



**International covenant  
on civil and  
political rights**

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**HUMAN RIGHTS COMMITTEE**  
**Ninety-fifth session**  
**New York, 16 March – 3 April 2009**

**REPLIES TO THE LIST OF ISSUES (CCPR/C/AUS/Q/5)  
TO BETAKEN UP IN CONNECTION WITH THE CONSIDERATION  
OF THE FIFTH PERIODIC REPORT OF THE GOVERNMENT OF AUSTRALIA  
(CCPR/C/AUS/5)\***

[19 January 2009]

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

## **Australian Government response to the Human Rights Committee's list of issues**

### **Question 1**

1. There are a number of pieces of legislation in place which have the effect of implementing various provisions of the International Covenant on Economic, Social and Cultural Rights (the Covenant), as outlined below.<sup>1</sup>
2. The Australian Constitution contains a number of express or implied guarantees of rights and immunities. An example of an express constitutional provision related to the protection of rights is the prohibition of laws that interfere with religious freedom in section 116 of the Constitution. The High Court of Australia has also recognized that there are implicit protections arising from the very structure of the Constitution as an instrument predicated on a system of 'representative democracy', such as the right to freedom of communication on political matters.
3. Australia has a legislative framework for the protection of human rights. Key pieces of Commonwealth legislation which serve to implement provisions of the Covenant include: the Racial Discrimination Act 1975 (Cth); the Sex Discrimination Act 1984 (Cth); the Disability Discrimination Act 1992 (Cth); the Age Discrimination Act 2004 (Cth); the Human Rights and Equal Opportunity Commission Act 1986 (Cth); the Privacy Act 1998 (Cth); and the Workplace Relations Act 1996 (Cth). The federal human rights framework is complemented by anti-discrimination legislative frameworks at the State and Territory level.
4. Australia also has an established administrative law framework which allows people to challenge a wide range of government decisions and to obtain reasons for particular decisions that have been made.
5. In addition to these established legislative and constitutional frameworks, the Australian Government continues to introduce legislation that implements Australia's obligations under the Covenant. Most recently, the Australian Government introduced into Parliament a host of reforms to eliminate discrimination against same-sex couples from approximately 100 federal laws.
6. Furthermore, on 10 December 2008, the Australian Government announced an Australia-wide consultation to determine how best to recognize and protect human rights and responsibilities in Australia. The aim of the consultation is to bring together a range of views across the spectrum of Australian society about how we should protect human rights. Importantly, the consultation will not presuppose any outcome and will not be limited to the discussion of any particular category of human rights.
7. A legislative charter of rights and responsibilities is one option for protecting human rights, but any new approach will flow from the views expressed by the Australian people. The Government has indicated that, while it would not support inclusion of a bill of rights in the

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<sup>1</sup> Detailed information about Australia's legislative implementation of the provisions of the Covenant is contained in Australia's Common Core Document incorporating the Fifth Report under the International Covenant on Civil and Political Rights and the Fourth Report under the International Covenant on Economic, Social and Cultural Rights, 2006.

Constitution, the consultation will consider a range of options for recognizing and protecting human rights in Australia.

8. It is likely that the consultation will involve a discussion of how Australia's international obligations, including those under the Covenant, are implemented in domestic legislation.

### **Question 2**

9. The Government is mindful of the Committee's general comment No. 24<sup>2</sup> concerning reservations to the Covenant, in particular the Committee's recommendation that States should ensure that the necessity for maintaining reservations is periodically reviewed, taking into account any observations and recommendations made by the Committee during its examination of periodic reports.<sup>3</sup>

10. The Australian Government has no intention at the current time to withdraw Australia's reservations to article 10, paragraph 2(a) and (b) and paragraph 3; article 14, paragraph 6 or article 20. The Government will continue to keep its reservations to the Covenant under periodic review.

### **Question 3**

11. The Australian Government reiterates its position that the views of the Committee adopted under the First Optional Protocol are to be considered in good faith by States parties and that considerable weight should be given to them, although they are not formally binding in law.

12. The Australian Government commends the Committee for its initiative in drafting general comment No. 33.

13. Of the seven cases referred to by the Committee, five raised issues relating to Australia's immigration laws, policies and practices. The Australian Government has instituted a number of measures which, in the view of the Government, reduce the likelihood of future communications about these subjects. These measures are summarised in a speech given by the Minister for Immigration and Citizenship on 29 July 2008. The text of the speech can be accessed at: <http://www.minister.immi.gov.au/media/speeches/2008/ce080729.htm>

14. With regards to the circumstances raised in the communication of *Young v Australia*, on 27 November 2008, Parliament passed amending legislation to remove discrimination against same-sex couples from a range of Commonwealth laws, including the Veterans' Entitlements Act 1986 (the VEA). Once the amendments to the VEA enter into force on 1 July 2009, same-sex partners of deceased and incapacitated war veterans will be entitled to apply for a pension under section 13 of the Act. While the amendments will not have retrospective effect, they will allow a same-sex partner of a veteran who has died before 1 July 2009 to access payments under the VEA from when the amendments come into effect. This is in line with the Government's policy

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<sup>2</sup> 'Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant' (CCPR/C/21/Rev.1/Add.6) (4 November 1994).

<sup>3</sup> General comment No. 24, para 20.

of prospectively removing discrimination against same-sex couples and their families. The reforms will not provide for retrospective payments under the VEA from the date of a partner's death to the commencement of reforms on 1 July 2009. However, affected persons may apply for an 'act of grace' payment or ex gratia payment for these amounts in conjunction with the prospective pension entitlement.

15. The Australian Government undertakes to keep the Committee informed about any future developments which affect the cases referred to by the Committee and any other cases.

#### **Question 4**

##### *The Covenant*

16. Australia accepts that there may be exceptional circumstances in which the rights and freedoms set out under the Covenant may be relevant beyond the territory of a State party (although notes that the jurisdictional scope of the Covenant is unsettled as a matter of international law). Although Australia believes that the obligations in the Covenant are essentially territorial in nature, Australia has taken into account the Committee's views in general comment No. 31 on the circumstances in which the Covenant may be relevant extraterritorially.

17. Australia believes that a high standard needs to be met before a State could be considered as effectively controlling territory abroad. It is not satisfied in all, or necessarily any, cases in which Australian officials may be operating beyond Australia's territory from time to time. The rights under the Covenant that a State party should apply beyond its territory will be informed by the particular circumstances. Relevant factors include the degree of authority and degree of control the State party exercises, and what would amount to reasonable and appropriate measures in those circumstances.

18. The only circumstances in which Australia would be in a position to afford all the rights and freedoms under the Covenant extraterritorially would be where it was exercising all of the powers normally exercised by a sovereign State, such as having the power to prescribe and enforce laws, as a consequence of an occupation, a consensual deployment, or a United Nations mandated mission. In no other circumstances could it be said that Australia was in a position to give effect to all of the rights in the Covenant. However, even in these cases, Australia may have obligations to ensure that the existing penal laws of the territory remain in force in line with the obligations upon an Occupying Power or have an obligation to respect the sovereignty of the Host State.

19. If Australia were exercising authority as a consequence of an occupation or during a consensual deployment with the consent of a Host State, in circumstances in which the principles of international humanitarian law applied, Australia accepts that there is some scope for the rights under the Covenant to remain applicable, although in case of conflict between the applicable standards under the Covenant and the standards of international humanitarian law, the latter applies as *lex specialis*. Further, the existence of a United Nations mandate may also be relevant in determining the lawfulness of a particular action, such as detention or interference with privacy.

20. Australia assures the Committee that in all cases it respects the fundamental rights and freedoms provided for under the Covenant, and to the extent that Australia is in a position to afford them during military or civilian operations occurring outside Australia, it will as a matter of policy endeavour to implement reasonable and appropriate measures in the circumstances.

21. With regard to the actions of Australian officials overseas, in all circumstances Australian officials will also be obliged to comply with Australian criminal laws that have extraterritorial application. For example, the Australian Defence Force is subject to the extra territorial provisions of the Commonwealth Criminal Code and the Defence Force Discipline Act when it deploys overseas.

#### *The Second Optional Protocol*

22. The Second Optional Protocol provides, in article 1, paragraph 1, that:

‘No one within the jurisdiction of a State party to the present Protocol shall be executed.’

Australia accepts that, consistent with the principle that Covenant rights may be relevant beyond the territory of a State party, the obligation in article 1, paragraph 1 of the Second Optional Protocol may also in appropriate circumstances be relevant outside Australia’s territory. Australia regards those circumstances as being restricted to cases in which Australia is exercising all of the powers normally exercised by a sovereign Government, including the power to prescribe and carry out sentences imposed by courts. In no other circumstances would Australia be in a position to give effect to the obligation in article 1, paragraph 1 of the Second Optional Protocol.

#### **Question 5**

23. The Australian Government regularly conducts internal reviews and scrutiny of bills, including anti-terrorism bills, for compatibility with both domestic and international human rights obligations. These checks ensure any restrictions or limitations on rights under the Covenant are strictly justified on permissible grounds, including on the grounds of national security or *ordre public*.

24. Australia’s anti-terrorism laws include strict legislative safeguards to ensure the powers are exercised with restraint and that they comply with human rights. Law enforcement, security and intelligence agencies are also subject to oversight by various independent bodies including the Ombudsman and the Inspector-General of Intelligence and Security.

25. The Anti-Terrorism Act (No 2) 2005 (Cth) provides for a review of the new anti-terrorism measures it contains in 2010. This review is to be conducted by the Council of Australian Governments and will also encompass related State and Territory legislation. The State and Territory Government officials on the Council are independent of the Australian Government. Similarly, a review of Division 3 of Part III of the Australian Security Intelligence Organisation Act 1979 is to be undertaken before 2016 by the Parliamentary Joint Committee on Intelligence and Security (PJCIS).

