or remain in Australia are assessed against the provisions of the Migration Act and the *Migration Regulations 1994*, including health, character, identity and security requirements.

95. As a matter of long-standing Australian Government policy, non-citizens who receive an adverse security assessment are detained pending resolution of their immigration status. The Government does not comment on individual cases.

96. The Independent Reviewer of Adverse Security Assessments' role is to review ASIO adverse security assessments given to Home Affairs in relation to people who remain in immigration detention and have been found to:

- Engage Australia's protection obligations under international law; and
- Not be eligible for a permanent protection visa, or who have had their permanent protection visa cancelled.

97. The Independent Reviewer examines all material relied upon by ASIO in making the security assessment, as well as other relevant material, and forms an opinion on whether the assessment is an appropriate outcome. The applicant may also submit material for the reviewer's consideration.

98. People in immigration detention may seek judicial review of the lawfulness of their detention.

99. The Australian Government remains committed to facilitating detainees' access to legal representatives and ensures these avenues are maintained to enable detainees to progress resolution of their immigration status in a timely fashion. The Government does not make recommendations or endorse any particular provider of legal services. Detainees may access the information necessary for them to choose their legal representative. This may be done through a community telephone directory or through public domain information via the internet.

100. Under section 256 of the Migration Act, detainees must be given reasonable facilities for obtaining legal advice and/or representation in relation to their immigration detention, should they wish to access such services. Detainees and legal representatives are able to schedule telephone interviews ahead of time and obtain access to a private space.

101. Total Persons Detained between 1 November 2014 and 30 September 2018 by Year:[6]

Detention Group	1 Nov 14 – 31 Dec 14	2015	2016	2017	1 Jan 18 – 30 Sept 18	Total
Air Arrival - Non Immi Cleared	685	3,546	3,489	4,456	2704	**14,880**
Illegal Foreign Fisher	14	26	233	106	28	**407**
Irregular Maritime Arrival	197	669	304	330	333	**1,833**
Overstayer	445	2,489	2,024	2,209	1463	**8,630**
Seaport Arrival	8	56	38	49	62	**213**
Visa Cancellation	123	1,610	1,456	1,723	1,235	**6,147**
Total	**1,472**	**8,396**	**7,544**	**8,873**	**5,825**	**32,110**

[6] Includes persons detained multiple times.

102. Persons Detained between 1 November 2014 and 30 September 2018 by Group and Year:[7]

Group	1 Nov 14 – 31 Dec 14	2015	2016	2017	1 Jan 18 – 30 Sept 18	Total
Minors	80	311	153	148	138	**830**
Refugees with Adverse Security Assessment	0	0	0	0	0	**0**
Refugees with s501 Character Cancellation/Refusal	0	11	15	23	14	**63**
Stateless Persons with Asylum Claim Refused	0	7	<5	<5	<5	**16**

103. Average Days in Detention for Total Persons Detained between 1 November 2014 and 30 September 2018 by Year:[8]

Detention Group	1 Nov 14 – 31 Dec 14	2015	2016	2017	1 Jan 18 – 30 Sept 18
Air Arrival - Non Immi Cleared	<5	8	6	<5	<5
Illegal Foreign Fisher	21	21	41	46	26
Irregular Maritime Arrival	458	477	385	203	87
Overstayer	55	52	40	38	29
Seaport Arrival	40	61	53	20	13
Visa Cancellation	109	171	137	97	59
Total	**88**	**90**	**57**	**38**	**26**

[7] As at 22 October 2018; Data values less than 5 are marked as <5 to help protect privacy.
[8] As at 22 October 2018; Data values less than 5 are marked as <5 to help protect privacy.

104. Average Days in Detention for Persons Detained between 1 November 2014 and 30 September 2018 by Group and Year:[9]

Group	1 Nov 14 – 31 Dec 14	2015	2016	2017	1 Jan 18 – 30 Sept 18
Minors	196	343	168	68	48
Refugees with Adverse Security Assessment	N/A	N/A	N/A	N/A	N/A
Refugees with s501 Character Cancellation/Refusal	N/A	825	422	258	155
Stateless Persons with Asylum Claim Refused	N/A	321	745	223	112

105. Maximum Days in Detention for Total Persons Detained between 1 November 2014 and 30 September 2018 by Year:[10]

Detention Group	1 Nov 14 – 31 Dec 14	2015	2016	2017	1 Jan 18 – 30 Sept 18
Air Arrival - Non Immi Cleared	332	1,078	869	502	198
Illegal Foreign Fisher	36	33	91	179	60
Irregular Maritime Arrival	1,342	1,277	903	548	270
Overstayer	1,337	1,262	857	524	271
Seaport Arrival	157	995	436	210	109
Visa Cancellation	1,285	1,267	912	548	270
Total	**1,342**	**1,277**	**912**	**548**	**271**

[9] As at 22 October 2018.
[10] As at 22 October 2018.

106. Maximum Days in Detention for Persons Detained between 1 November 2014 and 30 September 2018 by Group and Year:[11]

Group	1 Nov 14 – 31 Dec 14	2015	2016	2017	1 Jan 18 – 30 Sept 18
Minors	1,342	1,277	903	524	258
Refugees with Adverse Security Assessment	N/A	N/A	N/A	N/A	N/A
Refugees with s501 Character Cancellation/Refusal	N/A	1,251	893	531	258
Stateless Persons with Asylum Claim Refused	N/A	568	805	364	199

Article 2

Reply to the issues raised in paragraph 5 of the list of issues

107. The term "human rights" is defined in section 3 of the *Australian Human Rights Commission Act 1986* (AHRC Act) as the rights and freedoms recognised in the ICCPR, declared by the Declaration of the Rights of the Child, the Declaration on the Rights of Mentally Retarded Persons and the Declaration on the Rights of Disabled Persons, and declared by any other relevant international instrument.

108. Subsection 3(4) of the AHRC Act provides that these rights and freedoms are to be read as a reference to the rights and freedoms contained in these instruments as they apply to Australia (ie consistent with any reservations).

109. Section 47 of the AHRC Act enables the Attorney-General to, by legislative instrument, declare an international instrument that has been ratified, acceded to or adopted by Australia to be an instrument relating to human rights and freedoms for the purposes of the AHRC Act. The following instruments have been declared under this section:

- Convention on the Rights of Persons with Disabilities (in 2009);
- Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (in 1993); and
- Convention on the Rights of the Child (CRC) (in 1992).

110. The Australian Government does not intend to expand the AHRC's legislative mandate to explicitly include consideration of CAT as the AHRC can investigate acts and practices relating to the obligations under CAT by way of articles 7 and 10 of the ICCPR and articles 37(a) and (c) of the CRC.

Reply to the issues raised in paragraph 6 of the list of issues

111. Australia has comprehensively criminalised human trafficking, slavery and slavery-like practices and is committed to promptly and effectively investigating and prosecuting alleged offenders. The Australian Federal Police (AFP) is responsible for investigating human trafficking, slavery and slavery-like practices.

112. For privacy reasons, the Australian Government does not provide data on individual descriptors where the value is less than five people per category.

[11] As at 22 October 2018.

113. Number of trafficked people identified by the Australian Government for the period 1 July 2017–30 June 2018:

Offence	TOTAL
Forced Marriage	61
Sexual Servitude	21
Forced Labour	25
Child Trafficking	13
Trafficking	23
Domestic Servitude	9
Other	10
Total	162

114. Between 1 July 2017 and 30 June 2018 the AFP received 162 new referrals in relation to human trafficking and slavery offences. Of those referrals, 67 were within NSW, 48 within Victoria, 13 within Queensland, 12 in WA, 9 within SA, 6 offshore, 4 in the ACT, 2 in Tasmania, and 1 in the NT.

115. Of the ten referrals received under "Other": 4 relate to Debt Bondage, 3 relate to Deceptive Recruiting, 2 relate to Slavery and 1 relates to Harbouring a Victim.

116. As of 9 July 2018, the current status of the 162 referrals is as follows: 49 were rejected, 38 have been finalised, 36 are an active investigation, 21 are under evaluation and 14 are a watching brief, 3 suspended and one did not have a status reflected.

117. 98 suspected victims of human trafficking were supported by the Australian Government's Support for Trafficked Person Program (STPP), of whom 15were on the STPP for Forced Marriage.

Support for Trafficked People Program

118. Australia is committed to providing support and protection to trafficked people, including through dedicated, victim-centred support services. Australia provides a comprehensive range of support services for trafficked people through the Australian Government's STPP. STPP services include suitable secure accommodation, medical treatment, counselling, referral to legal and migration advice, social support and appropriate skills development training. All suspected trafficked people in Australia are eligible to access up to 120 days comprehensive, case-managed support through the STPP. Longer term support is available to trafficked people who assist with the criminal justice process.

119. Trafficked people may be identified through various avenues, including immigration officials, law enforcement agencies, non-government organisations, hospitals, medical practitioners, consulates, schools, and government agencies. Once identified, trafficked people are referred to the AFP for assessment and, where appropriate, entry to the STPP. Eligibility for the STPP is determined by the AFP and is based on whether a person is, or may have been, the victim of a human trafficking or slavery-related offence. The person must also be an Australian citizen, or hold a valid visa, although the person's visa status may be regularised through the Human Trafficking Visa Framework.

120. Number of STPP clients by gender:

	2013–14	2014–15	2015–16	2016–17
Male	11	18	19	
Female	65	70	61	
Total	**76**	**88**	**80**	**91**

121. A number of trafficked people have access to victims' compensation scheme (see paragraph 28). Under the *Crimes Act 1914* (Cth) (Crimes Act) a court can order an offender convicted of a human trafficking, slavery or slavery-like offence to make reparation to a victim.

122. On 15 February 2018, the Australian Government announced a 12-month trial to provide victims of forced marriage with access to up to 200 days of support through the STPP without being required to contribute to the criminal justice process. The Australian Government will carefully consider the results of the trial.

123. Under Australia's dedicated Human Trafficking Visa Framework, trafficked people who have assisted with the criminal justice process and would be in danger if returned to their country of origin are eligible for grant of a permanent visa to enable them and their dependents to remain in Australia. Trafficked people who would be in danger if returned to their country of origin may also be eligible for a permanent protection visa if they engage Australia's protection obligations.

124. The Australian Government continually evaluates the effectiveness of Australia's National Action Plan to Combat Human Trafficking and Slavery 2015–19 (National Action Plan), including through biannual meetings of Australia's multi-stakeholder National Roundtable on Human Trafficking and Slavery. The Australian Government's Operational Working Group, which meets every six weeks and brings together key operational agencies including law enforcement and prosecution agencies, also plays an important role in identifying and addressing any emerging issues.

125. The Australian Government is considering options for formal evaluation of the National Action Plan after it concludes in 2019.

Reply to the issues raised in paragraph 7 of the list of issues

126. The primary terrorism offences in the *Criminal Code Act 1995* (Cth) (Criminal Code) leverage from the definition of "terrorist act" in section 100.1 of the Criminal Code. A "terrorist act" is defined as an act, or threat to commit an act that:

- Falls within subsection 100.1(2), such as causing serious harm, death, endangerment of life, or serious risk to the health or safety of the public;
- Is done with the intention of advancing a political, religious or ideological cause; and
- Is done with the intention of:
    - Coercing, or influencing by intimidation, the government of the Commonwealth or a state, territory or foreign country, or of part of a state, territory or foreign country; or
    - Intimidating the public or a section of the public.

127. Each of these elements narrows the scope of conduct that is considered a "terrorist act". In particular, the requirement that the act or threat of action must be done with the intention of advancing a political, religious or ideological cause requires the prosecution to adduce evidence of motivation that is not generally required for the prosecution of ordinary criminal offences.

