



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

Distr.  
GENERAL

CAT/C/67/Add.7  
25 May 2005

Original: ENGLISH

---

COMMITTEE AGAINST TORTURE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 19 OF THE CONVENTION**

**Third periodic report of States parties due in 2004**

**Addendum\* \*\***

**AUSTRALIA**

[7 April 2005]

---

\* For the initial report of Australia, see CAT/C/9/Add.8; for its consideration, see CAT/C/SR.95 and 96 and *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 47 (A/47/44)*, paras. 181-214.

For the second periodic report, see CAT/C/25/Add.11; for its consideration, see CAT/C/SR.444, 447 and 451 and *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 56 (A/56/44)*, paras. 47-53.

\*\* 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.

## CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Recommendations of the Committee .....		4
Abbreviations .....		6
Introduction .....	1 - 10	7
I. IMPLEMENTATION OF THE CONVENTION - ARTICLES 1 AND 2 (1) .....	11 - 17	8
1.1 Legal status and implementation of the Convention in Australia .....	11 - 17	8
II. LEGALLY PUNISHABLE OFFENCES, EXPULSION, AND EXTRADITION - ARTICLES 3, 4, 5, 6, 7, 8 AND 9 .....	18 - 46	9
2.1 Jurisdiction of the Government of Australia .....	18 - 20	9
2.2 Domestic criminal offences .....	21 - 29	10
2.3 Refoulement, expulsion and extradition .....	30 - 41	11
2.4 Human rights communications .....	42 - 46	13
III. EDUCATION, TRAINING, REVIEW AND OTHER PREVENTATIVE MEASURES - ARTICLES 10, 11 AND 16 (1) .....	47 - 74	14
3.1 Preventative measures .....	47 - 64	14
3.2 Indigenous peoples and criminal justice .....	65 - 66	17
3.3 Mandatory sentencing provisions .....	67 - 71	17
3.4 Efforts to reduce overcrowding in prisons .....	72 - 74	18
IV. THE RIGHT TO PROCEDURAL GUARANTEES - ARTICLES 12, 13, 14, 15 AND 16 .....	75	19
4.1 Investigation and complaints mechanisms .....	75 - 80	19
4.2 Protection of complainants .....	81 - 85	20
4.3 Sample of investigations and complaints in the reporting period .....	86 - 100	21

## CONTENTS (*continued*)

	<i>Paragraphs</i>	<i>Page</i>
4.4 Medical and psychological rehabilitation after acts of torture or other cruel, inhuman or degrading treatment or punishment .....	101 - 103	23
<i>Appendices and tables</i>		
Appendix I. Offences and penalties .....		28
Appendix II. Administrative review of public officer conduct .....		45
Table 1. Legislation relevant to Australia's obligations under the Convention .....		51
Table 2. Statutory compensation schemes .....		54
Table 3. Bilateral extradition arrangements with States parties to the Convention .....		55
<i>List of annexes</i> .....		56

### **Recommendations of the Committee**

The recommendations of the Committee against Torture, made in response to Australia's Combined Second and Third Report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment at its twenty-fifth session in November 2000, are addressed as follows:

#### **Recommendation (a)**

The State party ensure that all States and Territories are at all times in compliance with its obligations under the Convention ..... paragraph 11

#### **Recommendation (b)**

The State party consider the desirability of providing a mechanism for independent review of ministerial decisions in respect of cases coming under article 3 of the Convention ..... paragraph 30

#### **Recommendation (c)**

The State party continue its education and information efforts for law enforcement personnel regarding the prohibition against torture and further improve its efforts in training, especially of police, prison officers and prison medical personnel ..... paragraph 47

#### **Recommendation (d)**

The State party keep under constant review the use of instruments of restraint that may cause unnecessary pain and humiliation, and ensure that their use is appropriately recorded ..... paragraph 47

#### **Recommendation (e)**

The State party ensure that complainants are protected against intimidation and adverse consequences as a result of their complaint ..... paragraph 81

#### **Recommendation (f)**

The State party continue its efforts to reduce overcrowding in prisons ..... paragraph 72

#### **Recommendation (g)**

The State party continue its efforts to address the socio-economic disadvantage that, inter alia, leads to a disproportionate number of indigenous Australians coming into contact with the criminal justice system ..... paragraph 65