26. On 23 December 2008, the Australian Government announced that it would establish a National Security Legislation Monitor to review the practical operation of counter-terrorism legislation. This will be an independent statutory office within the Prime Minister's portfolio and will report to Parliament. This proposal is consistent with recommendations made by various reviews of counter-terrorism legislation. The Government's response to recent reviews and inquiries concerning counter-terrorism legislation, including the Inquiry into the case of Dr Mohamed Haneef, is publicly available at: [http://www.ag.gov.au/www/agd/agd.nsf/Page/Publications\\_AustralianGovernmentresponsestotheClarkeInquiryandothercounter-terrorismreviews-December2008](http://www.ag.gov.au/www/agd/agd.nsf/Page/Publications_AustralianGovernmentresponsestotheClarkeInquiryandothercounter-terrorismreviews-December2008).

A summary of key aspects of the response is available at:

[http://www.attorneygeneral.gov.au/www/ministers/RobertMc.nsf/Page/MediaReleases\\_2008\\_FourthQuarter\\_23December2008-ComprehensiveResponseToNationalSecurityLegislationReviews](http://www.attorneygeneral.gov.au/www/ministers/RobertMc.nsf/Page/MediaReleases_2008_FourthQuarter_23December2008-ComprehensiveResponseToNationalSecurityLegislationReviews).

### Question 6

27. The Australian Government remains concerned that Indigenous Australians are over-represented in the criminal and juvenile justice systems.<sup>4</sup> Indigenous prisoners represented 24 per cent of the total prisoner population at 30 June 2007. As of that date, the average standardised rate of Indigenous imprisonment was 1787 per 100,000 of the adult Indigenous population (13 times higher than the non-Indigenous rate). Indigenous women constitute the fastest-growing prison population. As at 30 June 2007, the number of Indigenous women prisoners was 614 (an increase of 13.5 per cent compared to 2006 figures). Although the rate of detention for both Indigenous and non-Indigenous juveniles has decreased since 1994, Indigenous youth comprise 54 per cent of persons in juvenile detention and are 21 times more likely than non-Indigenous juveniles to be detained.

28. The Australian Institute of Criminology (AIC) National Deaths in Custody Program annual report 2006<sup>5</sup> found that 11 Indigenous deaths occurred in custody during 2006 calendar year. This comprised four in prison custody, six in police custody and custody-related operations and one in juvenile detention. The AIC notes that the ratio of Indigenous to non-Indigenous deaths in custody rose each year between 2001 and 2005, before falling to three in 10 in 2006.

29. Criminal and juvenile justice matters, including corrective services, are primarily the responsibility of Australia's State and Territory governments. A number of different strategies have been undertaken by State and Territory Governments. Whilst the outcomes of many of the projects are not necessarily directly measurable or have not yet been evaluated, there are indications that some projects are having an effect.

30. For example, Queensland's first sentencing court for Indigenous offenders was established in 2002. The court, known as the Murri Court, has become a locally supported Queensland response to address Indigenous over-representation in the criminal justice system. In September 2005, an internal Review of the Murri Court was conducted by the Queensland Department of Justice and Attorney-General. Murri Court stakeholders considered that the Murri Court is an effective mechanism for increased participation and ownership by the Indigenous community in the criminal justice process and that an additional goal of the Murri Court should be included to

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<sup>4</sup> The term 'conflict' is taken to mean adverse contact with the criminal justice system.

<sup>5</sup> This is the most recent report.

reflect the aim of community building and collaboration. Due to limited data collection processes in place, it was not possible to conclusively determine whether the Murri Court is meeting its objectives of reducing imprisonment, decreasing the rate of re-offending and reducing the number of Indigenous offenders who fail to appear in court. However, based on the number and type of Murri Court orders made across all places where the Murri Court sits, there are indications that the Murri Court is having success in its objective of diverting offenders from prison. Anecdotal evidence from Murri Court Magistrates is that many of the offenders appearing in Murri Court receive rehabilitative probation orders rather than imprisonment. An independent Review of the Murri Court is currently being conducted by the Australian Institute of Criminology and is expected to be completed in late 2009.

31. Other initiatives adopted by States and Territories to address the overrepresentation of Indigenous Australians in conflict with the criminal justice system include:

- In Queensland, Community Justice Groups to support Indigenous victims and offenders at all stages of the legal process, encourage diversionary processes and develop networks with other agencies to ensure that issues impacting on Indigenous communities are addressed; the training and support of Indigenous Justices of the Peace who play an important role in helping their communities with basic legal procedures and passing on an understanding of the justice system generally; and an Indigenous Alcohol Diversion program which includes a specific objective of reducing the number of Indigenous people involved in the criminal justice system;
- In Victoria, an Aboriginal Justice Agreement; the establishment of a County Koori Court in Victoria; the launch of a Local Justice Worker Program to support Koori offenders to complete their community-based orders; and Koori-specific justice programs including the Koori Youth Justice Program, the Koori Intensive Bail Support Program, the Koori Early School Leavers and Youth Employment Program, and the Koori Pre- and Post- Release program;
- In South Australia, Aboriginal Sentencing Courts and Aboriginal Conferencing, including the very successful Nunga Court at Port Adelaide and a Port Lincoln conferencing trial, are serving to improve the cultural appropriateness of the South Australian court system by demystifying the court processes for Aboriginal people and placing a priority on addressing underlying issues through diversionary program referrals and the involvement of Elders and victims in judicial processes; and the Magistrates Court employs Aboriginal Justice Officers to assist Aboriginal people who have matters before the courts;
- In Western Australia, measures to address issues of over-representation include the development of the Reducing Aboriginal Imprisonment Strategies (RAIS); two Aboriginal Community Courts; the provision of Aboriginal Liaison Officers in a number of Magistrates Courts throughout Western Australia; the establishment of an Aboriginal facilitators group for offenders; provision of support services through contracted non-government organizations to offenders and their families to assist with their transition from prison to the community; and other initiatives such as the Decca Station Project which provides training to enable access to employment for offenders.

32. At the federal level, the Australian Government also continues to implement a range of strategies to address the disproportionate number of Indigenous Australians who come in contact with the criminal justice system. Examples of Australian Government strategies include the Prevention, Diversion, Rehabilitation and Restorative Justice Program, Legal Aid for Indigenous Australians Program, Family Violence Prevention Legal Services and the Law and Justice Advocacy Development Program.

33. The Australian Government provides funding through the Prevention, Diversion, Rehabilitation and Restorative Justice Program to develop and undertake projects that will reduce Indigenous Australians' adverse contact with the justice system. The Program is also intended to facilitate projects that will support Indigenous Australians who have been incarcerated or are in custody and that provide through care support to assist in their successful reintegration back into the community. Early resolution of disputes, including through restorative justice practices, with greater involvement of agencies, the victims, offenders, and Indigenous communities is encouraged.

34. The Legal Aid for Indigenous Australians Program provides professional, culturally appropriate legal services to Indigenous Australians. In the 2007-08 financial year, Aboriginal and Torres Strait Islander Legal Services (ATSILS) attended to a total of 150,407 criminal matters. This represents an increase from 2006-07, when ATSILS attended to 144,275 criminal matters. Across both 2006-07 and 2007-08 financial years, adults aged 25-54 were provided with the most services.

35. Family Violence Prevention Legal Services provide a range of services to victims of family violence, sexual assault and abuse, including legal advice and casework assistance and support. In the 2007-08 financial year Family Violence Prevention Legal Services units provided approximately 14,000 occasions of legal assistance to Indigenous Australians and their families in rural and remote communities throughout Australia.

36. Through the Law and Justice Advocacy Development (LJAD) Program, the Australian Government supports organizations to advocate for the advancement of the legal rights of Indigenous Australians by promoting effective cooperation, coordination and liaison between Indigenous Australians, State, Territory and Australian governments and other bodies. The LJAD Program seeks to support Indigenous Australians in developing policy, law reform projects and delivering community legal education and information that promote improved law and justice outcomes for Indigenous Australians.

37. The Australian Government is in the process of establishing a new national Indigenous law and justice advisory body to provide expert advice and support on law and justice issues which impact on Indigenous Australians. In addition, the Standing Committee of Attorneys-General is developing a draft National Indigenous Law and Justice Framework. The aim of the Framework is to provide a national approach to Indigenous law and justice responses across jurisdictions, identifying priorities, successes and constructive ways forward.

#### **Question 7(a)**

38. While the Australian Government continues to closely monitor the Native Title Act 1993 and its processes, it is the Government's view that legislative change is not a panacea. The



Government is committed to ensuring that the native title system is flexible and produces broad benefits to Indigenous people. However, the Government has not announced an ‘overhaul of the system’. This perception appears to be based on erroneous media reporting. The Attorney-General has consistently stated that real change in native title will only come through adjusting the behaviour and attitudes of all parties in the native title system and how they engage with the opportunities native title can present.

39. To support broad mediated outcomes, the Government has announced a targeted reform to improve the operation of the native title system. On 17 October 2008, the Government announced that the Federal Court of Australia will assume a central role in managing all claims, including determining whether claims will be mediated by the Court or the National Native Title Tribunal. Having one body control the direction of each case means that the opportunities for resolution can be more readily identified and the efforts of the parties be best focussed. The change will contribute to the Government’s vision for a system that is flexible and produces broad benefits to Indigenous people. The Government intends that the change will commence in 2009.

40. In December 2008, the Attorney-General released a discussion paper for consultation on proposals to make minor amendments to the Native Title Act. The Government is committed to engaging with Indigenous people and other relevant stakeholders. This engagement will take place through a discussion paper, as well as through direct consultation. The Government will closely consider the outcome of this consultation and may make other amendments to the Native Title Act to improve the operation of the native title system for Indigenous people and other stakeholders. In particular, the Government has said that it is interested in examining proposals that would encourage agreement making. The Government is committed to encouraging and pursuing agreements that provide practical benefits which create Indigenous economic development opportunities.