128. Furthermore, advocacy, protest, dissent or industrial action that is not intended to cause serious harm, death, endangerment of life, or serious risk to the health or safety of the public, is expressly excluded from being a "terrorist act", ensuring the definition is appropriately targeted to serious activity or violence against the state or body politic. This ensures legitimate forms of non-violent protest are protected.

129. The terrorism offences in the Criminal Code are also tailored to ensure they strike the right balance between criminalising conduct that threatens Australia's national security, and safeguarding fundamental individual rights and freedoms. For example, the offence of advocating terrorism requires the prosecution to prove beyond reasonable doubt that the person not only intentionally advocated terrorism or a terrorist act, but was also aware of a substantial risk that their advocacy would result in another person actually committing a terrorist act or a terrorism offence. The offence does not apply to actions performed in good faith to protect the communication of particular ideas intended to encourage public debate. The good faith defence provides an important safeguard against unreasonable and disproportionate limitations on a person's right to freedom of expression and ensures that legitimate forms of political communication are not criminalised.

130. The Australian definition of "terrorist act" accords with the definition of terrorist act in other international jurisdictions, including the United Kingdom, Canada, South Africa and New Zealand. In its 2013 review of Australian Counter-Terrorism Legislation, COAG stated that "the Australian legal definition of terrorism is among the most tightly drafted and human rights respecting definitions in the domestic laws of any country".

131. Since 2011, the Independent National Security Legislation Monitor (the Monitor) has released 15 reports. Of these reports, six have been publicly responded to by Government, and five do not require a government response. The Government is giving active consideration to the four outstanding reports. The most recent reports of the Monitor, finalised in September 2017, relate to control orders, preventative detention orders, the declared areas provisions, and stop, search and seize powers. On 24 May 2018, the Government responded to the recommendations of the Monitor's September 2017 reports, supporting the majority of those recommendations.

Police powers to detain without charge

132. The current timeframe for detention of an individual for a Commonwealth terrorism offence in Part IC of the Crimes Act is:

- Four hours of initial investigation period; and
- Up to 20 hours of magistrate approved extensions.

133. Following the initial four hours, the investigating official must apply to a magistrate to extend the period of detention. The magistrate can approve an extension application if they are satisfied that further detention is necessary, and that the investigation has been conducted properly and without delay. The arrested person or their lawyer may make representations to the magistrate about the application to extend the investigation period.

134. The total 24 hour investigation period excludes certain categories of time, known as "disregarded time", during which the arrested individual cannot be questioned. This includes time to communicate with a legal practitioner, to rest and recuperate, and receive medical attention. A magistrate can also grant up to seven days "specified disregarded time" which provides time to collate evidence from sources other than the arrested individual.

135. Important safeguards in Part IC include the right of the individual to:

- Communicate with a lawyer before being questioned and to have the lawyer present during questioning;
- Be cautioned before questioning to outline that the person does not need to say or do anything, but anything said or done may be used in evidence;
- Inform a relative or friend of their whereabouts;
- Be given access to an interpreter if needed; and

- Be treated with humanity and with respect for human dignity and not be subjected to CIDTP.

136. At the counter-terrorism COAG meeting on 5 October 2017, states and territories approved the creation of an enhanced national pre-charge detention regime. The proposed reforms will maintain all the existing safeguards in Part IC, and judicial oversight of the regime.

Control Orders

137. The Commonwealth control order regime in Division 104 of the Criminal Code enables certain obligations, prohibitions and restrictions to be placed on an individual for one (or more) of the following purposes:

- Protecting the public from a terrorist act;
- Preventing the provision of support for, or the facilitation of a terrorist act; or
- Preventing the provision of support for or the facilitation of the engagement in a hostile activity in a foreign country.

138. The control order regime provides several important safeguards, including:

- That each obligation, prohibition and restriction must be reasonably necessary, and appropriate and adapted to the risk posed by the individual;
- The right to appeal and review the decision of the issuing court to make a control order; and
- The right to apply to have the control order varied or revoked.

139. A control order can only be issued by a court. The person's right to contact, communicate or associate with their lawyer is not restricted under the control order regime. The control order regime does not authorise the detention of an individual.

140. A control order may specify a prohibition or restriction on the person communicating or associating with specified individuals, which may, in exceptional circumstances include family members. The imposition of such a restriction is confined to circumstances in which the court is satisfied on the balance of probabilities that the restriction is reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the public from a terrorist act, preventing the provision of support for or the facilitation of a terrorist act, or preventing the provision of support for or the facilitation of the engagement in a hostile activity in a foreign country. In determining whether such a restriction would be appropriate, the court must also have regard to the impact of the restriction on a person's circumstances (including their financial or personal circumstances).

141. A control order cannot be made in relation to a person under the age of 14. There are also special rules that apply to control orders relating to young people aged 14 to 17. For example, the primary consideration of the court when determining whether to make a control order in relation to a young person is the best interests of the individual. Furthermore, the issuing court must appoint a lawyer to act for a young person in relation to control order proceedings unless the person refuses, or the proceedings are conducted ex parte.

142. Six control orders have been obtained since the commencement of this regime in 2005.

Stop, search and seize

143. Police may exercise the stop, search and seize powers in Division 3A of Part IAA of the Crimes Act where:

- An individual is in a Commonwealth place (such as an airport), and the police officer "suspects on reasonable grounds" that the person might have just committed, might be committing, or might be about to commit, a terrorist act; or

- An individual is in a "prescribed security zone" (a Commonwealth place which has been "declared" for the purposes of preventing or responding to a terrorist act).

144. These powers are limited in application to a narrow geographical location, being a "Commonwealth place". The only exception is the emergency entry to premises power in section 3UEA, which can apply in any location. Section 3UEA allows police to enter premises without a warrant in order to prevent a thing on the premises being used in connection with a terrorism offence, and where it is necessary to exercise the power due to a serious and imminent threat to a person's life, health or safety.

145. An individual is not detained under these provisions except for the limited purpose of conducting a search of the individual or a thing under the individual's control. A person must not be detained under this section for longer than is reasonably necessary for a search to be conducted. The stop, search and seize powers do not restrict an individual's right to access a lawyer or contact family members and next of kin. The powers in Division 3A are accompanied by oversight and accountability mechanisms to safeguard the rights of individuals. For instance, if there was a concern about the use of Division 3A powers by the AFP, this can be investigated by the Commonwealth Ombudsman or the Australian Commission for Law Enforcement Integrity. The Monitor also has the ability to review the operation of counter-terrorism legislation, including the power to request information on the exercise of powers by the AFP. The powers in Division 3A of Part IAA have not been used.

Preventative detention orders

146. The purpose of the Commonwealth preventative detention order (PDO) regime is to prevent a terrorist act that is capable of being carried out and could occur in the next 14 days, or to preserve evidence of, or in relation to, a recent terrorist act. A Commonwealth PDO can last for up to 48 hours. The PDO regime is a preventative, rather than investigative power. Accordingly, there is a prohibition on individuals being questioned under a PDO except for limited purposes, such as to ensure the safety and wellbeing of the detainee.

147. The PDO regime contains safeguards that protect the rights of a person who is the subject of a PDO, including the right to:

- Contact a lawyer, family member, employer or the Commonwealth Ombudsman;
- An interpreter; and
- Be treated humanely and not be subjected to CIDTP.

148. The person's right to contact their lawyer is not restricted unless there is a prohibited contact order (PCO) in relation to the person's detention that restricts contact with that particular lawyer. This will only be imposed in very limited circumstances where the court is satisfied that the making of the PCO is reasonably necessary, for example, to prevent interference with the gathering of information about a terrorist act. If these circumstances arise, the police officer who is detaining the person must give the person reasonable assistance to choose another lawyer.

149. A person may also contact one of their family members to let them know that the person being detained is safe, but may not disclose the fact that a PDO has been made in relation to the person, the fact that the person is being detained, or the period for which the person is being detained.

150. Further, a person may seek, from a federal court, a remedy relating to the PDO or the treatment of the person in connection with the person's detention under a PDO. The police officer who is detaining the person under the order must inform the person of this right.

151. The Commonwealth PDO regime has never been used.

ASIO questioning and detention powers

152. Questioning and detention warrants must permit the person being questioned to contact a lawyer of the person's choice at any time while in detention in connection with the warrant.

153. A person may only be prevented from contacting a particular lawyer if the prescribed authority so directs. The prescribed authority may so direct only if satisfied, on the basis of circumstances relating to that lawyer, that if the subject is permitted to contact the lawyer:

- A person involved in a terrorism offence may be alerted that the offence is being investigated; or
- A record or thing that the person may be requested in accordance with the warrant to produce may be destroyed, damaged or altered.

154. Questioning and detention warrants must permit the person being questioned to contact identified persons at specified times when the person is in custody or detention. This may include someone who has a particular familial relationship with the person being questioned. A person is not permitted to contact a family member or next of kin who is not identified in the warrant.

155. A person may seek, from a federal court, a remedy relating to the warrant or the treatment of the person in connection with the warrant. For example, the person may be able to apply to the Federal Court of Australia under subsection 39B(1) of the *Judiciary Act 1903* (Cth), or the High Court of Australia under paragraph 75(v) of the Constitution, for a remedy.

156. The prescribed authority must remind the person being questioned of this right prior to questioning, and at least once in every 24-hour period during which questioning of the person under the warrant occurs.

157. Moreover, disclosure to a lawyer for the purpose of obtaining legal advice, or representation in legal proceedings seeking a remedy relating to a warrant, or for the purpose of the initiation, conduct or conclusion (by judgment or settlement) of legal proceedings relating to such a remedy, are expressly permitted.

Reply to the issues raised in paragraph 8 of the list of issues

158. The *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) establishes the Parliamentary Joint Committee on Human Rights (PJCHR) which promotes early and ongoing consideration about, and recognition of, human rights in the Parliament and in the broader community.

159. Part of Australia's human rights scrutiny process is the requirement that all bills and disallowable legislative instruments introduced into Parliament be accompanied by a statement of compatibility. A statement of compatibility must articulate an assessment of the bill or legislative instrument's compatibility with the rights and freedoms recognised in the seven core international human rights treaties which Australia is a party to.

160. The PJCHR examines statements of compatibility and reports to both Houses of Parliament on whether a bill or legislative instrument is, or is not, compatible with Australia's international human rights obligations.

161. Where a bill or instrument limits a human right, the PJCHR requires that the statement of compatibility provide a detailed and evidence-based assessment of the measures against a number of criteria, including that the limitation on human rights must be in pursuit of a legitimate objective; be rationally connected to its stated objective; and be a reasonable, necessary and proportionate way of achieving that objective. Rather than making recommendations, if the PJCHR considers that a sufficiently reasoned and evidence-based assessment has not been provided, they will write to the relevant minister seeking further information.

162. The PJCHR seeks to conclude and report on its examination of bills while they are still before the Parliament, so that its findings may inform legislative deliberations.

However, this is dependent on the legislative program of the government of the day and the timeliness of ministers' responses to the PJCHR's inquiries for further information. Where a bill is passed before the PJCHR has been able to conclude its examination, the PJCHR nevertheless completes its examination of the legislation and reports its findings to the Parliament.

163. The Australian Government considers the views of the PJCHR in good faith.

164. In some cases where rights contained in the CAT were engaged by bills during the reporting period, the PJCHR found that while the bills limited multiple rights, the limitation on rights imposed by the bills were justified and compatible with Australia's human rights obligations.[12]

Article 3

Reply to the issues raised in paragraph 9 of the list of issues[13]

165. The Government of Papua New Guinea (PNG) closed the Manus Regional Processing Centre on 31 October 2017.

166. The Government of Nauru is responsible for the management of its Regional Processing Centre. Australia provides Nauru with support to assist them to manage and maintain facilities, and deliver services to residents. Accommodation sites in Nauru are fully open and residents are able to move in and out freely. Transferees residing in Nauru have access to health services, including mental health services, and a range of welfare services.