**Recommendation (h)**

The State party keep under careful review legislation imposing mandatory minimum sentences, to ensure that it does not raise questions of compliance with its international obligations under the Convention and other relevant international instruments, particularly with regard to the possible adverse effect upon disadvantaged groups ..... paragraph 67

**Recommendation (i)**

The State party submit its next periodic report by November 2004, and ensure that it contains information on the implementation of the present recommendations and disaggregated statistics ..... paragraph 1

### **Abbreviations**

AAT	Administrative Appeals Tribunal
ACT	Australian Capital Territory
ADF	Australian Defence Force
APMC	Australasian Police Ministers' Council
ASIO	Australian Security Intelligence Organisation
COAG	Council of Australian Governments
CRC	Convention on the Rights of the Child
DIMIA	Department of Immigration and Multicultural and Indigenous Affairs
FGM	Female Genital Mutilation
FMC	Federal Magistrates Court
HREOC	Human Rights and Equal Opportunity Commission
ICCPR	International Covenant on Civil and Political Rights
IGADF	Inspector-General, Australian Defence Force
IGIS	Inspector-General of Intelligence and Security
JSCOT	Joint Standing Committee on Treaties
NGO	Non-Government Organisation
3 RAR	Third Battalion Royal Australian Regiment
IDS	Immigration Detention Standards
RRT	Refugee Review Tribunal

## Introduction

### Preparation and structure of the report

1. The Australian Government is pleased to present to the Committee against Torture (Committee) Australia's Fourth Report under the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Convention or Convention against Torture) in accordance with article 19 of the Convention. Australia ratified the Convention on 8 August 1989. The Convention came into force for Australia on 7 September 1989.
2. This report demonstrates that Australia takes its obligations under the Convention seriously and continues to progressively implement, monitor and enforce mechanisms to proscribe and prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in all Australian jurisdictions. Australia strongly supports international action against torture and deplores such behaviour wherever and whenever it occurs.
3. Australia's Fourth Report under the Convention covers the period from 30 June 1997-29 October 2004. The report includes information on major or significant developments in law and practice relevant to Australia's obligations under the Convention. It also addresses the issues raised by the Committee in response to Australia's Second and Third Report under the Convention (Australia's Second and Third Report) in its twenty-fifth session in November 2000.
4. This report supplements and should be read in conjunction with Australia's previous reports under the Convention<sup>1</sup> and Australia's Core Document.<sup>2</sup> Together, these documents outline the legislative, judicial, administrative and other measures in Australia which give effect to Australia's obligations under the Convention. For the most part, these measures remain substantially unchanged in this reporting round. Thus, where particular articles are not addressed in this report, the Committee is referred to Australia's previous reports, particularly the Second and Third Report, for up to date information.
5. Australia's Fourth Report has been prepared with reference to the Committee's Guidelines for the submission of periodic reports. Where appropriate, overlapping articles have been grouped together and information provided accordingly. The Committee's recommendations in response to Australia's Second and Third Report are addressed throughout the report where relevant, rather than in a separate Part.
6. To avoid adding to the burden on the secretariat resources of the Committee, the Government has not attached all documents referred to in the report. Where appropriate, internet addresses are provided rather than hardcopy materials. The Government will provide further information where the Committee so requests when considering the report.

### Consultation with stakeholders

7. The Government consulted widely in preparing this report and is grateful to those stakeholders who provided input for their assistance and comments. These comments were taken into consideration in the preparation of the report.

## **Consultation with State and Territory Governments**

8. Australia has a federal constitutional system in which legislative, executive and judicial powers are shared or distributed between the Federal Government and those of the six States - New South Wales, Victoria, Queensland, Western Australia, South Australia and Tasmania - and two internal self-governing territories - the Australian Capital Territory and the Northern Territory.<sup>3</sup> As the State and Territory Governments are responsible for many of the government activities that give effect to the Convention, the Federal Government has consulted extensively with the State and Territory Governments in preparing this report. Where relevant, examples of significant legislative developments, programs and policies that have occurred in the States and Territories in the reporting period are included in the report.

## **Consultation with non-government organisations**

9. The Government recognises the important role played by non-government organisations (NGOs) in promoting and implementing the rights set out in the Convention and consulted widely with relevant NGOs in the preparation of the report. The Human Rights and Equal Opportunity Commission (HREOC), Australia's national human rights institution, was also invited to comment.