41. Another recently established initiative is the Joint Working Group on Indigenous Land Settlements. The Group was established in July 2008 by the native title Ministers and comprises representatives from all Australian State and Territory jurisdictions and the Commonwealth. This Group is developing innovative policy options for progressing broader regional land settlements. Broader settlement packages provide land and social justice outcomes beyond answering the question of whether native title exists. Examples of benefits under such settlements include training and employment opportunities, land transfers and co-management of land.

42. The involvement of a large number of non-government respondent parties in native title claims contributes to the complexity, time and cost of claims. While the interests of non-government respondents need to be considered to ensure sustainable outcomes, respondents should be concerned to clarify the interaction between Indigenous and non-Indigenous property rights, not to expend public resources on determining whether native title exists. The Government is exploring practical measures to streamline the participation of non-government respondents in native title claims. Approaches to be considered include the engaging of non-government respondents at an earlier stage in the claims process, or resolution of their interests outside of the formal mediation process.

**Question 7(b)**

43. On 13 February 2008 the Australian Prime Minister moved a motion of Apology to Australia's Indigenous Peoples in the Australian Parliament with specific reference to the Stolen Generations. The motion received bipartisan support.

44. The position of the Aboriginal and Torres Strait Islander Social Justice Commissioner (Commissioner) was created by the Government in 1992 in response to the findings of the Royal Commission into Aboriginal Deaths in Custody and the National Inquiry into Racist Violence. The Commissioner monitors the enjoyment and exercise of human rights for Indigenous Australians. The Commissioner is required to produce an annual Social Justice Report which is tabled in Parliament.

45. The Social Justice Report 2007, which focuses on family violence and child abuse in Indigenous communities, was launched by the Commissioner on 31 March 2008. It makes 14 recommendations, two in relation to Indigenous communities dealing with family violence and abuse and 12 in relation to the Northern Territory Emergency Response launched in June 2007 by the previous Australian Government following the release of the Little Children are Sacred report which brought the issue of alleged child abuse in remote Northern Territory Aboriginal communities to public attention. The key recommendations of the Social Justice Report 2007 relating to family violence and abuse are that:

- The Department of Families, Housing, Community Services and Indigenous Affairs develop a single submission process to fund community initiatives to address Indigenous family violence and child abuse issues;
- The Department of Families, Housing, Community Services and Indigenous Affairs fund and coordinate an information sharing mechanism such as a clearinghouse to facilitate sharing of knowledge and successes in Indigenous family violence and child abuse initiatives.

46. The Minister for Families, Housing, Community Services and Indigenous Affairs, the Hon Jenny Macklin MP, acknowledged that the report highlighted the need for measures to protect children against violence and sexual abuse.

47. The Little Children are Sacred report identified inter-generational social and economic disadvantage as key factors contributing to the circumstances for child abuse in remote communities. In December 2007 and March 2008, the Council of Australian Governments agreed to six ambitious targets for closing the gap between Indigenous and non-Indigenous Australians across urban, rural and remote areas:

- To close the gap in life expectancy within a generation;
- To halve the gap in mortality rates for Indigenous children under five within a decade;
- To ensure all Indigenous four years olds in remote communities have access to early childhood education within five years;

- To halve the gap in reading, writing and numeracy achievements for Indigenous children within a decade;
- To halve the gap for Indigenous students in year 12 attainment or equivalent attainment rates by 2020; and
- To halve the gap in employment outcomes between Indigenous and non-Indigenous Australians within a decade.

48. Since these targets were agreed, all Australian state and territory governments have been working together to develop fundamental reforms to address these targets. Governments have also acknowledged that this is an extremely significant undertaking that will require substantial investment. The Council of Australian Governments agreed in 2008 to initiatives for Indigenous Australians of \$A4.6 billion across early childhood development, health, housing, economic development and remote service delivery.

49. In giving effect to this commitment to closing the gap on Indigenous disadvantage, the Council of Australian Governments agreed in October 2008 to a New Partnership on Indigenous Early Childhood Development comprising \$564 million in joint funding over six years to address the needs of Indigenous children in their early years. As part of the initiative, 35 Children and Family Centres are to be established across Australia in areas of high Indigenous population and disadvantage to deliver integrated services that offer early learning, child care and family support programs. The funding will also increase access to ante-natal care, teenage reproductive and sexual health services, and child and maternal health services.

50. The Australian Government is taking a national leadership role in the protection of all children in Australia. The Australian Government is developing a national framework for protecting Australia's children recognizing that responsibility for statutory child protection services rests with State and Territory Governments and that the safety and well-being of all Australian children is an issue that demands the attention of all levels of government. A discussion paper, Australia's Children: Safe and Well, was released by Minister Macklin in May 2008. The paper has provided a basis for wide consultation including with State and Territory governments, advocacy and non-government organizations. It is expected that a practical, partnership-based National Child Protection Framework will be finalised in early 2009.

51. In April 2007 the Council of Australian Governments agreed to the establishment of a clearinghouse to improve the evidence base for closing the gaps in Indigenous outcomes. The clearinghouse will collect, assess and disseminate information from evaluations and research on best practice and critical factors for overcoming Indigenous disadvantage through a single online repository. A key feature of this clearinghouse will be the assessment of quality of evidence using practical standards appropriate to the relevant topic area of the material selected. While the main audience for the clearinghouse will be government policy makers and service providers, the material collected by the clearinghouse will be publicly accessible. An open tender process is currently being conducted and it is expected the clearinghouse will commence operation in 2009.

52. Further, the Australian Government notes also that several clearinghouses already operate to provide information specifically in relation to family violence, abuse and child protection topics. The Indigenous Justice Clearinghouse, for example, is a collaborative partnership between the Australian Institute of Criminology and the Attorney General's Department of New South Wales, and is endorsed by the Standing Committee of Attorneys-General. The aim of the

clearinghouse is to promote discussion and disseminate relevant Indigenous justice information to government policy makers and those working in the Indigenous justice field. The Australian Domestic and Family Violence Clearinghouse is a national organization, providing high quality information about domestic and family violence issues and practice. This Clearinghouse supports specialist and generalist service providers, government agencies, researchers, advocates and activists in their efforts, through the dissemination of information and research and by facilitating discussion. Finally, the National Child Protection Clearinghouse is funded by the Department of Families, Housing, Community Services and Indigenous Affairs as part of the Australian Government's response to the problem of child abuse. This Clearinghouse has operated from the Australian Institute of Family Studies since 1995. It collects, produces and distributes information and resources, conducts research and offers specialist advice on the latest developments in child abuse prevention and child protection.

53. Consultation with the Social Justice Commissioner on the recommendations made in the Social Justice 2007 report has been undertaken at Ministerial level. In addition, the Department for Families, Housing, Community Services and Indigenous Affairs meets with the Social Justice Commissioner on a quarterly basis. On receiving the Social Justice Report 2007, Minister Macklin stated that it would be considered as part of the review of the Northern Territory Emergency Response commissioned by the Government. The Social Justice 2007 report was provided to the members of the Northern Territory Emergency Response Review Board, and the Board met with the Social Justice Commissioner. In response to the Northern Territory Emergency Response Review completed in October 2008, the Australian Government has indicated that it will continue and strengthen the Northern Territory Emergency Response to protect women and children, reduce alcohol fuelled violence, promote personal responsibility and rebuild community norms in Northern Territory Indigenous communities.

54. In relation to the specific Social Justice 2007 report recommendation concerning a single submission process, the Australian Government notes the existing electronic submission (eSub) process and confirms that the Department for Families, Housing, Community Services and Indigenous Affairs is working in conjunction with relevant line agencies to address this recommendation within the parameters of a whole-of-government streamlined and simplified agreement-making framework.

### **Question 8**

55. The Australian Government acknowledges that Indigenous children are overrepresented in the juvenile justice system, as are young people with cognitive disabilities and mental health issues. Although juvenile justice matters are primarily the responsibility of Australia's States and Territories, Governments at both the federal and State and Territory level are continuing to develop initiatives designed to address these issues.

#### *Indigenous children in the juvenile justice system*

56. The Australian Government provides funding to support projects such as: Family Violence Prevention Legal Services, which seeks to prevent family violence and sexual abuse from occurring; the Prevention, Diversion, Rehabilitation and Restorative Justice Program, which funds activities intended to divert Indigenous Australians, including young people, away from

adverse contact with the criminal justice system; and the Legal Aid for Indigenous Australians Program, which provides culturally appropriate legal services to Indigenous Australians.

57. In 2008 the Human Rights and Equal Opportunity Commission<sup>6</sup> published a report funded by the Australian Government called 'Preventing Crime and Promoting Rights for Indigenous Young People with Cognitive Disabilities and Mental Health Issues'. The report is valuable in highlighting the specific needs of these young people and identifying promising interventions within the juvenile justice sector, and is available at:

[http://www.humanrights.gov.au/social\\_justice/publications/preventing\\_crime/](http://www.humanrights.gov.au/social_justice/publications/preventing_crime/)

58. Australian Government funding of \$20.8 million over five years from 2006 is being provided for the COAG Improving the Capacity of Workers in Indigenous Communities initiative. The initiative will support health practitioners including Aboriginal Health Workers, nurses, counsellors and other clinic staff to identify and address mental illness and associated substance use issues in Aboriginal and Torres Strait Islander communities, recognize the early signs of mental illness and make referrals for treatment where appropriate.