167. A Pre-Transfer Assessment is conducted for all individuals prior to transfer from Australia to a Regional Processing Country (RPC) to determine whether it is reasonably practicable to transfer individuals to RPCs. Individuals are given the opportunity to raise any reasons why they should not be transferred to an RPC. If particular issues are raised, for example matters that may prima-facie engage Australia's international *non-refoulement* obligations, the case is able to be referred to the relevant Minister to consider whether to exercise his non-compellable/non-delegable power under section 198AE of the Migration Act, to exempt the individual from being transferred to an RPC. Under section 198AE the relevant Minister has a personal non-compellable power, if he thinks it is in the public interest to do so, to exempt a person from transfer to an RPC.

168. In the instance where, in the opinion of an assessing officer, a person makes credible protection claims against designated RPCs, then the officer refers the matter to the relevant Minister in accordance with the process set out under the section 198AE. Under the section 198AE, Ministerial Guidelines cases are referred to the relevant Minister where in the opinion of the relevant officer (whether or not the opinion is legally or factually correct), the person has made a credible claim that:

- Their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion; or
- There is a real risk that he or she will be subjected to torture, cruel, inhuman or degrading treatment or punishment, arbitrary deprivation of life or have the death penalty carried out on him or her.

169. It remains open for a person not exempted by the relevant Minister from transfer to an RPC to challenge this and seek relief from transfer through judicial review. Individuals do, and have, exercised their right to file court proceedings concerning their proposed transfer to RPCs on various grounds, including based on the claim that they face a real risk of serious harm if they are taken to a particular RPC.

[12] Where the PJCHR did not consider the limitations justified see the Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2017 and the Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2017Where the PJCHR found a bill enhanced human rights protections under the Convention see the Modern Slavery Bill 2018.

[13] See endnote 4.

170. The Refugee Status Determination (RSD) process is managed by RPC Governments. The Australian Government does not have any involvement in the RSD process conducted in the RPCs.

171. Law enforcement in PNG and Nauru are matters for those governments. The listed alleged incidents have been investigated by their respective domestic law enforcement agencies and, as appropriate, justice systems. Additionally, there have been multiple independent reviews into regional processing arrangements, including the incident management framework in Regional Processing Centres. These reviews include the Cornall Review released in May 2014, the Moss Review released in February 2015, Australian Senate inquiries in 2014, 2016 and 2017, and regular monitoring reports from the UNHCR and non-governmental organisations.

172. The AFP continues to provide the Nauru Police Force with capacity building and mentoring.

173. The offence provision in section 42 of the *Australian Border Force Act 2015* (Cth) (ABF Act) applies to certain Commonwealth contracted service providers who disclose "Immigration and Border Protection information," as this term is defined in section 4(1) of the ABF Act. Immigration and Border Protection information is limited to certain categories of information where the disclosure could cause harm to the public interest. However, it is important to note that:

- This provision does not apply to health practitioners;
- There are exceptions in the ABF Act which permit the lawful disclosure of Immigration and Border Protection information, such as if the disclosure is to reduce a threat to life or health; and
- The *Public Interest Disclosure Act 2013* (Cth) provides certain protections for public officials, including contractors, who wish to make a disclosure in the public interest of certain kinds of conduct. The ABF Act does not override these protections.

174. Upon the closure of the Manus Regional Processing Centre, the movement of residents to alternative accommodation arrangements was undertaken by the Government of PNG on 23 and 24 November 2017.

175. No Australian Government officers were involved in the relocation of residents from the former Regional Processing Centre.

Reply to the issues raised in paragraph 10 of the list of issues

176. Australia objects to the language in paragraph 10 including "putting the passengers' lives at risk". Prior to Operation Sovereign Borders (OSB), 1,200 people lost their lives taking the dangerous journey to Australia by boat between 2008 and 2013. Following the establishment of OSB, Australia's border protection policies have ensured that no more lives have been lost at sea on route to Australia at the hands of people smugglers. The safety of those aboard intercepted boats is of paramount consideration. Returns are only conducted when safe to do so.

177. The matter of "payments of cash or other inducements by the Commonwealth of Australia in exchange for the turn back of asylum seeker boats" was referred to the Parliament of Australia's Legal and Constitutional Affairs References Committee on 24 June 2015 for inquiry and report. An interim report was published in May 2016 and the inquiry subsequently lapsed in July 2016. During the inquiry, Home Affairs provided a submission that outlined that the actions undertaken by the Australian officials were necessary to preserve the safety of life for those on board.

178. Amnesty International released a report, "*By Hook or By Crook – Australia's Abuse of Asylum Seekers at sea*", which raised allegations of mistreatment of Irregular Maritime Arrivals by Australian officials on two occasions in May and July 2015. On 28 October 2015, these allegations were referred to the Integrity and Professional Standards Branch of the then Department of Immigration and Border Protection, for assessment. The department subsequently investigated these allegations and it was found there was no evidence of abuse or mistreatment.

179. The efforts of OSB are subject to ministerial oversight and scrutiny, and measures and safeguards are in place to ensure actions and activities are undertaken in a manner consistent with Australian domestic law and Australia's obligations under international law. The public's right to know is balanced against operational security requirements and the safety of all involved in operations. Information will not be publicly released that could give a tactical advantage to people smugglers, and therefore encourage them to exploit more vulnerable people and risk more lives.

Reply to the issues raised in paragraph 11 of the list of issues

180. Between 1 November 2014 and 30 September 2018 there were:

- 96,584 applications made for Protection visas in Australia;
- 64,914 applications processed to a final grant or primary refusal.[14]

181. 6,710 total Protection visa grants (mostly on refugee grounds and which may or may not involve the possibility of torture) of which 1,524 applicants were granted a Protection visa specifically on the basis of a real risk of significant harm as defined in the Migration Act. This definition includes torture, cruel, inhuman or degrading treatment or punishment, arbitrary deprivation of life and the application of the death penalty. It is not possible to determine which of these decisions involved torture as precisely defined in Article 1 for the purpose of article 3 of the Convention as the Migration Act definition of significant harm is broader.

182. Between 1 November 2014 and 31 May 2018, there were 27,650 returns from the community and 24,211 removals from onshore immigration detention (voluntary and involuntary) to their country of origin or a third country.

183. These figures account for onshore assisted/managed departure figures only and do not include departures of non-citizens from Regional Processing Centres, which is a matter for the Governments of those countries.

184. Within the reporting period, Australia did not extradite any individuals who had been owed *non-refoulement* obligations.

185. As Australia did not progress any foreign extradition requests concerning individuals owed *non-refoulement* obligations during the reporting period, there were no appeals against extradition by such individuals.

Reply to the issues raised in paragraph 12 of the list of issues

186. The Australian Government has measures in place to provide for a thorough medical and psychological or psychiatric examination of potential torture victims when signs of torture or trauma have been detected during personal interviews of asylum seekers or undocumented migrants.

187. International Health and Medical Services (IHMS) is the Australian Government's contracted Health Service Provider (HSP) for the provision of health care to people in detention under the Immigration Detention Health Services Contract (the Contract). The Contract sets out a mechanism for the early identification of survivors of torture and trauma, requiring that:

- IHMS must ensure its personnel attend training prior to commencing their work with detainees and refresher courses annually thereafter, so its personnel have an awareness of, and are able to apply, all the department's mental health-related policies, including the early identification of survivors of torture and trauma; and
- IHMS must ensure that all detainees who identify as survivors of torture and trauma, or who display indicators of a history of torture and trauma, are referred to specialist counselling support services, which are currently being delivered by the Forum of

[14] Results that did not progress to a decision due to invalid or withdrawn applications or being otherwise finalised have been excluded.

Australian Services for Survivors of Torture and Trauma (FASSTT; a network of Australia's eight specialist torture and trauma rehabilitation agencies).

188. The Australian Government has measures in place to provide immediate rehabilitation and priority access to the asylum determination procedure for identified victims of torture.

189. Health professionals provide identified or suspected victims of torture with appropriate, responsive physical and mental health treatment, tailored to individual needs and circumstances. Treatment may include referral to specialist torture and trauma counselling and support services.

190. The specialist torture and trauma services are provided in Australian immigration detention centres, until the individual has a diminution of symptoms, and an appropriately qualified mental health professional deems the condition has been resolved or improved. This is decided on a case-by-case basis.

191. Since 2005, Australia places some individuals in community placement, rather than held detention, which has been the most frequently used option for reducing the health risks associated with torture and trauma whilst detained. Where a community placement is not appropriate, relevant supports are initiated to ensure the health safety and rehabilitation from trauma for the individual affected and their family if appropriate.

192. A Psychological Support Program in place in Australian immigration detention centres aims to:

- Prevent self-harm of individuals;
- Provide a clinically recommended approach to identify and support individuals who are at risk of self-harm and suicide; and
- Provide guidelines on suicide bereavement and response to self-harm incidents.

193. The Government of Nauru is responsible for those subject to regional processing in Nauru, including their health and welfare.

Articles 5–9

Reply to the issues raised in paragraph 13 of the list of issues

194. Within the reporting period, Australia did not formally reject any extradition request from a foreign country concerning an individual suspected of having committed a torture-based offence, so as to prosecute the individual in lieu.

Article 10

Reply to the issues raised in paragraph 14 of the list of issues*

195. Officials and personnel involved in the custody, interrogation or treatment of persons deprived of their liberty receive training on relevant international human rights obligations. All AFP members deployed to Nauru act in an advisory capacity only. The AFP has no members on Manus Island.

196. In accordance with provisions of the Convention, training of officials and personnel teaches that torture is strictly condemned; treatment in detention must meet human rights standards contained in relevant international instruments; detainees must be treated with respect and humanity and not be subjected to CITDP; conditions of detention must not be allowed to become so severe as to constitute such mistreatment; and that treating detainees with humanity and respect for the inherent dignity of the person includes access to medical services, communication services, visitation, appropriate accommodation, recreation and complaints mechanisms.

197. The Australian legal system has a comprehensive and significant focus on ensuring knowledge of new laws so that legal professionals such as the judiciary are well informed and up-to-date. Other public officials, such as police and corrections officers, as well as health professionals are expected to stay abreast of their responsibilities and maintain knowledge integral to their roles. They are supported in this through training and continuing education.

198. Australian Border Force staff whose roles involve exercising powers under the Migration Act (including persons working in an immigration detention environment) are provided with an overview of the provisions of the CAT. They are trained in principles of communication and using force as a last resort. They are provided with an overview of the indicators of people trafficking, torture and sexual servitude. The AFP pre-deployment training for all sworn AFP members deploying to capacity development missions offshore includes completing two training modules for Human Rights/Discrimination, which includes aspects of the CAT.

199. At the Commonwealth level, the AFP pre-deployment training includes information on detecting signs of torture or CIDTP in accordance with international standards required by the United Nations.

200. At the state and territory level, guidelines vary across jurisdictions although staff involved in the custody, interrogation or treatment of persons deprived of their liberty generally do not receive training specific to assessing signs of torture or CIDTP, they receive health care training in order to assess the general wellbeing of a person. If a reasonable degree of suspicion exists about the health of a person deprived of their liberty, or if the person is, or appears through observation to be, suffering, or showing suspicious symptoms or behaviours, professional healthcare advice must be sought as soon as practicable.

201. Each jurisdiction has its own guidelines regarding the use of force by law enforcement agencies and corrective services. These guidelines are consistent with the Australia New Zealand Policing Advisory Agency national guidelines for incident management, conflict resolution, and use of force. The guidelines promote the use of the minimum amount of force appropriate for the safe and effective performance of duties that is proportionate to the level of risk involved.