10. The comments received from these stakeholders raised a range of issues relevant to Australia's obligations under the Convention. These issues were taken into consideration in preparing Australia's Fourth Report.

## **I. IMPLEMENTATION OF THE CONVENTION - ARTICLES 1 AND 2 (1)**

### **1.1 Legal status and implementation of the Convention in Australia**

11. Acts constituting torture and other cruel, inhuman or degrading treatment or punishment are a criminal offence and/or civil wrong in all Australian jurisdictions (see Appendix One). In addition, specialist statutory authorities, such as HREOC and federal, State and Territory ombudsmen, are empowered to monitor and investigate the conduct of public officials. Together, these mechanisms ensure that Australia is at all times in compliance with its obligations under the Convention against Torture.<sup>4</sup>

12. The Committee is referred to Part One of Australia's Second and Third Report for further background information on the implementation and adoption of the Convention in Australia.

13. A number of developments relevant to Australia's obligations under articles 1 and 2(1) of the Convention have occurred in the reporting period. These include the adoption in 2004 of a statutory Bill of Rights by the Legislative Assembly of the Australian Capital Territory (ACT) and consideration by the Federal Government of Australia's position regarding ratification of the Optional Protocol to the Convention against Torture (Optional Protocol).

14. The ACT *Human Rights Act 2004* incorporates the *International Covenant on Civil and Political Rights* (ICCPR) into ACT law. Article 7 of the ICCPR prohibits torture, cruel, inhuman or degrading treatment or punishment.

15. The ACT Human Rights Act requires that all ACT legislation be interpreted and applied consistently with human rights unless legislation clearly authorizes otherwise. A human rights argument can be raised in proceedings against ACT authorities including, for example, where an agency has breached its statutory duty or its duty of care towards a detainee. The prohibition on torture, cruel, inhuman or degrading treatment or punishment must also be taken into account when framing legislation and developing operational guidelines. It is intended that the Human Rights Act will be interpreted and applied consistently with international law and internationally accepted standards. The ACT judiciary and other public officials may refer to the Convention against Torture, the ICCPR and other related rules and guidelines for the purpose of interpreting the Human Rights Act.

16. The Government is currently considering whether it will ratify the Optional Protocol to the Convention. On 26 November 2003 the Australian Senate referred this issue to the independent Joint Standing Committee on Treaties (JSCOT), comprising 16 members of the Australian Parliament House of Representatives and Senate for inquiry and report. After requesting and analysing written submissions, and hearing oral arguments, JSCOT issued a report in March 2004.<sup>5</sup> The report found, *inter alia*, that ‘there is no suggestion that the independent national preventative mechanisms are inadequate in Australia. Commonwealth, State and Territory Governments all conduct education and training programs and have mechanisms to prevent torture’.<sup>6</sup> Consequently, the report recommended against the Commonwealth Government taking binding treaty action with respect to the Optional Protocol at this time.<sup>7</sup>

17. The Government has not yet made a decision about whether it will ratify the Optional Protocol. However, the Government believes that there are appropriate legislative, administrative and judicial measures to prevent acts of torture currently in place in Australia.

## **II. LEGALLY PUNISHABLE OFFENCES, EXPULSION AND EXTRADITION - ARTICLES 3, 4, 5, 6, 7, 8 AND 9**

### **2.1 Jurisdiction of the Government of Australia**

18. As noted in Australia’s Second and Third Report, Australia generally exercises jurisdiction in relation to all people within its territory, whether nationals or non-nationals, including permanent and temporary residents and visitors.

19. The *Crimes at Sea Act 1979*, referred to in Australia’s previous report, has been replaced by the *Crimes at Sea Act 2000*. Like its predecessor, this Act extends Australia’s criminal jurisdiction offshore. The *Crimes (Aviation) Act 1991* performs a similar function with regard to crimes committed on an Australian aircraft. Together with corresponding State and Territory legislation, these instruments fulfil Australia’s obligations under article 5 of the Convention. Finally, a person present in Australia who has committed a crime of torture outside Australia would be liable to prosecution under the *Crimes (Torture) Act 1988*.

