



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

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English only

Committee against Torture

**Concluding observations on the combined fourth and fifth
periodic reports of Australia**

Addendum

**Information received from Australia on follow-up to the
concluding observations***

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* The present document is being issued without formal editing.



Additional information provided to the UN Committee against Torture by the Australian Government in response to the Committee's Concluding Observations (CAT/C/AUS/CO/4-5)

1. The Committee against Torture, in its Concluding Observations on Australia published on 28 November 2014 (CAT/C/AUS/CO/4-5), requested at paragraph 25 that Australia 'provide, by 28 November 2015, follow-up information in response to the Committee's recommendations contained in paragraphs 9, 12, 15 and 16 of the present document'. Australia's follow-up information on the issues of violence against women, Indigenous people in the criminal justice system, non-refoulement and mandatory immigration detention, including of children, between the period November 2014 and November 2015 is provided below.

Violence against Women

2. Australia notes the Committee's recommendations at paragraph 9 of the Concluding Observations. All Australian governments have a zero tolerance towards violence against women and their children. The federal Australian Government believes that keeping women and their families safe is the most fundamental step towards ensuring their security and prosperity. In January 2015, the former Australian Prime Minister, the Hon Tony Abbott MP, announced that preventing violence against women and their children would be a Council of Australian Governments (COAG) priority for 2015. COAG agreed to take urgent collective action to address the unacceptable level of violence against women. This has included the establishment of an Advisory Panel on Reducing Violence against Women to provide expert advice to COAG. The focus of the work through COAG includes:

- The establishment of a National Domestic Violence Order Information Sharing System, a prototype system that will enable police and courts to better share information on domestic violence orders
- A new National Domestic Violence Order Scheme, which will develop model laws allowing domestic violence orders to be automatically recognised and enforceable in all jurisdictions across Australia
- The establishment of National Outcome Standards for Perpetrator Interventions, to ensure that perpetrators of violence against women are held to account, at the same standard across Australia, and
- The development of strategies to tackle the increased use of technology to facilitate abuse against women and to ensure women have adequate legal protections against this form of abuse

3. On 24 September 2015, the Australian Government announced a \$100 million Women's Safety Package to Stop the Violence. The package will improve frontline support and services, such as health care workers. Immediate measures to improve support and services for women will include increased training for frontline staff and trials of integrated service models, such as \$14 million to expand the domestic-violence-alert training programme to police, social workers, emergency department staff and community workers to better support women, and working with the College of General Practitioners to develop and deliver specialised training to general practitioner doctors across the country.

4. The federal Australian Government has also recently opened a website relating to the *National Plan to Reduce Violence against Women and their Children 2010-2022* to provide up to date information about the National Plan including activities, reports and

research. The Australian Government is also working with states and territories and other key partners to implement the second action plan across Australia.

Victorian Royal Commission into Family Violence

5. In February 2015, the Victorian Government convened Australia's first Royal Commission into Family Violence. The Terms of Reference task the Royal Commission with finding the most effective ways to prevent family violence, improve early intervention to identify and protect those at risk, support victims, make perpetrators accountable, and better coordinate responses and shape appropriate attitudes towards women and children. The Victorian Government has provided \$40 million for the Royal Commission. Of this, \$36 million will go towards the operation of the Royal Commission and \$4 million will be provided as an initial investment for support services that experience an increase in demand during the Royal Commission. To date, the Royal Commission has received over 1000 written submissions. Four weeks of public hearings were held in July and August 2015, and a limited number of hearings will be held in mid-October 2015. Prior to the hearings, the Royal Commission held 43 community consultations across Victoria, with over 800 participants. The Royal Commission will deliver its final report and recommendations in February 2016.

Actions taken across other Australian jurisdictions

6. In February 2015, the Queensland Special Taskforce on Domestic and Family Violence, established by the Queensland Government in late 2014, released its report *'Not now, not ever' – putting an end to domestic and family violence in Queensland*. The Queensland Government supported all of the 121 government-focussed recommendations and will actively support all of the 19 non-government recommendations. The Queensland Government has allocated \$31.3 million over four years to implement the high priority initiatives recommended in the report, with the implementation council for the report to be led by former Australian Governor-General, Dame Quentin Bryce AD CVO.

7. In late 2014, the South Australian Government released the *Taking a Stand: Responding to Domestic Violence* policy to highlight the strong message to the community that domestic violence is not acceptable and will not be tolerated. One key program arising from the policy is the Women's Domestic Violence Court Assistance Service, a free of charge service for women, providing a greater level of support within the court system for victims of domestic violence, including legal advisers offering advice, representation and advocacy for women applying for an intervention order or varying an existing intervention order, as well as support to women reporting a breach of an intervention order and navigating other related legal matters. In July 2015, the South Australian Government also launched the *Achieving Women's Equality: South Australia's Women's Policy*, focussing on improving women's economic status, increasing women's leadership participation, and improving women's safety and wellbeing. The safety and wellbeing pillar aims to reduce violence against women and their children, and hold perpetrators accountable, increase community awareness that violence against women is not acceptable by working with business and community partners to implement strategies to prevent violence against women, and improve women's access to and knowledge about safety and justice.