202. For health professionals, it is up to individual doctors to ensure that their continuing professional development activities are related to their specific scope of practice. The responsibility for ensuring that doctors are aware of such provisions rests with the employer, ie if the doctor was likely to practice in a situation where there may be custody interrogation or treatment of persons deprived of their liberty.

203. All AFP members have access to an online Human Trafficking and Slavery Awareness training package which describes indicators of human trafficking and slavery to assist in the identification of victims of trafficking. Training is available to all AFP members who can access it at any time, but it is not compulsory. All AFP members also have access to a list of Human Trafficking and Slavery Indicators which is updated as required.

204. Further, as part of Australia’s National Action Plan to Combat Human Trafficking and Slavery 2015–2019, the AFP is responsible for the annual Human Trafficking Investigators Program. Through this program, and upon request, the AFP can provide training to relevant Australian government officials.

205. The training of the Nauru Regional Processing Centre’s personnel is a matter for the Government of Nauru.

Reply to the issues raised in paragraph 15 of the list of issues

206. There are no specific evaluation methodologies at the national level however jurisdictions have their own methods of evaluating the training delivered to their officials and personnel involved in the custody, interrogation or treatment of persons deprived of their liberty. In the NT, the Trainee Correctional Officer training modules are evaluated in conjunction with the Standard Guidelines for Corrections in Australia to which all Corrective Services in Australia, are signatories. These standards include provisions regarding the use of force and the care and well-being of prisoners.

207. In Queensland, the Operational Skills Section conducts evaluations of Operational Skills and Tactics (OST) training and continuous research into all areas of police OST in an effort to identify operational needs and enhance the safety of all Queensland Police Service members. The curriculum is reviewed annually and is influenced by current operational requirements, changes to national guidelines, internal policies and procedures, risk management, and litigation and judicial issues, including findings from coronial investigations.

Article 11

Reply to the issues raised in paragraph 16 of the list of issues*

208. The ABS reports annually on persons held in Australian prisons based on records held by corrective services agencies in each state and territory, including imprisonment rates.[15]

[15] Australian Bureau of Statistics, 2017, *Prisoners in Australia, 2017*, Data cube: Tables 15, 32, cat. no. 4517.0. Available at http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4517.02017?OpenDocument, accessed 19 June 2018; Australian Bureau of Statistics, 2016, *Prisoners in Australia, 2016*, Data cube: Table 31, cat. no. 4517.0. Available at http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4517.02016?OpenDocument, accessed 19 June 2018; Australian Bureau of Statistics, 2015, *Prisoners in Australia, 2015*, Data cube: Table 31, cat. no. 4517.0. Available at http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4517.02015?OpenDocument , accessed 19 June 2018; Australian Bureau of Statistics, 2014, *Prisoners in Australia, 2014*, Data cube: Table 30, cat. no. 4517.0. Available at http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4517.02014?OpenDocument, accessed 19 June 2018.

State/territory and year	Total prisoners	Male imprisonment rate	Female imprisonment rate	Mean age	Median age	Aboriginal and Torres Strait Islander	Unsentenced
	no.	no.	no.	years	years	%	%
NEW SOUTH WALES							
2014	10,567	344.7	24.3	36.4	34.5	23.6	25.9
2015	11,797	377.2	28.7	36.3	34.3	24.1	30.9
2016	12,629	397.5	31.0	36.5	34.5	24.0	32.9
2017	13,149	406.1	32.3	36.9	35.0	24.3	32.5
VICTORIA							
2014	6,111	256.2	17.5	37.5	35.5	7.8	18.7
2015	6,219	256.1	17.8	37.8	35.6	7.8	23.1
2016	6,522	263.7	17.8	37.9	35.7	8.2	28.8
2017	7,149	276.0	20.2	37.6	35.4	8.5	31.1
QUEENSLAND							
2014	7,047	353.5	36.2	34.4	32.3	31.8	23.7
2015	7,318	361.9	37.7	34.9	32.9	31.5	24.5
2016	7,746	382.0	35.8	34.9	33.0	31.8	29.3
2017	8,476	415.2	36.0	35.1	33.2	32.1	30.0
SOUTH AUSTRALIA							
2014	2,490	357.4	24.2	37.4	35.4	22.6	35.0
2015	2,732	391.8	23.5	37.6	35.5	23.0	35.9
2016	2,948	417.4	27.6	37.6	35.7	19.4	40.6
2017	3,032	424.8	30.7	37.7	35.6	23.3	37.5
WESTERN AUSTRALIA							
2014	5,241	477.6	47.9	35.1	33.4	39.6	22.4
2015	5,555	500.1	52.9	35.6	34.1	38.0	23.6
2016	6,329	562.1	63.3	35.5	34.0	38.0	29.4
2017	6,743	612.3	68.6	36.0	34.2	37.3	28.6
TASMANIA							
2014	451	210.5	16.3	36.1	33.5	16.2	21.7
2015	519	246.8	15.7	36.4	33.7	15.2	27.6
2016	569	252.2	30.7	35.9	33.6	16.2	27.2
2017	596	281.6	18.2	36.4	34.2	19.6	28.7
NORTHERN TERRITORY							
2014	1,492	1,448.0	127.9	34.7	33.1	85.9	28.2
2015	1,593	1,508.5	175.5	34.7	33.4	84.4	30.3
2016	1,666	1,604.5	147.6	34.7	33.2	83.6	27.8
2017	1,601	1,593.5	125.3	35.0	33.5	84.3	29.0
AUSTRALIAN CAPITAL TERRITORY							
2014	395	248.5	15.7	34.6	31.9	15.2	22.5
2015	396	252.7	13.6	35.1	33.0	19.2	27.0
2016	441	273.8	19.8	35.6	33.5	23.8	31.5
2017	449	261.2	26.0	35.6	34.1	21.2	38.8
AUSTRALIA							
2014	33,789	347.5	28.1	35.9	34.0	27.4	24.3
2015	36,134	365.7	30.7	36.2	34.3	27.4	27.4
2016	38,845	387.7	32.6	36.3	34.3	27.3	31.2
2017	41,202	404.3	34.0	36.5	34.5	27.4	31.3

2014									
Time on remand	NSW	Vic.	Qld	SA	WA	Tas.	NT	ACT	Aust.
NUMBER									
Under 1 month	494	325	287	247	298	36	127	20	1,834
1 and under 3 months	663	347	423	238	381	27	152	31	2,262
3 and under 6 months	542	213	410	174	271	18	87	23	1,738
6 and under 12 months	596	154	344	139	164	10	39	9	1,455
1 year and over	450	100	212	70	65	7	12	5	921
Total	**2,745**	**1,139**	**1,676**	**868**	**1,179**	**98**	**417**	**88**	**8,210**
Mean (months)	6.3	4.1	5.7	4.3	3.8	3.6	3.0	3.8	5.1
Median (months)	4.0	2.2	3.7	2.5	2.3	1.6	2.0	2.7	3.0
90th percentile (months)	15.4	10.8	13.6	11.0	9.2	9.9	7.1	9.1	12.8
PROPORTION (%)									
Under 1 month	18.0	28.5	17.1	28.5	25.3	36.7	30.5	22.7	22.3
1 and under 3 months	24.2	30.5	25.2	27.4	32.3	27.6	36.5	35.2	27.6
3 and under 6 months	19.7	18.7	24.5	20.0	23.0	18.4	20.9	26.1	21.2
6 and under 12 months	21.7	13.5	20.5	16.0	13.9	10.2	9.4	10.2	17.7
1 year and over	16.4	8.8	12.6	8.1	5.5	7.1	2.9	5.7	11.2
Total	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**

2015									
Time on remand	NSW	Vic.	Qld	SA	WA	Tas.	NT	ACT	Aust.
NUMBER									
Under 1 month	868	440	370	310	354	64	172	27	2,601
1 and under 3 months	823	411	461	277	362	49	166	24	2,564
3 and under 6 months	736	274	355	195	315	22	103	34	2,030
6 and under 12 months	698	200	370	141	198	4	42	15	1,661
1 year and over	524	110	245	62	80	5	12	4	1,036
Total	**3,651**	**1,434**	**1,796**	**981**	**1,312**	**143**	**482**	**107**	**9,898**
Mean (months)	5.8	4.1	5.9	3.9	3.9	2.3	2.6	4.0	4.9
Median (months)	3.4	2.2	3.5	2.1	2.5	1.2	1.6	3.0	2.7
90th percentile (months)	14.8	10.0	14.2	9.8	9.3	4.8	6.3	8.8	12.4
PROPORTION (%)									
Under 1 month	23.8	30.7	20.6	31.6	27.0	44.8	35.7	25.2	26.3
1 and under 3 months	22.5	28.7	25.7	28.2	27.6	34.3	34.4	22.4	25.9
3 and under 6 months	20.2	19.1	19.8	19.9	24.0	15.4	21.4	31.8	20.5
6 and under 12 months	19.1	13.9	20.6	14.4	15.1	2.8	8.7	14.0	16.8
1 year and over	14.4	7.7	13.6	6.3	6.1	3.5	2.5	3.7	10.5
Total	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**

2016									
Time on remand	NSW	Vic.	Qld	SA	WA	Tas.	NT	ACT	Aust.
NUMBER									
Under 1 month	827	543	475	324	448	63	141	38	2,871
1 and under 3 months	992	597	571	376	545	52	159	49	3,347
3 and under 6 months	749	379	453	249	470	21	90	19	2,430
6 and under 12 months	823	242	473	165	300	16	51	20	2,079
1 year and over	755	116	295	74	108	3	15	13	1,376
Total	**4,149**	**1,880**	**2,266**	**1,196**	**1,863**	**155**	**463**	**139**	**12,111**
Mean (months)	6.6	3.9	5.8	4.1	4.0	2.3	3.2	3.9	5.2
Median (months)	3.7	2.1	3.5	2.3	2.7	1.4	2.1	2.2	2.9
90th percentile (months)	16.5	9.3	13.9	9.5	9.7	6.0	7.5	10.7	12.9
PROPORTION (%)									
Under 1 month	19.9	28.9	21.0	27.1	24.0	40.6	30.5	27.3	23.7
1 and under 3 months	23.9	31.8	25.2	31.4	29.3	33.5	34.3	35.3	27.6
3 and under 6 months	18.1	20.2	20.0	20.8	25.2	13.5	19.4	13.7	20.1
6 and under 12 months	19.8	12.9	20.9	13.8	16.1	10.3	11.0	14.4	17.2
1 year and over	18.2	6.2	13.0	6.2	5.8	1.9	3.2	9.4	11.4
Total	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**

2017									
Time on remand	NSW	Vic.	Qld	SA	WA	Tas.	NT	ACT	Aust.
NUMBER									
Under 1 month	905	560	478	310	408	68	160	39	2,928
1 and under 3 months	873	682	607	333	442	55	162	55	3,218
3 and under 6 months	733	467	577	194	500	24	84	41	2,621
6 and under 12 months	912	318	544	184	396	18	43	22	2,440
1 year and over	844	191	341	122	181	3	10	17	1,711
Total	**4,269**	**2,223**	**2,545**	**1,137**	**1,926**	**171**	**464**	**174**	**12,911**
Mean (months)	7.0	4.3	6.0	4.9	4.9	2.7	2.7	4.4	5.6
Median (months)	4.2	2.5	3.7	2.4	3.6	1.4	1.7	2.7	3.3
90th percentile (months)	17.4	11.1	14.3	12.4	11.5	7.1	6.5	11.2	13.7
PROPORTION (%)									
Under 1 month	21.2	25.2	18.8	27.3	21.2	39.8	34.5	22.4	22.7
1 and under 3 months	20.4	30.7	23.9	29.3	22.9	32.2	34.9	31.6	24.9
3 and under 6 months	17.2	21.0	22.7	17.1	26.0	14.0	18.1	23.6	20.3
6 and under 12 months	21.4	14.3	21.4	16.2	20.6	10.5	9.3	12.6	18.9
1 year and over	19.8	8.6	13.4	10.7	9.4	1.8	2.2	9.8	13.3
Total	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**

209. The majority of jurisdictions are implementing programs to enhance the use of non-custodial measures as an alternative to imprisonment. Data on the percentage of cases in which non-custodial measures have been applied are below.[16] See also paragraph 236.