20. The Committee is referred to paragraph 45 of Australia’s Second and Third Report for further information.

## 2.2 Domestic criminal offences

21. Acts constituting torture which involve the infliction of physical pain and suffering committed within Australia's jurisdiction are offences under Australia's criminal law. Acts constituting cruel, inhuman or degrading treatment or punishment are also offences under Australian law. Appendix One provides an updated list of the relevant criminal provisions and penalties in federal, State and Territory law. Table 1 provides an updated list of other relevant legislation and delegated legislation relevant to Australia's obligations under articles 4, 5 and 16 of the Convention. The Committee is also referred to paragraphs 46-49 of Australia's Second and Third Report.

### National Model Criminal Code

22. In the reporting period important progress was made in implementing the Model Criminal Code for all Australian jurisdictions:

#### *Female genital mutilation*

- Specific offences against the person targeting female genital mutilation (FGM) have been enacted in every jurisdiction in Australia. In most jurisdictions, it is now also an offence to remove a child from the jurisdiction in which they reside for the purpose of performing FGM. Education and awareness raising campaigns aimed at reducing the occurrence of FGM are also being conducted throughout Australia.<sup>8</sup>

#### *Torture*

- In 2000 the federal Criminal Code was updated to include a suite of offences against the person. Division 71 of the Code creates offences against the United Nations and Associated Personnel and gives effect to the *Convention on the Safety of United Nations and Associated Personnel*. For many of these offences, the use of torture is an aggravating offence.

23. Efforts to progressively implement the Model Criminal Code continue across all Australian jurisdictions. For background information on the development and implementation of the Code the Committee is referred to paragraphs 50-51 of Australia's Second and Third Report.

### The Rome Statute of the International Criminal Court

24. Australia ratified the Rome Statute of the International Criminal Court on 1 July 2002 (Statute). The Statute entered into force for Australia on 1 September 2002. In June 2002 the Australian Parliament enacted legislation to facilitate Australia's compliance with the Statute.<sup>9</sup> This legislation creates offences equivalent to the crimes of genocide, crimes against humanity and war crimes set out in the Statute and ensures the primacy of Australia's criminal jurisdiction in relation to these crimes.

25. These offences have been incorporated into Division 268 of the *Criminal Code Act 1995* with specific reference to torture and inhuman treatment where relevant. These offences operate prospectively from 26 September 2002 and apply to conduct both within and outside Australia.

All genocide offences attract life imprisonment. Penalties for crimes against humanity range from 17 years to life imprisonment and war crimes offences attract penalties ranging from 10 years to life imprisonment.

### **Detention and questioning of persons in relation to terrorist offences**

26. In 2003 the *Australian Security Intelligence Organisation Act 1979* (ASIO Act) was amended to prevent and deter terrorist activity by enhancing the Australian Security Intelligence Organisation's (ASIO) intelligence gathering capabilities.<sup>10</sup> The ASIO Act now empowers ASIO to seek a warrant to question, and in limited circumstances detain, a person who may have information relevant to a terrorism offence.

27. The questioning regime contains rigorous requirements that must be met in order for a warrant to be issued and strict safeguards to ensure that the new powers are exercised appropriately. The regime is for intelligence-gathering purposes only, and does not authorise punishment of any kind of a person subject to a warrant.

28. Under the ASIO Act, questioning proceedings are supervised by an independent prescribed authority. Depending on the circumstances, a prescribed authority may be a former judge of a superior court, a current judge of a Supreme or District Court of a State or Territory, or a President or Deputy President of the Administrative Appeals Tribunal (AAT). Detention, if authorised, is supervised by a police officer. A statement of procedures for questioning and detention is set out in the Protocol to the ASIO Act.<sup>11</sup>

29. Among other safeguards in the ASIO Act and in the Protocol, the subject of a warrant must be treated with humanity and with respect for human dignity, and must not be subject to cruel, inhuman or degrading treatment. An official who fails to comply with a direction of the prescribed authority, contravenes a safeguard, or fails to afford a person their rights under the ASIO Act, commits an offence punishable by a maximum of 2 years imprisonment. An official may also be subject to other criminal penalties.

## **2.3 Refoulement, expulsion and extradition**

### **Refoulement**

30. In its Concluding Observations on Australia's Second and Third Report the Committee recommended that Australia '*consider the desirability of providing a mechanism for independent review of ministerial decisions in respect of cases coming under article 3 of the Convention*'.<sup>12</sup>

31. Consideration of Australia's non-refoulement obligation under the Convention mainly arises in relation to persons seeking refugee protection in Australia. As a signatory to the 1951 *Convention relating to the Status of Refugees* and the 1967 Protocol (collectively referred to as the Refugees Convention), Australia provides protection to those asylum seekers who engage Australia's protection obligations under these instruments. Protection is effected through the grant of either a temporary or permanent protection visa. The process of granting a protection visa involves determination of refugee status made by an officer of the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA).