59. Indigenous children who have suffered the trauma of sexual assault (often in the context of broader family and community violence) are over-represented in child protection systems, experience poorer outcomes in child and adolescent mental health, and are at increased risk of other downstream health impacts in later life. The Australian Government, through the Department of Health and Ageing, recently affirmed its commitment to extend the reach of sexual assault counselling services in remote areas through a new \$5.7 million four year funding agreement from 2008-09 with the Northern Territory Department of Health and Families. This is part of a larger \$6.2 million commitment that includes funds for an independent evaluation of the initiative. The Northern Territory Mobile Outreach Service (2008-2012) provides counselling, support and education services to children, families and communities to respond to sexual assault related trauma. These services will contribute to: improved outcomes in child and adolescent mental health; prevention of intergenerational trauma including further perpetration of abuse; and lessen the likelihood of entry to child protection and juvenile justice systems for this group of children.

60. At a State and Territory level, measures taken include:

- In South Australia, \$11.5m was committed in 2008 over four years to ensure an appropriate and coordinated response to the 2007 To Break The Cycle report, which called for concerted action on ways to address juvenile offending particularly by young Indigenous people;
- In Western Australia, Juvenile Justice Teams are one of the available diversionary options, and work with the young offender, their family and where appropriate with the victim, to formulate an appropriate plan to address the offending behaviour; and tailored education is provided to all young Indigenous people in custody with consideration made to their age, ability, social and academic level;

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<sup>6</sup> The Human Rights and Equal Opportunity Commission has been known as the Australian Human Rights Commission since September 2008, although its legal name remains the Human Rights and Equal Opportunity Commission. Legislation that is before Parliament proposes to formally change the Commission name to the Australian Human Rights Commission.

- In Queensland, an Aboriginal and Torres Strait Islander Youth Justice strategy has been developed to provide an integrated response to reduce the over-representation of Indigenous young people in the justice system and increase their representation in diversionary processes; youth justice initiatives such as Indigenous Service Support Officers aim to make youth justice service delivery more culturally appropriate for Indigenous young people; and a range of policies and programmes of the Queensland Police Service aim to reduce Indigenous over-representation generally in the criminal justice system, such as the provision of around 140 Police Liaison Officers, most of whom are Indigenous, to help to establish and maintain a positive rapport between Indigenous and multicultural communities and the Police.

*Children with mental illness and intellectual disabilities*

61. The Australian Government has funded a project called headspace under the National Youth Mental Health Foundation, which establishes a Centre for Excellence to collect, analyse and disseminate the latest research for health professionals regarding the best treatments available for young people with mental health and substance abuse issues.

62. At a State and Territory level, measures to reduce the disproportionate number of children with cognitive disabilities and mental health issues in the juvenile justice system include:

63. In Victoria, all young people admitted to a youth justice custodial centre receive a thorough health assessment, including mental health screening, within 24 hours of reception (12 hours for Aboriginal clients), and a more comprehensive mental health examination subsequently occurs within 48 hours of reception; clinicians from a variety of professional backgrounds deliver health services, including mental health assessment and treatment, to youth justice clients; and a Protocol was launched in March 2005 to ensuring enhanced access to specialist mental health services for youth in the justice system.

64. In Queensland, the Queensland Police Service runs an early intervention / prevention initiative called CRYPAR (Coordinated Response to Young People at Risk) for young people who are at risk of involvement in the youth justice system due to issues including mental illness and various other problems. More information is available at <http://www.police.qld.gov.au/services/newsletters/nhw/2005/winter/article07.htm>

**Question 9**

65. The Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse in the Northern Territory (Inquiry) was appointed by the Northern Territory Government in August 2006 to report on allegations of sexual abuse of Aboriginal children. The Inquiry's report, Little Children are Sacred, was publicly released on 15 June 2007. The Little Children are Sacred report emphasized that child abuse and neglect in Indigenous communities throughout the Northern Territory was at crisis levels and required prompt and firm decisions to be made to address it.

66. The Little Children are Sacred report indicated that in all 45 communities visited by the Northern Territory Board of Inquiry, child abuse and potential neglect of children had been reported. The report underlined: the strong connections between alcohol abuse, violence and the

sexual abuse of children; the destructive effects of alcohol for Aboriginal communities that many children were not protected and nurtured, and many children were not attending school and the important contribution of schools and schooling in keeping children safe and its potential for positive influences in their lives.

67. On 21 June 2007, the then Government announced national emergency measures aimed at protecting Aboriginal children in the Northern Territory from abuse and to give them a better, safer future. The then Opposition offered bi-partisan in-principle support.

68. The then Government's measures were not directed at addressing the specific recommendations in the Little Children are Sacred report, but aimed to protect children and make communities safe in the first instance, and then to lay the basis for a sustainable future for Indigenous people in the Northern Territory. Immediate measures included provision of additional policing, child health checks, repairs to community infrastructure, and alcohol and pornography restrictions.

69. On 7 August 2007, the then Government introduced the three emergency response Bills into the Parliament to give effect to key Northern Territory Emergency Response measures. The Bills were passed by the Parliament on 17 August 2007. The legislation to implement some of the Northern Territory Emergency Response measures (for example, alcohol and pornography restrictions and income management) excluded the operation of the prohibition on racial discrimination in the Racial Discrimination Act 1975 (Cth).

70. In November 2007, a new Government was elected at the federal level. The incoming Government continued the Northern Territory Emergency Response but adopted a change in approach including a more consultative approach with the Aboriginal people affected and that new Northern Territory Emergency Response measures would conform with the RDA.

71. In December 2007, the Government established an advisory group of 25 Northern Territory Aboriginal leaders to discuss the implementation of the Northern Territory Emergency Response measures and to provide feedback to the Minister for Families, Housing, Community Services and Indigenous Affairs. The Prime Minister and the Minister for Families, Housing, Community Services and Indigenous Affairs met with this group on 16 December 2007 and the Minister met this group again on several occasions in the following year. Both the Prime Minister and the Minister made visits to Northern Territory Aboriginal communities in 2008.

72. The 2008-09 Budget also provided for the engagement of up to 20 Indigenous community members to act as community agents, providing a conduit between community and government representatives and facilitating greater community input to government decision-making.

73. In June 2008, the Australian Government established the Northern Territory Emergency Response Review Board to conduct an independent review of the Northern Territory Emergency Response. The Review Board's report was publicly released on 13 October 2008. Two of the three members of the Board were Indigenous Australians and the third has significant experience in Indigenous affairs.

74. The Northern Territory Emergency Response Review made three overarching recommendations, including that:

- Government actions affecting Aboriginal communities respect Australia's human rights obligations and conform with the Racial Discrimination Act.
- The Australian Government has accepted all three recommendations and is committed to continuing and strengthening the Northern Territory Emergency Response.
- The Government is acting on its commitment to build genuine, sustained and constructive engagement and partnership with Indigenous people through the Apology to Indigenous people, and in particular the Stolen Generations -an important and symbolic first step to build trust and good faith; a new commitment to be held accountable to closing the gap targets between Indigenous and non-Indigenous Australians and consultations across the country on the establishment of a national representative body.

75. On 23 October the Government announced its intention to legislate in the first half of 2009 to ensure people in the Northern Territory subject to income management have access to the full range of appeal rights, including through the Social Security Appeals Tribunal and the Administrative Appeals Tribunal.

76. It is important that there is an orderly transition from the existing arrangements because Indigenous women and Elders who are vulnerable to intimidation or abuse have reported that they have greater control over their finances, and are more able to provide for children as a result of this policy.

77. In addition, the Government will design and implement in consultation with Indigenous people an income management policy framework that conforms with the Racial Discrimination Act. Legislation reflecting this policy and lifting the suspension of the Racial Discrimination Act in relation to the Northern Territory Emergency Response measures will be introduced in the 2009 Spring sittings of the Australian Parliament. The Government will also refine the alcohol and pornography measures to conform to the Racial Discrimination Act.

78. The Government has asked the Northern Territory Valuer-General to determine a reasonable rent for all existing five-year leases that were compulsorily acquired by the previous Government. Payment will then commence automatically. The Government will respond in full to the Review Board's recommendations, including future funding arrangements in the next few months.

### **Question 10**

#### *Statistics on violence against women*

79. Estimating true prevalence rates of violence against women in Australia is difficult as definitions and methods of data collection vary between jurisdictions, agencies and surveys.

80. The 2005 Australian Bureau of Statistics Personal Safety Survey (PSS), gathered information about the physical and sexual assault experiences of women and men aged 18 years



or more. Nearly 3.1 million women (39.9 per cent) reported having experienced physical or sexual violence at least once since the age of 15, compared with nearly 3.8 million (50.1 per cent) of men. Of these women, 443,800 (5.8 per cent) had been physically or sexually assaulted in the year prior to the survey, compared to 808,300 (11 per cent) of men.

81. The 2005 PSS indicated that in the 12 months leading up to the survey, more women reported being physically (4.7 per cent) assaulted than sexually assaulted (1.6 per cent), and similarly with men (10.4 per cent and 0.6 per cent respectively).

82. According to the 2005 PSS, younger women were more at risk of physical or sexual violence than older women. In the year prior to the PSS, just over one in ten women between the ages of 18 and 24 were physically assaulted. Women in this age group were also four times more likely to be physically assaulted, and eight times more likely to be sexually assaulted than older women.

83. Physical and sexual violence experienced by women is more likely to be perpetrated by a current or ex-partner (37.8 per cent) or a male family member or friend (11.2 per cent). A perpetrator of physical assault is just over three and a half times more likely to be a male than a female. In the twelve months prior to the PSS, one in five women reported experiencing sexual assault by a male partner and were 14.5 times more likely than men to be assaulted by a current or previous partner over their lifetime.