[16] Australian Bureau of Statistics, 2018. *Criminal Courts, Australia, 2016-17*, Data cube: Tables 15, 19, 23, 27, 31, 35, 39, 43, cat. no. 4513.0. Available at http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4513.02016-17?OpenDocument, accessed 19 June 2018.

Year	Defendants proven guilty	Non-custodial order
	ACT	
2014–15	3,570	2,827 (79%)
2015–16	3,208	2,534 (79%)
2016–17	3,520	2,717 (77%)
	NSW	
2014–15	122,908	106,296 (86%)
2015–16	133,944	114,644 (86%)
2016–17	136,145	115,269 (85%)
	NT	
2014–15	11,517	6,911 (60%)
2015–16	10,960	6,261 (57%)
2016–17	9,835	5,146 (52%)
	QLD	
2014–15	155,389	140,299 (90%)
2015–16	157,260	140,954 (90%)
2016–17	150,042	132,618 (88%)
	SA	
2014–15	31,550	26,107 (83%)
2015–16	29,164	23,690 (81%)
2016–17	28,573	22,867 (80%)

Year	Defendants proven guilty	Non-custodial order
	TAS	
2014–15	10,850	8,917 (82%)
2015–16	11,016	8,772 (80%)
2016–17	10,670	8,461 (79%)
	VIC	
2014–15	94,969	86,324 (91%)
2015–16	100,924	93,344 (92%)
2016–17	103,021	94,923 (92%)
	WA	
2014–15	81,022	74,952 (93%)
2015–16	80,197	73,550 (92%)
2016–17	85,209	77,905 (91%)

210. In the ACT, convicted detainees are required by law to be held separate from remand prisoners. Where this is not practicable, or if different accommodation is necessary to ensure the safety of the detainee or anyone else, a direction may be made by the Director-General of ACT Justice and Community Safety Directorate such that detainees are not separated.

211. In NSW, section 33 of the *Crimes (Administration of Sentences) Regulation 2014* (NSW) lists convicted inmates and unconvicted inmates as separate classes of inmates in

the NSW prison system and provides that, as far as practicable, inmates of different classes are to be kept separate from one another.

212. In all other jurisdictions, correctional services attempt, to the extent possible and where facilities allow, to separate remand and convicted detainees. In Tasmania, the Government has committed $70 million for a new remand facility which will house up to 70 remandees. $270 million has also been committed to build a new prison which will provide the Tasmania Prison Service with greater capacity to separate unconvicted persons and sentenced prisoners.

213. In each state and territory, corrective services ensure an adequate standard of health care is provided to those detained in correctional facilities. While in custody, detainees receive the same level of health care the general public would receive under the public health system. Within 24 hours of admission to a correctional facility, all detainees undergo an initial physical and mental health assessment, and any ongoing risks and needs are addressed in the detainee's case management plan.

214. Jurisdictions provide a team of doctors, nurses, mental health and addiction specialists, and visiting specialists including psychiatrists, dentists and allied health specialists to provide health services to detainees. In the ACT, the Director-General of ACT Justice and Community Safety Directorate must appoint a doctor for each correctional centre. In NSW, the Justice Health & Forensic Mental Health Network is responsible for providing appropriate health care to detainees.

Australian Immigration Detention Facilities

215. Home Affairs contracts an HSP to ensure that health services for those in Australian Immigration Detention Facilities (AIDFs) receive health services that are comparable to those available to the Australian community under the public health system. These health services are provided through onsite primary and mental health clinicians with referral to allied health and specialists, as required. Acute care is provided by public hospitals in the Australian health care system. The department has numerous health policies that support the physical and mental health care of people in AIDFs.

216. Additionally, the AIDF service providers, departmental detention officers and case managers are trained in recognising and responding to detainee mental health, or psychological distress. If risk factors are identified at any point after initial health checks, a referral is triggered for mental health re-screening, or immediate referral to a torture and trauma specialist service.

217. The Commonwealth and the states and territories are responsible for the inspection and oversight of places of detention in their jurisdiction.

218. The Commonwealth and the states and territories have mechanisms in place to monitor, oversee and inspect places of detention and are working towards the establishment of a National Preventive Mechanism following Australia's ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in December 2017. See Appendix IV for specific mechanisms.

Reply to the issues raised in paragraph 17 of the list of issues*

219. In 2017, the Australian Government commissioned a review of the implementation of the 339 recommendations from the Royal Commission into Aboriginal Deaths in Custody (RCIADC). This Review allowed a more comprehensive picture to be developed following the 2015 report from Amnesty International Australia which claimed that most of the recommendations had not been fully implemented. The Final Report of the Review was released on 24 October 2018 and found that the majority of the RCIADC recommendations have been adopted and implemented across all levels of government. The Review will help to identify areas where additional or different approaches are needed to address contemporary drivers of Aboriginal and Torres Strait Islander peoples' disproportionate contact with the justice system.

220. The National Deaths in Custody Program (NDICP) collects and records comprehensive data on all individuals:

- Who died in prison custody, police custody or youth detention;
- Who died attempting to escape from prison, police custody or youth detention, regardless of where the death occurred;
- Whose death was caused or contributed to by traumatic injuries sustained, or by lack of proper care, while in such custody or detention, regardless of where the death occurred; or
- Who died or were fatally injured in the process of police or prison officers attempting to detain that person.

221. The NDICP was established at the Australian Institute of Criminology in 1992 as part of the Australian Government's commitment to implementing the recommendations of the RCIADC.

222. During 2016–17 the Australian Institute of Criminology compiled data on all deaths in custody that occurred in 2013–14 and 2014–15 and have commenced the compilation of 2015–16 and 2016–17 data. The 2018 Productivity Commission Report on Government Services also provides statistics on the number of deaths in custody for the reporting period. See Appendix V.

223. Although states and territory corrective services record incidents where persons in detention are injured or killed as a result of violence or the excessive use of force, data are generally not captured for reporting purposes and are available in a form that would enable a sufficient response to all parts of this issue. Available data are below.

224. Table 8A.16 – Assaults in custody, rate per 100 prisoners[17]

	NSW	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*ACT*	*NT*
Prisoner on prisoner								
Serious assault								
2016-17	0.29	1.88	3.08	0.83	1.50	2.78	3.59	0.18
2015-16	0.59	1.09	2.25	0.84	1.29	1.53	0.75	0.06
2014-15 (c)	0.56	1.69	1.80	0.59	1.40	2.14	3.21	0.13
Assault								
2016-17	27.48	20.88	10.49	4.13	6.87	7.31	15.72	3.29
2015-16	23.68	16.14	7.09	3.74	8.29	8.97	16.92	3.31
2014-15 (c)	15.07	12.24	5.00	5.42	5.86	8.55	12.56	3.06
Prisoner on officer								
Serious assault								
2016-17	–	0.03	0.11	0.14	0.17	0.17	–	–
2015-16	–	0.05	0.01	0.17	–	0.38	–	–
2014-15 (c)	–	0.08	0.08	0.09	–	–	–	–
Assault								
2016-17	1.55	1.63	1.01	1.60	0.63	1.22	1.80	0.37
2015-16	1.95	2.01	0.90	1.35	0.28	3.44	–	0.06
2014-15 (c)	0.51	1.56	0.25	1.98	0.79	1.71	0.88	–

Reply to the issues raised in paragraph 18 of the list of issues*

225. Most jurisdictions have specific legislation that prohibits the use of isolation or segregation for punishment in juvenile justice settings.

226. The use of isolation or segregation is only used in limited circumstances, when it is reasonably necessary for the child's protection, or the protection of another child or property. There are also a number of conditions that accompany the decision to isolate or segregate a child including a maximum period of time the child can be kept in isolation or segregation, and requirements for regular contact with staff, and access to support services, education, basic human necessities and exercise.

[17] Productivity Commission, 2018, *Report on Government Services 2018: Chapter 8, Corrective Services*, Commonwealth of Australia, Canberra.

227. In the NT, the *Youth Justice Legislation Amendment Act 2018* was passed by the NT Legislative Assembly on 10 May 2018. The Act repealed the provision governing the use of isolation for the purposes of discipline, clarified the practice of "separation" as distinct from "isolation", and introduced a number of safeguards for when children are separated from others in detention.

228. In Queensland, in response to an Independent Review of Youth Detention conducted in 2017, Youth Justice Queensland is undertaking a number of actions to address the recommendations that relate to separation including:

- Introducing greater scrutiny to monitor decision-making about separations in the context of behavioural development plans developed for children, to ensure all separations are compliant with the Youth Justice Regulation 2016;
- Taking steps to clarify that separation is not permissible as a default condition of a child's behavioural development plan;
- Underscoring that unlawful separations are not tolerated by Youth Justice Queensland and any staff member suspected of approving an unjustified separation will be referred to the Ethical Standards Unit within the Department of Child Safety, Youth and Women; and
- Conducting a review of separation records to ensure contemporaneous evidence is provided for continuous separations.

229. The majority of jurisdictions have legislation that provides for the use of restraints in limited circumstances that are dependent on the level of risk that exists to people or the order of the centre and the likelihood of that risk becoming a reality. Such circumstances include where a child may attempt to escape, or may seriously harm themselves or another person, or seriously disrupt the order and security of the centre, and youth detention staff reasonably believe there is no other way to stop the young person from engaging in the behaviour outlined above.

230. In these circumstances, youth justice staff are encouraged to use their training in engagement de-escalation techniques to prevent incidents of violent behaviour where restraints may otherwise be required. Authorised restraint techniques are used as a last resort only, where other less restrictive interventions have failed to prevent harm or the risk of harm.

231. The introduction of the *Youth Justice Legislation Amendment Act 2018* addresses the horrific acts that led to the Royal Commission into the Protection and Detention of Children in the NT. It specifically prohibits the following:

- The use of force except under specific circumstances and only as a last resort;
- The use of force or restraint for the purpose of maintaining the good order of a detention centre or disciplining a detainee;
- Any form of physical, verbal or emotional abuse;
- The administering of corporal punishment, that is, any action which inflicts, or is intended to inflict, physical pain or discomfort on the detainee;
- Any act or omission intended to degrade or humiliate the detainee;
- Excessive control over the detainee's access to basic human needs, including toilet facilities, food and clean drinking water;
- The use of any form of psychological pressure intended to intimidate or humiliate the detainee; and
- Any kind of unlawful discriminatory treatment.

232. Territory Families is delivering a number of workshops in Don Dale and Alice Springs youth detention centres to inform and engage with staff and young people in detention about the new provisions. Territory Families is ensuring training for youth justice staff complies with the Act.

233. Territory Families has developed further law reform proposals that improve the current immunity provisions in the *Youth Justice Act* (NT). These include provisions in relation to extending limitation periods for commencement of civil proceedings in relation to acts done or omitted to be done by any person under the Act.

234. As a result of the Royal Commission, police received 28 referrals from youth regarding various complaints while in detention. All of these matters were investigated by NT Police and no charges have been laid in relation to any of those matters.

235. No criminal complaints from these youth were received in relation to the use of "tear gas" by NT Corrections staff, however some commenced civil action regarding this incident.