8. The New South Wales Government's *Domestic Violence Justice Strategy 2013-2017* sets out a clear framework to improve the New South Wales' criminal justice system response to domestic violence. Initiatives under the Strategy include legislative amendments to allow for better information sharing between government and non-government services, to facilitate victims' access to domestic violence support services and to prevent and reduce serious threats to victims and their children and ensure victims are referred to domestic violence support services; and reforms to allow victims of domestic

and family violence to give their evidence in court via prior recorded video or audio statement in criminal proceedings for a domestic violence offence. Further, the *Women's Domestic Violence Court Advocacy Program*, administered by Legal Aid NSW, provides Women's Domestic Violence Court Advocacy Services, including information, referral and advocacy to women and children seeking apprehended domestic violence orders at 114 local courts across New South Wales.

9. The Tasmanian Parliament recently passed the *Family Violence Amendment Act 2015* (Tas). The Act amends the *Family Violence Act 2004* (Tas) to extend the definition of "family violence" to include "property damage" as a type of family violence, provides for an automatic ban on the publication of any material that might identify an affected child in family violence proceeding, and extends the time within which a prosecution under the Act may be brought for economic abuse or emotional abuse or intimidation from six to 12 months. The Tasmanian Government has also launched *Safe Families, Safe Homes: Tasmania's Family Violence Action Plan 2015-2020*, a whole-of-government action plan to respond to family violence. The Tasmanian Government has committed \$25.57 million to 18 new and direct actions that will combat family violence, including coordinated information sharing between relevant agencies, wraparound services to meet needs and circumstances of women and their children at any stage of leaving or in choosing to stay in domestic violence situations, and awareness raising campaigns.

10. The Western Australian Government introduced the *Freedom from Fear Action Plan 2015: Working towards the elimination of family and domestic violence in Western Australia*. The plan has a priority focus on strengthening community education and awareness raising campaigns, targeting communities and populations at greatest risk, piloting innovation approaches to perpetrator intervention, and increasing the capacity of the service system to stop perpetrators where they are identified. Further, Family and Domestic Violence Response Teams have been established across 17 locations in Western Australia to provide coordinated responses between community sector groups, Western Australia Police, and the Department for Child Protection and Family Support to triage all Domestic Violence Incident Reports and provide timely responses. This includes a shared database and support for the effective application of existing legal frameworks and service provision.

11. In April 2015, the Northern Territory Government released its *Policy Framework for Northern Territory Women 2015-2020*, focusing on a whole-of-government and whole-of-community approach to the reduction of all forms of violence across the territory community. Actions under the framework include the development of a Sexual Violence Strategy, focus in primary prevention of violence through education, increased awareness of the impacts of violence, and changing behaviours of perpetrators who choose to use violence in their relationships, and ensuring effective support for women victims and survivors, including those in the Northern Territory justice system.

12. The Australian Capital Territory Government has recently finalised the second implementation strategy under the *Prevention of Violence Against Women and Children Strategy 2011-17*, which was developed to provide a clear focus and overarching principles to guide violence prevention activities across government. One initiative the Australian Capital Territory Government has progressed, in conjunction with the Disability and Community Services Commissioner and a number of community organisations, is a project to address gaps in service delivery for women with disabilities needing to escape domestic violence and/or sexual assault. The project focuses on crisis situations where women need immediate disability supports to enable them to establish safety from violence. The project aims to ensure that women with disabilities, who traditionally have been marginalised and excluded from domestic violence and sexual assault services available to other women, will no longer be disadvantaged because of their disability. In its first year of operation the

project supported a number of women with disabilities fleeing violence and/or sexual assault through collaboration with domestic and sexual violence services and the disability sector. Services such as personal care, accessible accommodation and transport, interpreter services, and support with caring for children were provided to women fleeing violence.

Education in schools

13. Several jurisdictions have taken action to promote education and awareness of domestic and family violence for youth through school programs and the education curriculum. The Victorian Government piloted a Respectful Relationships Education program across 20 schools during 2013-2015. From 2016 onwards, the Victorian Government will introduce respectful relationships education into the state school curriculum. The program will support students to learn how to build healthy relationships, understand global cultures, ethics and traditions, and to prevent family violence, focussing on challenging negative attitudes such as prejudice, discrimination and harassment, which can lead to violence, often against women. The Tasmanian Government awarded White Ribbon Australia a grant of \$83,580 for a state-wide project to implement Breaking the Silence in Schools Program. *Breaking the Silence in Schools* workshops will be convened in all Tasmanian school regions during 2015. The Western Australian Government has developed the 'Youth Say No' website, an awareness campaign developed in consultation with and for young people. The website includes information and resources about family and domestic violence, lesson plans for teachers to use in schools, interactive components and linkages to other social media platforms.