84. Indigenous women report higher levels of violence than non-Indigenous women and results from the International Violence against Women Survey indicated that in the 12 months prior to the survey more Indigenous women reported experiencing physical violence (20 per cent) than non-Indigenous women (7 per cent). Indigenous women were also three times more likely than non-Indigenous women to be sexually assaulted.

85. This publication is highly comparable with the 1996 Women's Safety Survey (WSS), where relevant. The WSS collected information from approximately 6,300 women over the period February to April 1996. The PSS expands on the WSS by broadening the scope of the survey to include men.

86. The Australian Bureau of Statistics (ABS) also published the Crime and Safety Survey 2005. This survey used a different methodology and different definition of violence to the PSS and WSS. According to the Crime and Safety Survey 2005, the majority of female victims of assault surveyed sought support from family members, friends or neighbours, or work colleagues after the incident.

87. There was an increase in police reports between the Australian Bureau of Statistics, 1996 Women's Safety Survey and the 2005 PSS. During 2004-05, 36 per cent of women who reported a physical assault in the PSS, and 19 per cent who reported sexual assaults, also reported to the police. In the same time period, 34.5 per cent of men who reported a physical assault to PSS also reported to the police.

For further information regarding the Personal Safety Survey, go to [http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4906.02005%20\(Reissue\)?OpenDocument](http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4906.02005%20(Reissue)?OpenDocument)

*Measures to address violence against women*

88. The Criminal Justice and Health systems in Australia are the responsibility of the State and Territory Governments. However, the Australian Government has a role and has a zero tolerance to violence against women. Government measures are aimed at reducing violence against women in all its forms.

89. In 2008, the Australian Government announced the formation of the National Council to Reduce Violence against Women and their Children. The Council is providing expert advice to Government on measures to reduce the incidence and impact of domestic and family violence and sexual assault on women and their children. The National Council is developing an evidence-based National Plan to Reduce Violence against Women and their Children, a draft of which is due to be delivered in December 2008. This will guide an integrated and comprehensive whole of Government response to 2020.

90. Current or former measures by the Australian Government that are aimed at reducing violence against women include:

- Education and advocacy activities to promote non-violent relationships with women, such as the White Ribbon Campaign. The Government provided funding of \$1 million to the White Ribbon Foundation.
- Investment in research on domestic violence and effective methods of working with perpetrators of violence, through organizations such as the Australian Domestic and Family Violence Clearinghouse, the Australian Centre for the Study of Sexual Assault and the National Council.
- Working with States and Territories to achieve greater harmonization and consistency in the implementation of best practice in relation to domestic violence and sexual assault laws.
- \$2 million has been committed for VicHealth to provide research on the prevention of violence against women. This will include conducting the 2009 National Survey on Community Attitudes to Violence against Women, which will build on the information gathered in previous VicHealth surveys.
- ‘The Violence Against Women: Australia Says NO Campaign’ – a media campaign and telephone help line introduced in 2004, which has generated more than 85, 000 calls between 2004 and 2008.
- The National Helpline for Domestic Violence and Sexual Assault provides a national 24-hour a day, 7 days a week service to provide counselling and referral services for callers seeking assistance. A new approach to the National Helpline is being considered in consultation with the National Council to Reduce Violence against Women and their Children and other relevant stakeholders.

- The awarding of grants to community-based organizations to gather input into policy development under the Domestic and Family Violence and Sexual Assault initiative. The Office for Women does not intend to conduct this initiative again, as these one off projects are generally not sustainable and a more targeted and structured approach is preferred for the future.

91. State and Territory Governments have responsibility for laws relating to domestic violence and sexual assault and over the past five years have worked to strengthen and improve their legislation addressing violence against women. In addition to federal Government initiatives, States and Territories have implemented a range of strategies and programs to combat violence against women in their own jurisdictions.

### **Question 11**

92. Paragraph 22(3)(c) of the Extradition Act 1988 (Cth) reflects Australia's international commitment to the abolition of capital punishment. The provision establishes in Australian domestic law that extradition cannot be granted unless the requesting country provides an undertaking that the death penalty will not be imposed on the extradited person or, if imposed, will not be carried out.

93. It is settled law in Australia that in determining whether a death penalty undertaking can be relied upon, the Minister must consider whether the undertaking is substantive and has 'practical content'. The Minister must be satisfied that 'the undertaking is one that, in the context of the system of law and government of the country seeking surrender, has the character of an undertaking by virtue of which the penalty of death would not be carried out': see *McCrea v Minister for Customs and Justice* [2005] FCAFC 180.

94. Further, as a matter of long standing practice, where an extradition request is being considered by Australia, the person concerned, their legal representatives, and their supporters are invited to make representations in anticipation of the Minister's determination. The representations may address any issue the person considers relevant to the Minister's determination, including information concerning the effectiveness of undertakings provided by the requesting country.

95. The Australian Government is not aware of any case in which the terms of a diplomatic undertaking issued to Australia by a country pursuant to paragraph 22(3)(c) have been breached. Australian Government representatives at the responsible Australian diplomatic missions continually liaise with their host Governments on such issues, and provide consular assistance and welfare monitoring to Australians and permanent residents of Australia who have been detained overseas.

### **Question 12**

#### *Visa Framework*

96. A comprehensive people trafficking visa framework was established in 2004 to support suspected victims of trafficking. A Bridging Visa F (BVF) can be granted to suspected victims for up to 30 days. This provides victims with time to decide whether they wish to assist police

investigations or prosecutions and for the police to assess whether they will issue a Criminal Justice Stay visa (see below).

97. The victim may be issued a Criminal Justice Stay Visa (CJSV) if he/she chooses to assist the police in the investigation or prosecution, and the police require them to remain in Australia. CJSVs can remain in effect for the course of an investigation or prosecution.

98. Victims may be invited to apply for a Witness Protection Trafficking Visa (WPTV) if they have significantly contributed to an investigation or prosecution and they may be in danger if they return to their home country. WPTVs can either be for temporary or permanent stay in Australia and a permanent visa can be offered to people who have held the temporary visa for at least two years.

99. The Australian Government has undertaken consultations with key non-government and government stakeholders on the effectiveness of the existing visa arrangements for victims of trafficking. The Government is currently considering the results of the review.

100. The visa framework applies to all suspected victims of trafficking, regardless of the industry to which they may have been trafficked. The visa framework is designed to support those in genuine need of protection and is linked to the Government's Support for Victims of People Trafficking Program.

#### *Victim Support*

101. The Australian Government Office for Women administers the Support for Victims of People Trafficking Program. Support is provided on a case management basis and includes income assistance, access to accommodation, medical treatment, basic legal advice, counselling, training and social support.

102. As at 1 December 2008, 112 people have received support from the Support for Victims of People Trafficking Program. To date, the Program has supported victims who have been trafficked into Australia to work in the sex industry and for other forms of labour exploitation. The support program is available to all victims of trafficking who meet the eligibility criteria, regardless of gender, or the purpose for which they were trafficked.

103. Since the Government's anti-trafficking strategy was established in 2003, no victims of trafficking identified in Australia have been children. In accordance with Australia's obligations under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, any non-citizen minor located by authorities being exploited in the sex industry or other forms of forced labour or slavery would be automatically considered a victim of people trafficking. If a minor were identified as a victim of trafficking, the matter would be referred to the relevant State/Territory authority responsible for child protection, and a case management approach with specific attention to the rights and welfare needs of the child would be implemented.

### Question 13

104. On 29 July 2008, the Minister for Immigration and Citizenship (the Minister) announced substantial changes to Australia's asylum and migration policy. The proposed changes follow decisions by the Australian Government to close offshore processing centres on Nauru and Manus Island and to abolish Temporary Protection Visas for unauthorised arrivals. The proposed changes focus on a new risk-based approach to immigration detention.

#### *Mandatory detention*

105. The Minister's speech of 29 July 2008 contains new Immigration Detention Values to guide immigration detention policy and practices.

106. Mandatory detention is an essential component of strong border control. To support the integrity of Australia's immigration program, three groups will be subject to mandatory detention:

- All unauthorized arrivals, for management of health, identity and security risks to the community;
- Unlawful non-citizens who present unacceptable risks to the community; and
- Unlawful non-citizens who have repeatedly refused to comply with their visa conditions.

107. The proposed changes to Australia's asylum and migration policy mean that detention in immigration detention centres will only be used as a last resort and for the shortest practicable time. Detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of immigration detention, including the appropriateness of both the accommodation and the services provided, will be subject to regular review. Children and, where possible, their families, will not be detained in an immigration detention centre.

108. The number of people held in immigration detention has reduced significantly over the past three years.<sup>7</sup> As at 14 November 2008, there were 340 people in immigration detention, including 43 in community detention. Of those in immigration detention, 189 had arrived in Australia lawfully and were then taken into immigration detention for either overstaying their visa or breaching their visa conditions. The number of people in immigration detention who had arrived unlawfully by air or boat as at 7 November 2008 was 75.

#### *Geographic application*

109. In 2001, the Australian Government introduced legislative changes that meant that non-citizens arriving in certain parts of Australia, including Christmas, Ashmore, Cartier and Cocos (Keeling) Islands, became known as "offshore entry persons". An offshore entry person who is in Australia and is an unlawful non-citizen cannot make a valid application in Australia for a visa unless the Minister determines that it is in the public interest for the person to do so. In 2005, certain islands forming part of Queensland, Western Australia and the Northern Territory, and

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<sup>7</sup> [http://www.immi.gov.au/managing-australias-borders/detention/\\_pdf/immigration-detention-statistics-20081114.pdf](http://www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-20081114.pdf)

the Coral Sea Islands Territory, became subject to the same regime. All of these places remain part of Australian and part of the migration zone.

110. The Australian Government considers the non-statutory processing of persons who arrive unauthorised at these places necessary to ensure border security and to discourage people-smuggling. The risk-based approach to immigration detention outlined above will apply throughout Australia, including those places mentioned above as far as practicable.