236. In 2013–14, the proportion of juvenile offenders undergoing diversionary programs varied across jurisdictions. From 2014–15 to 2015–16, the majority of jurisdictions reported an increased proportion of juvenile offenders undergoing diversionary programs but from 2015–16 to 2016–17, the majority of jurisdictions reported a decreased proportion of juvenile diversions.[18]

237. Jurisdictions have legislation that provides the legal framework to ensure that children in remand or custody are detained in youth detention facilities separate to adult correctional facilities. In the rare circumstance where a child is held in police lockup or in a police watch-house, the child is held separately from adults and the child is brought before a Magistrate or transferred from police custody to a youth detention facility as soon as possible.

238. Where jurisdictions do not have separate facilities for housing juvenile offenders, for example, in lower population density areas, they are generally housed separately from the adult prison population within the facility.

239. The *Youth Justice and Other Legislation Amendment Act 2016* (Qld) commenced on 12 February 2018, ending Queensland's treatment of 17 year olds as adults in the criminal justice system and bringing Queensland into line with all other Australian jurisdictions. All 17 year olds who come into contact with the justice system under new matters are treated as children providing increased access to programs and supports, and if sentenced to a period of detention, are sent to a youth justice detention facility rather than an adult facility.

240. Although there are no plans at the national level to raise the minimum age of criminal responsibility, this is being considered within some jurisdictions.

241. The Royal Commission into the Protection and Detention of Children in the NT recommended that the age of criminal responsibility be raised to 12 years. The NT Government provided in-principle support for this recommendation and is undertaking a comprehensive review and reform of current youth justice legislation. Law reform proposals have been developed by the NT Government for raising the age of criminal responsibility to 12 and age of admission to detention to 14. It is anticipated that these will come into effect in 2019.

242. In Tasmania, the minimum age of criminal responsibility will be considered as part of the next major review of the *Youth Justice Act 1997* (Tas). A timeframe has not yet been set for the review.

243. In WA, the Government has expressed support for raising the age of criminal responsibility to 12 years stating that they will work within COAG to consider the age of criminal responsibility.

244. In all jurisdictions, detention is a last resort, and is only considered where alternative arrangements such as youth justice conferencing, diversion programs or community orders have been considered as not appropriate.

[18] Productivity Commission. (2015). *Report on Government Services 2017: Volume C, Chapter 6, Police Services.* Commonwealth of Australia, Canberra; Productivity Commission. (2017). *Report on Government Services 2017: Volume C, Chapter 6, Police Services.* Commonwealth of Australia, Canberra.

245. Sentencing children and young offenders pursuant to the relevant jurisdiction's legislation, is a complex exercise that requires judges to take into account the maximum penalty set by Parliament, the gravity of the offence and the offender's circumstances, including the offender's age and rehabilitation prospects.

246. A child or young offender can only be sentenced to life imprisonment without parole in very rare circumstances where the matter was brought before the Supreme Court and the offending was of extreme objective gravity and severity. At this time, jurisdictions do not intend to review legislation that allows for the imposition of a sentence of life imprisonment on offenders who commit certain extremely serious offences.

Reply to the issues raised in paragraph 19 of the list of issues

247. All jurisdictions have legislation that provides that solitary confinement may be used in some places of detention as a measure of last resort.

248. Prisoners may be held in segregated custody in circumstances where they pose a serious threat to themselves or others. In WA, prisoners may be placed in separate confinement for the purpose of maintaining good order and security in a prison or as a penalty imposed following a disciplinary hearing or conviction.

249. In the ACT, detainees may be segregated from others for health reasons, for the safety of a person at the facility, or for the safety and security of the facility. Separate confinement can be used as a sanction for three, seven or 28 days. At the commencement of separate confinement, a detainee will be examined by a Justice Health doctor and again at the end of the period. For periods exceeding seven days the General Manager of Justice Health will review the order on a daily basis.

250. Section 192 of the *Corrections Management Act 2007* (ACT) sets out that a disciplinary inquiry is an administrative process to which the rules of natural justice apply and there are a number of review options available in regard to disciplinary sanctions.

251. In Queensland, prisoners may be separately confined for a maximum period of seven days if they are found guilty of a major breach of discipline.

252. Decisions to place individuals in segregated custody are subject to regular review. In NSW, the *Crimes (Administration of Sentences) Act 1999* (NSW) legislates time periods for reviews to take place and establishes the Serious Offenders Review Council (Review Council) which reviews segregated and protective custody directions. An inmate whose total continuous period of segregated or protective custody exceeds 14 days may apply to the Review Council for a review of these directions.

253. In Queensland, prisoner have a right of review of the separate confinement order from a more senior officer.

254. State and territory correctional facilities also assess the ongoing necessity for segregation.

255. Although all instances of solitary confinement are reported and recorded, information on the maximum and average duration is not publicly available.

256. Procedures for strip searches vary between jurisdictions. Any search of a person, including a child or young person, must be carried out in strict compliance with the requirements of the relevant jurisdiction's legislation.

257. The procedures include a range of measures to safeguard the prisoner's dignity and self-respect, including processes to maintain privacy so far as possible, avoiding any unnecessary force and not touching the prisoner as part of the search, except where reasonable force is used to compel participation.

258. Australian, state and territory governments recognize strip searching is an intrusive practice and are committed to implementing and monitoring procedures with regard to a person's dignity and privacy. In Victoria, a review is underway examine policies, practices and technology that can be utilised in the women's prison system as an alternative to strip searching, or to reduce reliance on it.

259. Detainees are informed of their rights, including those under international human rights law, and are able to comment on or complain about any matter relating to the conditions of detention. Detainees are able to make complaints directly to the police or a regulatory body such as the AHRC or the relevant state or territory Ombudsman. Material advising of the right to complain to the AHRC and the relevant Ombudsman's office is displayed prominently throughout detention facilities at all times and is also available to detainees on request.

260. Each state and territory's Ombudsman offices, or other appointed officials, regularly conduct visits and inspections of correctional facilities, and are able to receive complaints from inmates. In the NT, inspection of adult correctional and youth detention facilities are carried out by statutory official visitors whilst the NT Ombudsman continues to receive and deal with complaints made by prisoners.

261. In Queensland, the Office of the Public Guardian administers a community visitor program to protect the rights and interests of children and young people in youth detention centres and 17 year olds detained at adult corrective services facilities. Community visitors help detainees resolve issues and disputes, and make complaints. Youth detention centres are visited by community visitors on a weekly basis. Adult corrective services facilities are visited on a monthly basis.

Reply to the issues raised in paragraph 20 of the list of issues

262. Australia is committed to ensuring that no-one in Australia is deprived of their liberty on the basis of their disability. Australia recognises that there are particular challenges in relation to the treatment of persons with mental impairment in both the health and criminal justice contexts. This is an area of ongoing review and reform.

263. In 2015 a cross-jurisdictional working group was established on the treatment of people with cognitive disability or mental impairment unfit to plead or found not guilty by reason of mental impairment. The working group collated and analysed data across jurisdictions on fitness to stand trial, the defence of mental impairment and interstate forensic transfers and developed a national statement of principles relating to persons unfit to plead or not guilty by reason of cognitive and mental health impairment (the National Principles).

264. The draft National Principles recognise the rights of persons with cognitive or mental health impairments and seek to identify safeguards throughout the legal process and periods where a person is subject to orders.

265. In October 2018, the Australian Attorney-General wrote to all state and territory Attorneys General seeking endorsement of the National Principles.

266. To date, the National Principles have been endorsed by Queensland, NSW, NT, WA and Tasmania.

267. SA elected not to formally endorse the National Principles due to inconsistency with SA legislation, policy and practices, and the cost implications of making changes to accord with the National Principles. This does not prevent future endorsement and the Australian Government has committed to reviewing the National Principles in five years, in consultation with jurisdictions, to ensure they remain relevant and continue to represent best practice.

268. Each state and territory has a legislated process in place to determine whether a person is fit to plead and the treatment of persons found unfit to plead, including those with psychiatric or cognitive impairment. This involves a finding by a court whether or not the person is fit to plead, allowing for a period of time in which the person may become fit to plead if they are found unfit and then a determination by a court of whether or not the person committed the offence. In the ACT, if a person is determined to be unfit to plead, and does not, or is unlikely to become, fit to plead within a 12-month period, a hearing is held to determine whether the person engaged in the conduct required for the offence charged. If that is proven beyond a reasonable doubt, the person can then be detained under the *Mental Health Act 2015* (ACT).

269. If a person is detained because they are unfit to plead, jurisdictions are responsible for the facilities in which this detention takes place. This can include custodial detention, a secure mental health facility (including correctional, private and public hospitals), secure care facility, disability justice centre or another appropriate location.

270. Some jurisdictions have specific facilities where a person with an intellectual disability can be detained. Victoria has the Intensive Residential Treatment Program, a residential treatment facility, and the Long Term Residential Program, a residential institution. Both operate under the *Disability Act 2006* (Vic).

271. Jurisdictions have regimes in place to ensure that the custodial detention is periodically reviewed and the person is released into the community if appropriate.

272. Some jurisdictions have statutory limits on the period of detention that can be imposed. In the ACT, the *Crimes Act 1900* (ACT) provides that a person detained under Part 13 must be for a limited period.

273. While some jurisdictions have indefinite term detention, this is subject to safeguards, such as a requirement that the term is appropriate for the offence charged, oversight and periodic review is provided by an independent body, and there is a complaints process.

274. All jurisdictions have processes in place to ensure that periodic review is provided by an independent body and that there is an appropriate complaints process in place.

275. All jurisdictions have legislation in place that allows a person who is being detained to challenge their detention. In some jurisdictions an application may also be made by the person's carer, a public advocate, a parole board or other party with an appropriate interest in the matter.

276. All jurisdictions facilitate access to complaints processes by an affected person. In Queensland if a person is admitted to a forensic disability service under the *Forensic Disability Act 2011* (Qld), they and their allied person must be given a statement of rights that includes information about their right to make a complaint and about the complaints process. In WA, the *Declared Places (Mentally Impaired Accused) Act 2015* provides for advocacy services for residents, subject to consent. Advocates act on behalf of the resident to safeguard their rights, health, safety and development and are able to raise complaints on their behalf.

277. Australia is committed to working towards the elimination of restrictive practices for persons with cognitive or psychiatric impairment. On 21 March 2014, the Commonwealth and state and territory governments endorsed the National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector supporting an approach that restrictive practice is a last resort, and that the dignity and human rights of people should be respected and supported at all times.

278. State and territory governments have legislation in place to ensure that the use of seclusion and restraint is a last resort, meets appropriate standards, and is reported to a responsible body and then reviewed. Some jurisdictions also have bodies that perform an educative role, through the development of best practice guidelines and recommending alternative support options that avoid the use of restrictive practices.

279. For privacy reasons, the Australian Government is unable to provide a complete response to issue 20(d).

Community-based or alternative social-care services

280. In the 2017–18 Budget the Australian Government committed $80 million over four years for the National Psychosocial Support (NPS) measure which provides psychosocial support services to assist people with severe mental illness resulting in reduced psychosocial functional capacity who are not otherwise eligible for assistance through the National Disability Insurance Scheme. It is proposed the NPS measure be implemented through purpose specific funding to Primary Health Networks (PHN) to commission these new services.

281. The Australian Government is in the process of finalising bilateral agreements with each jurisdiction regarding their continuing or enhanced investment in psychosocial services.

282. The Australian Government also funds the Partners in Recovery (PIR) Program, and the Day to Day Living (D2DL) Program. PIR supports people with severe and persistent mental illness with complex needs, and their carers and families, by improving collaboration, coordination and integrations across multiple sectors, services and supports they may come into contact with (and could benefit from).

283. The D2DL Program is a structured activity program to improve quality of life for individuals with severe and persistent mental illness by offering structured and socially based activities.