Indigenous people in the criminal justice system

14. Australia notes the Committee's recommendations at paragraph 12 of the Concluding Observations. The Australian Government and state and territory governments are determined to deliver demonstrable improvement in the lives of Indigenous Australians. The criminal justice system is the primary responsibility of state and territory governments, with each jurisdiction continuing to implement and provide a range of initiatives and programs to address these issues. Actions jurisdictions have taken since Australia's 2014 appearance before the Committee include the following.

15. The federal Australian Government funds eight Aboriginal and Torres Strait Islander Legal Services to deliver culturally appropriate legal assistance services at over 100 permanent sites, court circuits and outreach locations in urban, rural and remote areas. This includes an investment of \$350 million over five years until the 2019-20 financial year for the delivery of Indigenous legal assistance.

16. The Victorian Government has renewed its commitment to the *Victorian Aboriginal Justice Agreement*, a formal partnership between the Victorian Government and the Aboriginal community to work together to improve justice outcomes and safety for Aboriginal families and communities. Now in its third phase for 2015-2018, the agreement has an increased focus on improving the safety of Koori families and communities through preventing and reducing the further progression of young Koories into the criminal justice system, maximising diversion particularly for Koori women, aiming to reduce re-offending at all points of the justice continuum, aiming to reduce conflict, violence and victimisation and improving support for victims, and addressing issues which drive contact with the justice system such as alcohol and drugs, mental health issues, unstable housing and unemployment.

17. The New South Wales Government is trialling a Koori Court program throughout 2015 in the Parramatta Children's Court for young Aboriginal offenders under 19 who have been found guilty of committing a criminal offence. Unlike a mainstream court, the Koori Court is more informal, and before being sentenced by the magistrate or judge, an informal

conference will be facilitated by a Children's Registrar with input from the young person, their family, Aboriginal Elders and staff from both government and non-government agencies.

18. The Queensland Government committed to providing funding to reinstate specialist courts, being the Murri Court, Special Circumstances Court Diversion Program and the Drug Court, in the 2015-16 budget. Initially work will focus on researching and analysing available evidence of what delivers the most effective outcomes, rather than simply reinstating previous models. The initial phase of this project will also establish a team to undertake review work and develop the framework and model to support diversionary courts. The framework will build on the current Indigenous Sentencing List and the Queensland Courts Referral Program, and will recognise the linkages between offending, drug and alcohol abuse, and child protection and domestic violence.

19. The Australian Capital Territory Government has recently introduced the *2015-18 Aboriginal and Torres Strait Islander Justice Partnership*. The Partnership aims to reduce Aboriginal and Torres Strait Islander over representation in the criminal justice system, as both victims and offenders, by improving accessibility, utilisation and effectiveness of justice related programs and services and improving data collection and reporting. The Partnership has a targeted approach, focusing on three key objectives being to reduce over-representation by reducing recidivism and increasing access to diversionary programs, improving access to justice services, and improving data collection and reporting.

Non-refoulement

20. Australia notes the Committee's recommendations at paragraph 15 of the Concluding Observations. The Australian Government does not remove people where this would contravene Australia's non-refoulement obligations under international law, including the *Refugees Convention*, the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT), or the *International Covenant on Civil and Political Rights* (ICCPR).

21. Australia's non-refoulement obligations are assessed within the protection visa framework under the *Migration Act 1958* (Cth) (Migration Act). If a person claiming to be owed protection is found not to meet the definition of a refugee under the Migration Act, they will be assessed against the complementary protection provisions. The complementary protection provisions in the Migration Act provide a basis to grant a protection visa to a person who engages Australia's non-refoulement obligations under the CAT and the ICCPR. Specifically, subparagraph 36(2)(aa) provides that the Minister for Immigration and Border Protection (the Minister for Immigration), or the Minister's delegate, may grant a protection visa if there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia, there is a real risk that he or she will suffer significant harm. Significant harm is defined to include torture.

22. In most instances, where an application for a protection visa is refused or a protection visa is cancelled by the Minister for Immigration (or the Minister's delegate), the applicant is entitled to seek merits review of that decision. Merits review of protection visa decisions is undertaken by the Administrative Appeals Tribunal (AAT) or by the Immigration Assessment Authority (IAA), an independent statutory office within the AAT. There are certain protection visa decisions, however, which are not subject to merits review. These relate to applicants who are excluded from protection on certain character or security grounds, applicants who are excluded from IAA review as set out under subsection 5(1) of the Migration Act, or decisions for which the Minister has issued a conclusive certificate under subsection 411(3) of the Migration Act. Judicial review of protection visa decisions is available regardless of whether merits review was also available.