#### *Christmas Island*

111. Unauthorized boat arrivals will be processed on Christmas Island. In line with the Government's new Immigration Detention Values, all unauthorised arrivals are subject to mandatory detention for the management of health, identity and security risks to the community. People detained on Christmas Island who raise protection issues receive publicly-funded independent assistance and advice, access to independent merits review of unfavourable decisions and external scrutiny by the Immigration Ombudsman.

112. Christmas Island has a range of immigration detention facilities that provide the flexibility to manage individuals and groups with different needs.

113. The new Immigration Detention Centre is one of these facilities, and is available for use in the event that numbers of unauthorised boat arrivals exceed alternative accommodation capacity on Christmas Island.

#### **Question 14**

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

115. The AFP can detain the person for a period of four hours (or two hours in the case of an Aboriginal person or Torres Strait Islander), which can be extended by a judicial officer to a maximum of 12 hours, or, in the case of a terrorism offence, to a maximum of 24 hours. In addition, the person's detention may be extended by periods of time necessary to enable the person to rest, receive medical attention or speak to a lawyer, among other things. In the case of a terrorism offence, a judicial officer may also approve additional periods of time where it is necessary for police to collect and analyse information from overseas authorities, operate between different time zones or translate material (section 23CA(8)). During these additional periods of time, questioning must be suspended.

116. Time zone differences between countries impose constraints on investigations with an international aspect, as investigators may need to obtain information from overseas that is critical to informing interviews with suspects. It is possible that during terrorism investigations, halting the questioning of an arrested suspect will be necessary so that investigators can obtain relevant information from overseas authorities in other time zones.

117. The legislation contains detailed criteria that require the police to demonstrate to a judicial officer that any additional periods of time requested for detention are reasonable. Paragraph

23CA(8)(m) contains two important qualifiers. First, any suspension or delay of questioning to receive information from an overseas location in a different time zone must be reasonable. A suspension or delay would, for example, be unreasonable if the information could be obtained from an overseas location without delay, regardless of any time zone differences, or if the same information as that sought overseas could be obtained locally. A suspension or delay of questioning may also be unreasonable if the information to be obtained from overseas has little relevance to the questioning of the person detained. The second qualifier in proposed paragraph 23CA(8)(m) is that the period for which questioning is suspended or delayed must also be reasonable and is capped so that the dead time cannot exceed the difference in time zones between the place of the investigation and the relevant overseas location.

118. There are also a range of safeguards in the legislation, including the right for a suspect to communicate with a lawyer and have the lawyer present during questioning and the right to be treated with humanity and respect for human dignity. If the person is not an Australian citizen, he or she must be given the opportunity to communicate with the consular office of his or her country.

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

### **Question 15**

120. The mandatory sentencing law (currently in section 401(4) of the Criminal Code 1913 (WA) was introduced by a former Western Australian Government as part of overall changes to Western Australian legislation dealing with burglary, particularly with respect to home burglary, aggravated burglary and those offenders who repeatedly commit home burglary. This mandatory sentencing law only applies to a person convicted of burglary in respect of a place ordinarily used for human habitation and if the person is a repeat offender at the time of committing that offence (that is, the person has on two previous occasions already been convicted of this offence of home burglary).

121. Mandatory sentencing does not necessarily mean detention for juveniles. If the court is of the view there are special circumstances, a juvenile offender may not receive a sentence of detention. This discretion has been applied previously in cases where the offender was very young or when the nature of the offences was considered to have important mitigating circumstances.

122. The Western Australian Government considers that mandatory sentencing for home burglary for repeat offenders is an appropriate and proportionate penalty for Western Australia, including the need to protect people living in their homes and to provide them with a sense of safety and security. There are currently no State Government proposals to amend section 401(4) of the Criminal Code 1913 (WA).

### **Question 16**

123. The Australian Government is not considering the establishment of one overarching independent body to investigate, correct and compensate cases of alleged wrongful arrest, detention and conviction. Australia already has several independent mechanisms in place to investigate, correct and compensate such cases.

124. All States and Territories have mechanisms in place to enable the investigation and compensation of cases of wrongful arrest, detention and conviction.

125. In all jurisdictions within Australia, the common law remedy of false imprisonment provides an avenue for civil damages for unlawful arrest and detention. Facts about a wrongful conviction may also support a tortious claim for damages, such as false imprisonment, malicious prosecution or misfeasance.

126. In the Australian Capital Territory, under section 23 of the Human Rights Act 2004 (ACT), an individual who is wrongfully convicted of a criminal offence may seek compensation. In other States and Territories, a state or territory government may choose to make an ex gratia payment either on its own accord or as a result of a request for such a payment.

127. In addition, all jurisdictions have mechanisms for review of criminal cases. If a person has been convicted of an offence, and avenues of appeal have been exhausted, there can (depending on the jurisdiction) either be an inquiry into the conviction or sentence, or the matter can be referred to the appeal court for consideration of the whole matter or for assistance on any point arising in the matter. See, for example, section 475(1) of the Crimes Act 1900 (ACT), section 433A of the Criminal Code (NT), section 474C Crimes Act 1900 (NSW), section 672A of the Criminal Code (QLD), section 369 of the Criminal Law Consolidation Act 1935 (SA), section 419 of the Criminal Code (TAS), section 584 of the Crimes Act 1958 (VIC), section 140 of the Sentencing Act 1995 (WA).

128. At the Commonwealth level, there are a number of statutory bodies that are able to investigate complaints in relation to allegations of wrongful arrest and detention. The Commonwealth Ombudsman investigates complaints about the administrative decisions of Commonwealth Departments, including by the Department of Immigration and Citizenship, from people in immigration detention who believe they have been treated unfairly or unreasonably. The Ombudsman is also the Law Enforcement Ombudsman and can investigate complaints about the actions of AFP members and about the policies, practices and procedures of the AFP as an agency.

129. The Inspector-General of Intelligence and Security (IGIS) is a statutory office that is responsible for oversight of the security and intelligence agencies. It should be noted that security and intelligence agencies do not have arrest or detention powers. While it would be possible for a person to be detained for the purpose of bringing them before a Prescribed Authority for questioning pursuant to a warrant issued under section 34G of the Australian Security Intelligence Organisation Act 1979, the detention would be handled by police officers. The IGIS may conduct inquiries into the legality and propriety of the agencies' actions at the request of the responsible Minister, of his or her own motion, or in response to a complaint made to the IGIS. The IGIS is independent of Government and has extensive investigatory powers



that are akin to those available to Royal Commissions. The IGIS can also make recommendations to the agencies regarding compensation in relevant cases.

130. Under Part II of the Human Rights and Equal Opportunity Commission Act 1986 (Cth) (HREOC Act), the Human Rights and Equal Opportunity Commission can inquire into complaints alleging that an act or practice by or on behalf of the Commonwealth or an authority of the Commonwealth is inconsistent with any 'human right' (defined by section 3 of the HREOC Act to include rights under the ICCPR). Where the Commission finds a breach of human rights (for example, if it found that a refusal by the Commonwealth of compensation to a federal prisoner for wrongful conviction was in breach of article 14, paragraph 6 of the Covenant), the Commission is empowered to make recommendations, such as for payment of compensation. The Commission will prepare a report on the matter to the Attorney General, including details of any recommendations and actions taken by the Commonwealth as a result of the findings and recommendations of the Commission. The Attorney-General must table the report in both Houses of Federal Parliament.

### **Question 17**

131. Under section 39 of the National Security Information (Criminal and Civil Proceedings) Act 2004, the Secretary of the Commonwealth Attorney-General's Department may give written notice to the defendant's legal representative that an issue relating to a disclosure of information that is likely to prejudice national security may arise in the proceedings. Upon receipt of the Secretary's notice, the legal representative may apply to the Secretary for a security clearance at the level considered appropriate by the Secretary in relation to the information. The security clearance process is conducted at arm's length from the agencies involved in prosecutions and legal representatives can choose to obtain their security clearances from a number of providers of security vetting services. If a clearance is denied, the applicant may seek a review of the decision by the Administrative Appeals Tribunal.

132. The defendant may apply to the court for the proceeding to be deferred or adjourned pending receipt of a security clearance by his or her legal representative or to enable another counsel to be security cleared. In these circumstances, the court must defer or adjourn the proceeding so as to ensure the defendant's right to be fairly and independently represented.

133. If the defendant's legal representative does not apply for the security clearance within 14 days after the day on which the notice is received, or within such further period as the Secretary allows, the prosecutor may advise the court that the defendant's legal representative has not sought clearance. The court may then advise the defendant of the consequences of being represented by an uncleared legal representative and may recommend that the defendant engage a legal representative who has been given, or is prepared to seek, a security clearance.

134. Uncleared legal representatives risk the possibility that they will not have access to national security information which is relevant to the proceedings against their client. For example, the Act affords the court discretion to exclude uncleared participants from closed court hearings under subsection 29(3) if the court considers that disclosure of information would be likely to prejudice national security. In addition, section 46 provides that it is an offence to disclose national security information to an uncleared person except in limited circumstances, such as

where the disclosure has been approved by the Secretary of the Attorney-General's Department or the disclosure takes place in compliance with conditions approved by the Secretary.

135. Similar provisions apply in respect of civil proceedings involving national security information.

136. Although the rights in article 14 of the Covenant are not subject to explicit qualification, it is widely recognized that it is sometimes necessary to prevent certain individuals or the general public from hearing sensitive evidence, for example to protect vulnerable witnesses or to avoid compromising ongoing police investigations. Similarly, the Australian Government believes it is reasonable to require those who will have access to evidence which could affect national security to undergo background checks, as indeed is the practice applied to Australian Government employees.