284. Jurisdictions have also developed community-based and alternative social-care services for persons with cognitive or psychiatric impairments or psychosocial disabilities. The NSW Government is piloting a Cognitive Impairment Diversion Program, which involves expanding the Statewide Community and Court Liaison Service to include court-based identification and assessment of defendants with cognitive impairments. This program targets persons with cognitive impairment in contact with the NSW criminal justice system for low level offences and develops holistic plans to divert them into disability and mainstream supports. The Victorian Government's community-based accommodation services – forensic disability accommodation – are dedicated to offenders with an intellectual disability.

Articles 12–13

Reply to the issues raised in paragraph 21 of the list of issues*

285. The AFP received 36 complaints relating to excessive use of force involving injury between 1 January 2014 and 30 September 2018. These statistics reflect all complaints made across the breadth of the AFP's operations and personnel, including ACT Policing. All use of force events must be reported internally.

286. As at 30 September 2018, 31 of the 36 complaints have been investigated and finalized by AFP Professional Standards and the remaining five are ongoing investigations.

287. No complaints extended to further prosecutions.

288. AFP's authority to investigate such complaints is provided by Part V of the *Australian Federal Police ACT 1979*. Complaints investigated by the AFP under the provisions of Part V are overseen by the Commonwealth Ombudsman.

289. While state and territory authorities receive and record complaints in relation to alleged acts of torture, CIDTP or excessive use of force, data are generally not captured for reporting purposes and are not available in a form that would enable a sufficient response to all parts of this issue.

290. Further, in some jurisdictions, alleged complaints are received and processed by a variety of divisions within an agency meaning a comprehensive list of complaints is not available. In other jurisdictions, the data and information is either not publicly available or is not disaggregated as requested.

Reply to the issues raised in paragraph 22 of the list of issues

291. Australia has a range of policies and procedures, including reporting mechanisms and appropriate escalation points, to ensure that all complaints are responded to, investigated and managed appropriately.

292. Effective planning and reporting of incidents assists the Australian Government in minimising risks to staff and others and assists staff in responding appropriately and in a timely and coordinated manner to such incidents.

293. Allegations of inappropriate or illegal behaviour by detainees, Service Providers or departmental staff are reported to Home Affairs and police or child protection agencies where appropriate.

294. In Australia, detainees are informed of their rights, including those under international human rights law, and are able to comment on or complain without hindrance or fear of reprisal about any matter relating to the conditions of detention.

295. Detainees and community members can make complaints directly to:

- The Australian Border Force (ABF);
- The Facilities and Detainee Service Provider;
- The Commonwealth Ombudsman;
- The AHRC; or
- The police.

296. If a complainant is unhappy about the outcome of an investigation by the ABF or Service Provider, they can raise the matter with an external oversight organisation such as the Commonwealth Ombudsman or the AHRC.

297. The Service Provider ensures that the detainee induction briefing includes all information relevant to detention, including information on regulatory bodies such as the Commonwealth Ombudsman, the AHRC and international bodies such as the International Organization for Migration.

298. Material advising of the right to complain to the AHRC and the Commonwealth Ombudsman is displayed prominently throughout detention facilities at all times and is also available to detainees on request.

299. Australia also maintains a standing invitation to UN Special Procedures Mandate Holders, with a long history of engaging cooperatively with UN Special Rapporteurs and facilitating their visits.

300. See also paragraphs 259–261.

Manus Island and Nauru

301. The Governments of PNG and Nauru have responsibility over regional processing matters within their respective jurisdictions.

Confidentiality of complaints and protection of complainants

302. The complainant's identity and all complaints are treated as strictly confidential by those involved in the complaint resolution process, with mechanisms in place to ensure a complainant's anonymity. A complaint is not be discussed with, or disclosed to, any other persons unless for the purposes of resolving or monitoring the complaint. Each complaint is managed discreetly and complainants are protected against victimisation. Legislation makes it an offence to victimise people who make complaints to complaint handling and inspection bodies like the Commonwealth, state or territory Ombudsmen and the Inspector of Custodial Services.

303. Section 37(4) of the *Ombudsman Act 1974* (NSW) makes it an offence, punishable by up to five years imprisonment, to use, cause, inflict or procure any violence, punishment, damage, loss or disadvantage to any person for or on account of:

- His or her making a complaint to the Ombudsman;
- His or her assisting the Ombudsman; or
- Any evidence given by him or her to the Ombudsman.

304. Section 20 of the *Inspector of Custodial Services Act 2012* (NSW) makes it an offence, punishable by up to 12 months imprisonment, to take or threaten to take detrimental action against another person because that person or any other person provides,

or proposes to provide, information, documents or evidence to the Inspector or a member of staff of the Inspector. The term "detrimental action" is defined to include:

- Injury, damage or loss;
- Intimidation or harassment;
- Discrimination, disadvantage or adverse treatment in relation to employment;
- Dismissal from, or prejudice in, employment; or
- Disciplinary proceedings.

305. All correctional officers are responsible for overseeing, recording, monitoring and ensuring that complaints are acted upon in their areas of responsibility. Correctional facilities and external oversight agencies such as the Commonwealth, state or territory Ombudsmen, the AHRC or the police have complaint handling procedures that require a formal response to be provided to the complainant about the outcome of their complaint, regardless of whether or not they remain in custody.

Reply to the issues raised in paragraph 23 of the list of issues

306. The Royal Commission into Institutional Responses to Child Sexual Abuse delivered its final report to the Governor-General on 15 December 2017.

307. The Royal Commission made 409 recommendations to governments and institutions covering areas such as child safe institutions, record-keeping and information sharing, support and therapeutic treatment services, addressing the complex problem of children with harmful sexual behaviours, contemporary out-of-home care issues, schools, sports and recreation, detention environments, religious institutions, redress, working with children checks and the criminal justice system.

308. In June 2018, the Australian Government and all state and territory governments published formal responses to the Royal Commission's report.

309. Of the 409 recommendations, 84 deal with redress, which the Australian Government has responded to through the creation of the National Redress Scheme for people who have experienced institutional child sexual abuse. Of the remaining 325 recommendations, 122 have been directed wholly or partially to the Australian Government. The Government response accepts, or accepts in principle, 104 of these 122 recommendations with the remaining 18 recommendations listed as being "for further consideration" or "noted". The Australian Government has not rejected any of the recommendations.

310. The Australian Government has established an implementation taskforce to run from January 2018 to June 2020 to implement accepted recommendations. This will include consideration of the recommendations relating to the criminal justice system, which aim to improve the system for survivors of institutional child sexual abuse. It is not intended that the Government's consideration of and response to these recommendations will replace existing criminal justice processes.

311. The requested statistical data is not available for all children who lived in institutional or out-of-home care throughout the twentieth century. In recent years, state and territory governments have commenced collecting some of this information, however, due to cross-jurisdictional differences in legislation, systems and record-keeping processes, data are incomplete and only some of this information is adequate for national reporting.

312. The Australian Government reports on two indicators which partially meet this request:

- The number and percentage of children in out-of-home care who were the subject of a substantiation of sexual abuse, physical abuse, emotional abuse or neglect where the abuse was perpetrated by a person who was living in the household providing out-of-home care;

- Corresponding data where the abuse was perpetrated by any person who encounters the child while the child is in out-of-home care (that is, not limited to a person living in the household).

313. Data for these two indicators is sourced from state and territory administrative systems and has some limitations. Jurisdictions utilise different data systems and record-keeping methods, which vary in scope and in the level of detail collected. As such, data are incomplete for some jurisdictions and are not necessarily comparable across jurisdictions.

314. The published data indicates that fewer than 6 per cent of children in out-of-home care were the subject of a substantiation of abuse or neglect in all jurisdictions. The percentage where the person responsible was living in the household was below 3 per cent across all jurisdictions.

315. Table 16A.12 Children in out-of-home care who were the subject of a substantiation of sexual abuse, physical abuse, emotional abuse or neglect.[19]

	Unit	*NSW*	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*ACT*	*NT*
2016-17									
Children in out-of-home care who were the subject of a notification, which was substantiated									
Number of children	no.	785	na	165	88	156	9	7	77
Children aged 0-17 years in at least one care placement during the year									
Number of children	no.	20 581	13 001	10 958	5 112	3 951	1 353	939	1 326
Children in out-of-home care who were the subject of notification, which was substantiated, as a proportion of all children in care									
Proportion	%	3.8	na	1.5	1.7	3.9	0.7	0.7	5.8
2015-16									
Children in out-of-home care who were the subject of a notification, which was substantiated									
Number of children	no.	na	na	163	82	139	7	23	72
Children aged 0-17 years in at least one care placement during the year									
Number of children	no.	20 316	12 473	10 709	4 967	3 671	1 300	879	1 299
Children in out-of-home care who were the subject of notification, which was substantiated, as a proportion of all children in care									
Proportion	%	na	na	1.5	1.7	3.8	0.5	2.6	5.5
2014-15									
Children in out-of-home care who were the subject of a notification, which was substantiated									
Number of children	no.	na	na	144	87	122	8	11	108
Children aged 0-17 years in at least one care placement during the year									
Number of children	no.	21 426	11 017	8 400	4 725	3 273	1 245	831	1 233
Children in out-of-home care who were the subject of notification, which was substantiated, as a proportion of all children in care									
Proportion	%	na	na	1.7	1.8	3.7	0.6	1.3	8.8

316. Table 16A.13 – Children in out-of-home care by whether they were the subject of a child protection substantiation and the person believed responsible was living in the household providing out-of-home care.[20]

[19] Productivity Commission, 2018, *Report on Government Services 2018: Chapter 16, Child protection services*, Commonwealth of Australia, Canberra.

[20] Ibid.

	Unit	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
2016-17									
Children in care who were the subject of a substantiation and the person believed responsible was in the household									
Number of children	no.	521	130	na	10	109	na	4	na
Children aged 0-17 years in at least one care placement during the year									
Number of children	no.	20 581	13 001	10 958	5 112	3 951	1 353	939	1 326
Children in care who were the subject of a substantiation as a proportion of all children in care									
Proportion	%	2.5	1.0	na	0.2	2.8	na	0.4	na
2015-16									
Children in care who were the subject of a substantiation and the person believed responsible was in the household									
Number of children	no.	95	163	na	5	107	na	12	na
Children aged 0-17 years in at least one care placement during the year									
Number of children	no.	20 316	12 473	10 709	4 967	3 671	1 300	879	1 299
Children in care who were the subject of a substantiation as a proportion of all children in care									
Proportion	%	0.5	1.3	na	0.1	2.9	na	1.4	na
2014-15									
Children in care who were the subject of a substantiation and the person believed responsible was in the household									
Number of children	no.	147	69	na	7	95	na	10	na
Children aged 0-17 years in at least one care placement during the year									
Number of children	no.	21 426	11 017	8 400	4 725	3 273	1 245	831	1 233
Children in care who were the subject of a substantiation as a proportion of all children in care									
Proportion	%	0.7	0.6	na	0.1	2.9	na	1.2	na

317. People who have experienced abuse as a child in institutional or out-of-home care are able to seek financial assistance through the victims of crime schemes in each state and territory or to pursue compensation through civil litigation. Examples of redress programs that have run in jurisdictions include:

- Tasmania's Claims of Abuse in State Care Program operated from 2003–13. The Program assessed historical claims of abuse from people who had been in state care and were 18 years and over in 2003. In 2014, The Tasmanian Department of Health and Human Services released the Review of Claims of Abuse of Children in State Care. The report states that over 10 years, the Program received 2,414 claims from which 1,848 people received ex gratia payments totalling $54.8 million;
- The Queensland Government operated a redress scheme from 2007–10 in response to recommendations from the Commission of Inquiry into Abuse of Children in Queensland Institutions. The Queensland Redress Scheme provided ex-gratia payments of between $7,000 and $40,000 to victims of all forms of abuse and neglect as children in 159 Queensland institutions;
- The WA Government ran a redress scheme from 2008–11for persons who had experienced child abuse (sexual, physical, emotional/neglect) while in State care. The scheme provided redress to 5,345 child abuse victims.