23. The *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* was passed by the Australian Parliament on 5 December 2014, with some measures commencing on 16 December 2014 and the remainder on 18 April 2015. While one of the amendments made by this Act provides that non-refoulement obligations are not relevant in the context of an official's duty to remove an unlawful non-citizen under section 198 of the Migration Act there are mechanisms within the Migration Act which provide the Australian Government with the ability to assess non-refoulement obligations before consideration of removal, for example through the protection visa application process or the use of the Minister's public interest powers in the Migration Act. These considerations are undertaken before a non-citizen is considered to be available for removal.

24. A person would not be considered available for removal under section 198 until their application for a protection visa has been finally determined and that application determined that they did not engage Australia's protection obligations. An application has been finally determined where a review decision has been made on the application by a Tribunal, or where a departmental decision on the application has been made and that decision is no longer subject to any form of review, or the timeframe for applying for review of the decision has ended.

25. The Migration Act also provides the Minister with non-delegable and non-compellable powers to intervene in individual cases to grant a visa or to allow another protection visa application, if the Minister considers that it is in the public interest to do so. The Minister will generally only intervene where there are unique or exceptional circumstances and the person has no other pathway to a visa. A person's request for the exercise of the Minister's intervention powers will be referred for the Minister's consideration where the request meets the Minister's Guidelines for referral.

26. A pre-removal clearance process for non-citizens, regardless of their mode of arrival in Australia, is undertaken as a final check to ensure that Australia's non-refoulement obligations have been assessed prior to removal. This check ensures that all visa application or Ministerial intervention processes have been finalised, and whether there are any new circumstances raised by individuals which require further assessment. Should a person raise new or credible protection claims at this stage or the department identifies protection issues, the person would be referred for assessment against the Minister's Guidelines for referral for the possible use of his Ministerial intervention powers under sections 48B, 417 or 195A of the Migration Act.

27. In relation to legal assistance, those who have arrived lawfully and are disadvantaged or face financial hardship may be eligible for assistance with their primary application for a protection visa through the Immigration Advice and Application Assistance Scheme. A new Primary Application Information Service will provide application assistance from registered migration agents during primary processing for a small number of illegal arrivals, namely the most vulnerable. Information regarding the protection visa process is available publicly on the Department of Immigration and Border Protection's website, including through Protection Application Information and Guides. Privately arranged application assistance can be sought by any person claiming protection in Australia, including pro bono migration assistance from a registered migration agent.

Mandatory immigration detention, including of children

28. Australia notes the Committee's recommendations at paragraph 16 of the Concluding Observations. Under Australia's Migration Act, where an officer knows or reasonably suspects a person is an unlawful non-citizen, the officer must detain the person. However, the officer may be able to grant the detained person a short term visa (or Bridging visa) which will change the detainee's immigration status to lawful non-citizen. The

decision to grant a Bridging visa, enabling a non-citizen to remain lawfully in Australia, is based on an assessment of risk. The following groups of people will generally not be granted a Bridging visa:

- All illegal arrivals — until the health, identity and security risks which they present to the Australian community are resolved
- Unlawful non-citizens who present unacceptable risks to the community, including persons with adverse security assessments, and
- Unlawful non-citizens who have repeatedly refused to comply with their visa conditions

29. Under the Migration Act, detention is not limited by a prescribed timeframe but ends when the person is granted a visa or is removed from Australia. Whether a person can be granted a visa or removed from Australia is dependent on numerous factors, including identity determination, developments in the person's country of origin, and the complexity of processing due to individual circumstances surrounding health, character and security matters.

30. Children who arrive illegally are initially accommodated in alternative places of detention, such as Immigration Residential Housing and Immigration Transit Accommodation. The priority remains that children, and where possible their families, are moved into community detention immediately following the completion of all necessary checks.

31. Several independent bodies already provide external scrutiny of immigration detention in Australia, including the Commonwealth Ombudsman, the Australian Human Rights Commission, the Office of the United Nations High Commissioner for Refugees, the Australian Red Cross and the Australian Government Minister's Council on Asylum Seekers and Detention. The Commonwealth Ombudsman is required by law to assess the appropriateness of the detention of each person detained for more than two years.

32. Immigration detention centres are one form of accommodation in the detention network. Alternatives to closed detention, established by the Australian Government to provide accommodation for families and semi-independent living, include Immigration Residential Housing, Immigration Transit Accommodation, Alternative Places of Detention and Community Detention.