137. The Australian Government considers that these measures strike a reasonable balance between protecting the interests of the State and those of the accused in criminal trials or parties to civil litigation.

### **Question 18**

#### *Access to mental health care for prisoners experiencing mental illness*

138. State and Territory Governments have primary responsibility for the provision of mental health services to people who are incarcerated. These measures include legislative requirements, guidelines and case-management procedures. States and Territories have procedures in place to ensure that inmates of detention facilities are screened by relevant corrective services and health staff to assess their physical, mental and emotional state, and make notification and referrals to the appropriate health care authorities.

139. In March 2008, the National Justice CEOs Group (including Departmental representatives from all States and Territories and the Commonwealth) endorsed a project plan for the National Justice Mental Health Initiative. The project consists of three phases. In Phase 1, the Working Group completed an audit of recent justice mental health research and reports which revealed areas where further work is needed. Phase 2 identified the most effective means of disseminating the collected information and policy. Phase 3 (ongoing) involves the development of best practice guidelines for diversion and support of mentally ill persons in the justice system. The guidelines will identify strategies to engage young people, Aboriginal and Torres Strait Islanders, and people from culturally and linguistically diverse backgrounds.

#### *HREOC recommendations on immigration detention centres*

140. Several of the Commission's recommendations are consistent with the ongoing improvement program of the Department of Immigration and Citizenship (DIAC). Initiatives introduced by DIAC in 2007 include: a new risk-based method for determining placements for people in detention; enhancements to case management services to ensure that durable immigration outcomes are obtained for clients; and improvements to the delivery of health and mental services.

141. Over the past three years DIAC has worked closely with stakeholders, particularly the Detention Health Advisory Group (DeHAG) to develop improved mental health provision for people in immigration detention. This has included the implementation of an integrated mental health delivery model, which provides for comprehensive mental health assessment by clinicians and appropriate care planning and follow-up. More recently the work of DeHAG has focussed on a review of mental health screening to improve identification of trauma and ensure that re-screening occurs at appropriate trigger points. A new regime of mental health screening is currently being implemented as a result of this work. Policy is also being developed on the prevention of self harm and identification and management of people who are survivors of torture and trauma.

142. DIAC contracts a Health Services Manager to provide general primary health care and mental health services to people in immigration detention facilities. Services such as public health screening and acute hospital admissions for both physical and mental illness are generally provided by state and territory health departments. The department has Memorandums of Understanding or agreements in principle with state and territory health departments to ensure that hospital services are provided at a level commensurate with that provided to the wider community.

143. DIAC continues to monitor the general and mental health needs of all people in immigration detention to ensure that models of health care and health resources are appropriate to meet people's needs.

### **Question 19**

#### *Remand detainees*

144. Australia notes at the outset its reservation to article 10, paragraph 2 (a) of the Covenant which states that the principle of segregation is accepted as an objective to be achieved progressively. Further, the reservation states that the obligation to separate is accepted only to the extent that such segregation is considered by the responsible authorities to be beneficial to the juveniles or adults concerned.

145. State and Territory governments are responsible for the management and operation of prisons within their jurisdiction. Pursuant to s 120 of the Australian Constitution, the detention of federal offenders (including those on remand) is the responsibility of the States and Territories. The classification of a particular prisoner is a matter for State and Territory prison authorities. In classifying prisoners, factors taken into account include the seriousness of the charge brought against the person in question, and the state's duty of care to safely and securely place the person in custody.

146. The States and Territories deliver corrective services in accordance with the Standard Guidelines for Corrections in Australia (Standard Guidelines). The Standard Guidelines are a statement of national intent on the delivery of corrective services. In 2004, the Corrective Services Ministers' Conference (CSMC) agreed that the Standard Guidelines should be reviewed. Revised draft Standard Guidelines were endorsed by the Corrective Services Administrators' Council on 2 May 2007 but are yet to be considered by the CSMC. It is hoped that the final Standard Guidelines will be agreed in early 2009.

147. The revised draft Standard Guidelines state that where practicable, remand prisoners should not be put in contact with convicted prisoners against their will.

148. Remand detainees are subject to treatment appropriate to their status as unconvicted persons. Under the revised draft Standard Guidelines, remand prisoners should be given the opportunity to wear their own suitable clothing, the opportunity to work, and increased visitor access (at the discretion of the prison manager), among other privileges.

### *Burden of proof*

149. In 2004, the Anti-terrorism Act 2004 (Cth) inserted s 15AA into the Crimes Act 1914 (Cth). Section 15AA provides that a bail authority (a judicial officer) must not grant bail to a person charged with, or convicted of, certain offences unless the bail authority is satisfied that exceptional circumstances exist to justify bail. Relevant offences include a 'terrorism offence'. A terrorism offence is defined as an offence against Subdivision A of Division 72 or Part 5.3 of the Criminal Code.

150. The purpose of the reversed burden of proof is to achieve a nationally consistent approach to bail for persons charged with terrorism offences and certain other federal offences that will in many instances be relevant to terrorist activity. Most State and Territory jurisdictions establish a presumption against bail where a person is accused of particular offences or is a repeat offender. For example, many jurisdictions impose a presumption against bail for serious drug offences.

151. Section 15AA provides an exception to the general rule that persons awaiting trial in Australia should not be detained in custody (but may be subject to guarantees in the form of bail conditions). This exception applies only to those accused of serious terrorism-related offences and federal offences that equate with the traditional offences of murder and manslaughter that exist under State and Territory law. In any event, the presumption against bail in relation for persons accused of these offences can be rebutted where there are 'exceptional circumstances'.

152. The phrase 'exceptional circumstances' is not defined, however, there have been various judicial pronouncements concerning the question of what constitutes exceptional circumstances in terrorism-related cases so as to justify bail. The courts have the discretion to determine whether 'exceptional circumstances' exist. In this regard, each case is assessed on its merits. The court has granted bail in several cases relying on the exceptional circumstances provisions. It is ultimately a matter for the court to determine the appropriateness of granting bail and outlining bail conditions to a defendant.

### **Question 20**

153. The Minister for Immigration and Citizenship has tasked the Department of Immigration and Citizenship (DIAC) to explore options on formally incorporating Australia's non-refoulement obligations under articles 6 and 7 of the International Covenant on Civil and Political Rights (ICCPR) and article 3 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) into a visa process. Such a process would provide for decisions in respect of those obligations to be open to merits and judicial review.

154. Under Australia's current migration framework, complementary protection for asylum seekers falls within the realm of the Minister's discretionary powers.

155. A proposed complementary protection model has been developed in line with Australia's current Protection visa framework which would see the introduction of additional criteria for identifying protection based on a non-refoulement obligation under the ICCPR or the CAT. It would also seek to apply the legal test established through international jurisprudence for identifying a real risk to a person's right to life or right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

156. The proposed model, which is subject to Government approval, aims to establish a single decision-making process for assessing the non-refoulement obligations under the Refugees Convention, the ICCPR or the CAT. It also envisages the grant of a protection visa, regardless of the grounds for protection.

157. DIAC is currently consulting on the proposed model with stakeholders, including academic experts in refugee law. Upon finalising the policy proposal and practical aspects of the model, DIAC will seek Government approval. Implementation would include legislative amendments.

158. Should the proposed model be adopted, it is expected the Minister's public interest power will continue to allow the Minister the ability to consider a case on humanitarian grounds such as where circumstances may pose a significant threat to a person's personal security, human rights or human dignity.

### **Question 21**

159. The Australian Government notes that inciting a person to commit any criminal offence is an offence in its own right under section 11.4 of the Criminal Code Act 1995 (Cth). However, since 'hatred' is not a crime under Australian law, incitement to hatred is not covered by this section.

160. All Australian States and Territories (except South Australia) have legislation in place that prohibits religious discrimination. Some States also prohibit religious vilification and the incitement of hatred based on religious belief. These provisions relate to State and Territory criminal offences (most offences in Australia fall into this category). For example, this can be seen under sections 321G and 321H of the Victorian Crimes Act 1958.

161. At a federal level, the Racial Discrimination Act 1975 (Cth) prohibits vilification on the basis of race, colour, or national or ethnic origin ('offensive behaviour based on racial hatred'). Racial vilification covers acts that offend, insult, humiliate or intimidate a person or groups of people. The prohibition is subject to a number of exemptions which are intended to ensure that debate in good faith can occur freely in respect of matters of legitimate public interest (eg accurate reporting in the media or genuine academic, artistic or scientific purpose), thereby ensuring an appropriate balance between freedom of expression and the protection of groups and individuals from racially offensive behaviour.

162. There is no federal legislation dealing specifically with religious discrimination or vilification. However, at the time the racial vilification provisions in the Racial Discrimination Act were introduced the Government said it intended that the terms “race” and “ethnic origin” were to be given a broad meaning and may extend to covering particular religious groups. Subsequent judicial comments have supported this broader meaning.

163. Racial or religious hatred, while undeniably a problem of global significance, is not properly the subject of criminal jurisdiction. The Australian Government does not believe it is appropriate to criminalise thoughts. Incitement to violence, on the other hand, is squarely within the Criminal Code definition and is therefore punishable by law.

164. Tolerance of different religious beliefs is promoted through education in Australia. Education also assists in minimising discrimination on the basis of religion. The Human Rights and Equal Opportunity Commission is tasked with a human rights education role, and plays an important part in increasing community awareness about rights and responsibilities, including freedom of religion and belief.

165. The Commission also has the power to hear complaints by individuals under the Racial Discrimination Act that are the target of discrimination or vilification. The Commission will first attempt to conciliate the complaint. If the conciliation is unsuccessful the complainant may commence legal proceedings regarding the complaint in the Federal Magistrates Court or the Federal Court.