318. The National Redress Scheme for people who experienced institutional child sexual abuse was established in response to 84 recommendations of the Final Report of the Royal Commission into Institutional Responses to Child Sexual Abuse. The Redress Scheme commenced on 1 July 2018 and provides access to psychological counselling, a direct personal response and a monetary payment. Applicants will be able to access legal information and assistance funded by the Australian Government when applying for redress. Commonwealth Government institutions and government institutions in NSW, Victoria and the ACT are all participating in the Scheme. The remaining states and territory governments have announced they will join the Scheme in the coming months. Several non-government institutions have already joined the Scheme and multiple non-government institutions are in various stages of joining. Although joining is not compulsory, the Scheme has been actively engaging with, and will continue to engage with, institutions that have not yet joined.

Article 14

Reply to the issues raised in paragraph 24 of the list of issues

319. Victims of torture and CIDTP have access to victims' compensation schemes within their relevant jurisdiction (see paragraph 28). Specialist torture and trauma services also exist in all jurisdictions to assist refugees who enter Australia and are victims of torture and CIDTP.

320. Under state and territory legislation, victims' compensation schemes may provide financial assistance for medical costs associated with rehabilitation and may provide payment for the treatment of injury, including psychological injury by specialist health services.

321. Jurisdictions do not record data that specifically identify cases of torture and CIDTP or where compensation is requested and granted in these cases. The data that is recorded is not adequate for national reporting.

322. The Royal Commission into Institutional Responses to Child Sexual Abuse's Redress and Civil Litigation Report recommended removal of the limitation period for commencing civil litigation for personal injury related to child sexual abuse, and that the removal should be retrospective in operation.

323. In March 2017, amendments to Queensland's *Limitation of Actions Act 1974* (Qld) commenced to retrospectively remove the limitation period for an action for damages relating to personal injury arising from child sexual abuse. These amendments allow claims for personal injury as a result of child sexual abuse to be brought at any time in a person's life.

324. On 10 April 2018, the *Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Act 2017* (WA) passed through the WA Parliament. The Act removes limitation periods for civil action by survivors of child sexual abuse allowing them to seek justice and compensation in WA civil courts regardless of when the abuse occurred. The Act provides a legal basis for suing institutions in the name of their current office holders for historical child sexual abuse and includes provisions to overcome the difficulties that survivors may face in identifying a proper defendant. It includes provisions overriding certain sections of the federal or Australian corporations law, which will enable office holders to access the assets of related trusts and corporations for the purposes of satisfying the judgement amount. The Act also ensures that survivors are treated fairly by introducing a cap on the legal fees that may be charged to a plaintiff in child sexual abuse cases.

325. The NSW Department of Family and Community Services (FACS) offers personal apologies to victims and survivors of child abuse in out-of-home-care, as part of the civil claims process. Apologies are provided by a FACS Senior Executive with appropriate seniority. In light of the findings and recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, FACS has implemented Child Safe Standards to better identify, prevent, report and respond to abuse of children in out-of-home-care.

326. LACs are independent statutory bodies established under state and territory legislation. LACs determine eligibility for their legal services and the extent of assistance they provide in individual cases. Applications for grants of legal aid are means and merits tested against guidelines determined by each LAC. See also paragraph 20.

327. On 22 October 2018, the Prime Minister delivered a National Apology to victims and survivors of institutional child sexual abuse. The Australian Government's decision to deliver this National Apology followed the release of the Royal Commission into Institutional Responses to Child Sexual Abuse's final report.

328. In March 2018, the Government appointed an independent, survivor-focused Reference Group to advise it on the form and content of the National Apology.

329. A national consultation was undertaken from May–July 2018 by the National Apology Reference Group to reach out to survivors, their families and support people, to inform the content of the National Apology and the ceremony.

Article 16

Reply to the issues raised in paragraph 25 of the list of issues

330. The underpinning principle in Australia is that the use of conducted energy weapons (Tasers) is to be the last resort, proportionate to the level of risk involved, and the minimum level appropriate for the safe and effective performance of police duties.

331. Australia has national guidelines developed by the Australian and New Zealand Policing Advisory Agency (ANZPAA) in the form of the ANZPAA use of force principles introduced in 2013. The principles provide guidance for jurisdictions in the development and application of policies and procedures and promote cross-jurisdictional cooperation for continuous improvement in the area of use of force, including the use of Tasers.

332. The threshold and reporting requirement for the use of Tasers varies across each state and territory, however, in most jurisdictions is "immediate physical threat of serious harm", which ranks as the highest standard in Australia.

333. Jurisdictions maintain governance structures to report, record, monitor and evaluate the use of Tasers. Reporting on the use of Tasers is mandatory in all jurisdictions.

334. The use of Tasers on pregnant women and children is prohibited unless in exceptional circumstances where there is no other reasonable option to avoid the imminent risk of serious injury.[21]

335. Custodial staff generally do not use or have access to Tasers in correctional facilities. Police officers are also not permitted to carry such devices in areas of police custody unless in exceptional circumstances where an incident requires a high level tactical option to be available. In the event where a tactical response is required, the use of Tasers is limited to officers specifically trained in tactical response situations.

336. Officers must complete initial training and assessment specific to the operation of conducted energy weapons before they are allowed to carry or use such devices. Officers are required to undertake specific Taser training on an annual basis to maintain the appropriate level of skill and competency. Training incorporates the physical aspects of using a Taser including technical proficiency, critical thinking and judgemental decision-making as well as understanding the relevant legislation, code of conduct and ethics.

337. The AFP had a total of 360 deployments, NSW Police had 2,396 deployments, SA Police had 655 deployments with six escalating to complaints against police, Queensland Police had 3,679 deployments and WA Police had 906 deployments.

338. Within the AFP (inclusive of ACT Policing), data on Taser use includes instances where the Taser was drawn, aimed or discharged.

339. Information on the number of complaints or allegations against police officers regarding the use of Tasers could not be provided for all jurisdictions as it is either not captured or not publicly available.

340. NSW recorded a total of 78 allegations, 42 of which were investigated and 23 of which were sustained. WA recorded a total of 13 allegations, all of which were investigated but none were sustained.

341. The NT has only recently begun to collect data on complaints against police that have Taser involvement. As such, there are no figures prior to 2017. Since 2017, in the NT, there have been three complaints against police for the deployment of a Taser; one was

[21] Tasmanian Taser guidelines do not specifically refer to the use of Tasers on pregnant women and children.

sustained. The outcome for the officer involved was the provision of remedial advice and further training. One matter required no further action and one matter is still subject to investigation.

342. All Taser use involving discharge is subject to a review, including analysis of video footage.

Reply to the issues raised in paragraph 26 of the list of issues

343. The Australian Government is committed to respecting the rights of all persons to physical integrity and reproductive rights.

344. The regulation of sterilisation of adults with disability is primarily a state and territory issue. A procedure for the purposes of sterilisation may only occur in Australia with the person's consent, or, if the person is unable to give valid consent, with authorisation from a court or guardianship tribunal. All jurisdictions have guardianship tribunals to decide a range of matters for people who have an impaired capacity to make independent decisions, including regarding sterilisation.

345. The Australian Government's jurisdiction in sterilisation cases exists only under the *Family Law Act 1975* (Cth) (Family Law Act), and is confined to matters involving children. Under Australian law, it is generally within the bounds of parental responsibility for a parent to consent to medical treatment for and on behalf of their child. However, parental authority does not extend to cases where the medical procedure is non-therapeutic, invasive and irreversible; where there is a significant risk of making the wrong decision; and the consequences of a wrong decision would be particularly grave. In such cases, Family Court authorisation is required. Medical procedures resulting in the sterilisation of a child must be therapeutic in nature for it to be within the bounds of permissible parental authority and not require court authorisation.

346. In relation to children with gender dysphoria, recent decisions of the Family Court of Australia have held that, in appropriate circumstances, young people can access all three stages of medical treatment for gender dysphoria without involvement of the court where there is agreement between the child, parents, and treating medical practitioners.

347. When a court is deciding whether to authorise medical treatment for a child, the best interests of the child is the paramount consideration. Evidence must be given to satisfy the court that the treatment is in the child's best interests, which must include evidence from a relevant expert witness, including, but not limited to, a medical or psychological professional.

348. In May 2015, the Australian Government responded to the Australian Senate Standing Committee on Community Affairs References Committee's reports on the involuntary or coerced sterilisation of people with disabilities (17 July 2013) and intersex people (25 October 2013). The regulation of medical procedures and services, and the provision of associated medical information, is primarily a matter for the states and territories.

349. The Australian Government supports increased consistency across jurisdictions regarding sterilisation. The Australian Government has encouraged all state and territory governments to review current principles for the treatment of infants with intersex variations, and to consider adopting or developing specific principles for their jurisdiction in consultation with intersex support groups and medical experts.

350. On 27 September 2017, the Australian Government directed the ALRC to undertake a review of the family law system, including the Family Law Act. The ALRC is considering whether changes should be made the family court's jurisdiction to support best outcomes for children, including intersex children. The ALRC will report to the Commonwealth Attorney-General on 31 March 2019.

351. The AHRC is also conducting an inquiry that considers how best to protect the human rights of people born with variations in sex characteristics, in the specific context of non-consensual medical interventions. The consultation phase commenced in July 2018 after which the AHRC will publish a report with recommendations for reform.

352. There are no specific civil or criminal offences in relation to involuntary sterilisation or unnecessary and irreversible medical or surgical treatment. However, depending on the circumstances, such acts may be considered to be assault against the person and could result in criminal prosecution or proceedings for civil remedies.

Reply to the issues raised in paragraph 27 of the list of issues

353. While Australian law does not explicitly outlaw corporal punishment in all settings, child protection mechanisms and criminal penalties will apply to any person, including family members, who physically abuse or cause serious harm to a child. Corporal punishment is prohibited as a sentence for crimes in Australia.

354. Parenting advice and information provided by all Australian governments focuses on positive behaviour management and emphasises the negative consequences of physical punishment.

355. The Australian Government does not endorse corporal punishment as an approach to student behaviour management in schools. The ACT, NSW, SA, Queensland, Tasmania, Victoria and WA have either explicitly banned the use of corporal punishment in government schools or have removed provisions in legislation that provided a defence to the use of reasonable chastisement by people acting in the place of a parent (such as teachers).

356. The ACT, NSW, NT, Tasmania, and Victoria have legislated to ban corporal punishment in both government and non-government schools. Irrespective of this, criminal penalties apply in all jurisdictions to teachers who abuse or assault children.

357. Several jurisdictions have conducted, or are in the process of, conducting reviews relating to schooling for children with disability which have included consideration of restrictive practices against children. A number of courts are currently considering matters involving the restraint of children with disability in schools.

358. In the NT, the *Youth Justice Legislation Amendment Act 2018* specifically prohibits the administering of corporal punishment of children in detention.

II. Other issues

Reply to the issues raised in paragraph 28 of the list of issues

359. Australia ratified OPCAT on 21 December 2017. Upon ratification, Australia made a declaration under article 24 of OPCAT to postpone National Preventive Mechanism (NPM) obligations for three years.

360. The Australian Government will use the three years to work with jurisdictions on the implementation of OPCAT including the establishment of Australia's NPM.

361. It is proposed that Australia's NPM will be established as a cooperative network of Commonwealth, state and territory bodies responsible for inspecting places of detention and will be facilitated by an NPM Coordinator.

362. On 1 July 2018, the Office of the Commonwealth Ombudsman commenced as Australia's NPM Coordinator and as the NPM body for Commonwealth places of detention.