166. The Commission can also inquire into any act or practice of the Commonwealth or an employer that may be inconsistent with the UN Declaration on the Elimination of all Forms of Intolerance and Discrimination Based on Religion or Belief, and seek to conciliate the matter.

167. The Commission recommended in the “Ismaξ – Listen” report that discrimination and vilification on the basis of religion be criminalised at the federal level. The Commission is currently conducting another project examining freedom of religion and belief. It is likely that this project will revisit the Commission’s previous recommendations about religious discrimination and vilification in Australian law.

168. A Government Living in Harmony partnership responds, in part, to the ‘Isma-Listen’ report recommendation that Government agencies facilitate consultation between media organizations and religious and ethnic community organizations. The partnership between universities and media organizations across Australia aims to test how far perceptions of negative reporting were true, and to identify ways of improving journalistic practice. A range of project resources have been developed for use by journalism educators for the education and training of journalists in both universities and newsrooms.

169. In respect to an ‘Isma-Listen’ recommendation which calls on Muslim community leaders to build closer links with other religious and ethnic communities in Australia, under the National Action Plan to build on Social Cohesion, Harmony and Security, the Australian Government funds an annual community grants program to assist communities to promote harmony, build links with other communities and increase Muslim participation in wider Australian life.

## Question 22

170. The Commonwealth Electoral Act 1918 (the Electoral Act) governs the conduct of federal elections in Australia. Each State and Territory has separate electoral laws that govern elections held in those states and territories.

171. On 26 September 2007 the High Court of Australia decided in the case of *Roach v Electoral Commissioner* that sections 93(8AA) and 208(2)(c) of the Commonwealth Electoral Act 1918 were invalid. Section 93(8AA) provides:

A person who is serving a sentence of imprisonment for an offence against the law of the Commonwealth or of a State or Territory is not entitled to vote at any Senate election or House of Representatives election.'

172. Section 208(2)(c) provides that the list of voters to be prepared by the Electoral Commissioner must not include persons covered by section 93(8AA).

173. The consequence of the decision of the High Court is that the law on the right of prisoners to vote is the law that applied before sections 93(8AA) and 208(2)(c) were enacted in 2006. This means that a prisoner serving a sentence of less than three years imprisonment who satisfies the other requirements for enrolment to vote is entitled to vote. This was the position that applied at the federal election held in Australia on 24 November 2007 and at subsequent federal by-elections.

174. While sections 93(8AA) and 208(2)(c) still have to be removed from the Electoral Act, they have no effect, having been declared invalid by the High Court. It is proposed that amendments to the Act will be prepared during 2009.

175. The High Court in *Roach* also considered the validity of the electoral laws that applied to prisoners before the 2006 amendments. The pre-2006 laws denied prisoners the right to vote if they were serving a sentence of three or more years. The High Court considered that this restriction was reasonably proportionate to the maintenance of representative government established by the Australian Constitution.

176. Australia considers that the position outlined above is compatible with article 25 of the Covenant, noting the Committee's interpretation set out in General Comment 25. In particular, Australia regards the suspension of the right to vote for persons serving terms of imprisonment for three years or more as objective, reasonable and proportionate.

## Question 23

177. Information relating to Australia's reporting obligations under the Covenant is disseminated in a variety of ways. All reports to and concluding observations of UN human rights committees are made publicly available on the website of the Commonwealth Attorney-General's Department. Such information is also circulated to States and Territories, federal Government departments, the Human Rights and Equal Opportunity Commission (the Commission), non-government organizations, libraries, academic institutions and Australia's overseas posts. Reports to UN human rights committees are also tabled in Federal Parliament.

178. The Commission has primary responsibility for raising public awareness about human rights through undertaking human rights education and promotion. Most of the Commission's statutory functions have an educational or public awareness component. The functions of the Commission include advising the Australian Government on human rights issues, reviewing legislation to ensure compliance with human rights principles, and serving to place major human rights issues on the political and public agenda by conducting research and public inquiries into human rights matters.

179. The Australian Department of Foreign Affairs and Trade (DFAT) conducts regular NGO consultations with a broad range of human rights NGOs to discuss international human rights issues. At these consultations, DFAT invites relevant Government agencies to provide updates on Australia's forthcoming treaty body appearances and treaty reporting.

180. The Australian Government also facilitates an annual Human Rights Non- Government Organization (NGO) Forum that encourages human rights group representatives to dialogue with Ministers about matters of national importance to the national human rights agenda. The program is broad and representatives attending the event are invited to ask questions on human rights issues and written responses to questions taken on notice are distributed after the Forum. Commissioners from the Commission also attend to both address and raise current human rights concerns. The Forum also gives interested parties an opportunity to discuss national implementation of instruments such as the Covenant and the Optional Protocols to the Covenant. This Forum is well attended by a wide range of socially representative groups including disability, indigenous and women's advocacy organizations. The Forum is a valued and crucial national mechanism for government and non-government dialogue on human rights issues. The last Forum was in June 2008 and over 35 national human rights NGO's were represented.

181. The Australian Government believes that the protection of human rights and responsibilities is an important aspect of Australia's democracy. For this reason, on 10 December 2008, the Government announced a nation-wide consultation to determine how best to recognize and protect human rights and responsibilities in Australia.

182. It is likely that during the national human rights consultation, the question of how civil and political rights could be further protected in Australia will be raised. It is also expected that the consultation will consider how human rights education could be strengthened to further promote a human rights culture in Australia.

183. States and Territories also undertake activities to increase awareness of human rights, including those covered by the Covenant. For example, in Victoria, the Judicial College of Victoria held a series of intensive programs for judicial officers in 2007 and 2008 on the operation of the Charter of Human Rights and Responsibilities Act 2006 (Vic), which includes Covenant rights. In 2009, the College is offering a Human Rights Charter Overview for New Appointees. The Victorian Government has also provided Human Rights Charter education programs, including Legal and Legislative Policy Officer training to over 500 participants, and a Human Rights Implementation Program to 300 service delivery staff across government (including Victoria Police and law enforcement officers). Members of Victoria Police receive Human Rights training upon recruitment, which includes specific training on the use of force, detention practices and custodial matters.



## Question 24

184. As envisaged by the Harmonised Guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents (Harmonized Guidelines) prepared by the United Nations Inter-Committee Technical Working Group in 2006 (HRI/MC/2006/3), Australia's Core Document, which incorporates Australia's fifth report under the Covenant and Australia's fourth report under the International Covenant on Economic, Social and Cultural Rights, contains general information to supplement specific reports submitted to the various United Nations human rights committees. The document also contains the periodic treaty reports under both of the Covenants.

185. The document therefore includes information on demographic, economic, social and cultural characteristics of Australia, and Australia's Constitutional, political and legal structure, and on the general framework for protection and promotion of human rights. It also includes information common to relevant treaties to which Australia is a party, including but not limited to information on non-discrimination and equality and effective remedies.

186. The Harmonized Guidelines note that their purpose is to enable each treaty body and State party to obtain a complete picture of the implementation of the relevant treaties, set within the wider context of the State's international human rights obligations, and provide a uniform framework within which each committee can work. They also aim to strengthen the capacity of States to fulfil their reporting obligations in a timely and effective manner, including the avoidance of unnecessary duplication of information. As Australia's reports under both of the Covenants were due within one month of each other, the Australian Government sought to meet the objectives of the Harmonized Guidelines, and Australia's treaty body reporting obligations, in a way which provided an integrated picture of human rights in Australia - reflecting the universality and indivisibility of human rights - and which sought to provide an efficient reference point for Australia's other individual treaty reports to avoid unnecessary duplication of information. Given that all of the rights under the core human rights treaties to which Australia is a party essentially derive from the rights contained in the Covenants, and that information on the implementation of rights under all of those other treaties is also relevant to Australia's implementation of the Covenants, the Australian Government considered that indicating throughout the document the relevant articles of all treaties which applied to each set of information provided as part of the reports under the Covenants was an appropriate interpretation of the Harmonised Guidelines.

187. All of the information required to be provided in the individual treaty report under the Human Rights Committee's Consolidated guidelines for State reports under the Covenant (CCPR/C/66/GUI/Rev.2) is also contained within the Core Document incorporating Australia's report under the Covenant. Australia has provided information in relation to specific concerns raised by the Human Rights Committee with respect to its previous report and appearance under the Covenant throughout the document as relevant. A table indicating where each of the previous concluding observations of the Committee are addressed in the core document is included in the Covenant Report annexed to the document, which also includes information on communications under the First Optional Protocol to the Covenant for the reporting period. The document also contains information on Australia's reservations to and declarations under all core human rights treaties, including the Covenant, on difficulties faced by Australia in particular areas such as addressing Indigenous disadvantage, and the way in which Australia has

interpreted and implemented particular articles which provide for limitations. The document also provides a range of relevant statistics which provide information on progress achieved by Australia in implementing Covenant rights.

188. The Australian Government acknowledges the important work that the Inter-Committee Meeting of human rights treaty bodies has been undertaking in an effort to streamline the reporting requirements of states under the different treaties, to ensure that reporting can be managed in a timely and efficient manner, and that the Committees are provided with relevant and useful information which can properly inform the Committees' work. Australia was among the first States to submit a report prepared under the Harmonised Guidelines, and in this respect the report was somewhat experimental. In the process of attempting to translate the harmonized guidelines into practice and fulfil individual treaty reporting requirements, a number of difficulties were faced, including how to provide the required information within the page limits established by the Committees and how best to keep such a document up to date and relevant to subsequent individual treaty reports. The Government is very interested in obtaining the Committee's views - and the views of the Inter-Committee Meeting and the OHCHR more broadly - on Australia's report, and on ways in which the reporting process might otherwise be made more efficient and constructive for both Committees and States.

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