32. Asylum seekers in Australia have access to multiple mechanisms of review with regard to their application for refugee status. First, unsuccessful applicants can seek review of DIMIA's decision before the Refugee Review Tribunal (RRT) or the AAT depending on the basis for refusal. The Tribunals are independent statutory merits-review bodies which have the power to affirm or vary DIMIA's decision, to set aside the decision and substitute a new decision or to remit the matter to DIMIA for reconsideration.

33. Where there is a perceived error of law in the decision of the RRT, an applicant can appeal the decision to a single judge of the Federal Court for judicial review. The Federal Magistrates Court (FMC) has also had jurisdiction to review decisions of the RRT since October 2001. Such cases may go on appeal to the Full Federal Court, and may then be the subject of a special leave application to the High Court of Australia (High Court). Under section 75 of the Constitution a person may also seek judicial review in the High Court's original jurisdiction.

34. On 11 May 2004 the Government announced a package of migration litigation reforms to deal more quickly with migration cases before the courts. Among other things, this package of reforms will direct judicial review applications of RRT decisions to the FMC. In order to ensure that migration cases are dealt with quickly and fairly the Government has appointed eight additional magistrates to the FMC as part of this package.

35. Finally, sections 417<sup>13</sup>, 454<sup>14</sup> and 501J<sup>15</sup> of the *Migration Act 1958* empower the Minister for Immigration and Multicultural and Indigenous Affairs to substitute a decision of the RRT or AAT that an applicant is not a person to whom Australia has protection obligations under the Refugees Convention with a more favourable decision if the Minister considers it in the public interest to do so.

36. Ministerial Guidelines (Guidelines), originally introduced in 1999 and reissued in 2003, provide guidance to DIMIA officers in identifying cases in which 'unique or exceptional circumstances' warrant referral to the Minister for consideration as to whether or not to exercise his/her public interest powers.<sup>16</sup> Most notably, the Guidelines refer to Australia's international obligations under the Convention against Torture, the *Convention on the Rights of the Child* (CRC) and the ICCPR as relevant factors in deciding whether the Minister should consider exercising these powers. These powers allow consideration at the executive level of government of the public interest, weighing up the full range of humanitarian or other issues that may arise in relation to a particular individual.

37. The Minister's public interest intervention powers are transparent, as any decision to intervene must be tabled before each House of the Australian Parliament. The Minister is ultimately accountable to the Parliament and the Australian people for his/her actions in the exercise of these powers.

38. Given existing review mechanisms and processes, the Government does not consider an additional level of review, such as that suggested by the Committee, either necessary or appropriate. Furthermore, the Government maintains that current policy and practice is not inconsistent with Australia's obligations under the Convention.

## **Expulsion**

39. In December 1998 the Minister for Immigration and Multicultural Affairs issued a policy on criminal deportation that is binding on delegates of the Minister in making deportation determinations.<sup>17</sup> This policy directs decision-makers to consider Australia's non-*refoulement* obligations under the ICCPR, the Convention against Torture and the Refugees Convention in making deportation determinations. Decision-makers are directed to obtain advice about the obligations should they be relevant in a particular case. This policy is also binding on the AAT in exercising its power to overturn a decision of the Minister on appeal.

40. The Committee is referred to paragraphs 52-54 of Australia's Second and Third Report for further information on the processes and legislative provisions relating to criminal deportation in Australia.

## **Extradition**

41. Table 3 provides an updated list of the States parties to the Convention with whom Australia has extradition arrangements. For further information on Australia's extradition framework the Committee is referred to paragraphs 59-62 of Australia's Second and Third Report.

## **2.4 Human rights communications**

### **Communications under the Convention against Torture**

42. The Government is aware of 19 communications lodged against Australia under Article 22 of the Convention against Torture in the reporting round.<sup>18</sup> All of these cases involved the actual or proposed removal from Australia of the alleged victim and the claim that Australia thereby breached or would potentially breach article 3 of the Convention. Ten of these cases have since been discontinued or withdrawn. The Committee against Torture has issued Views in response to eight cases, with Views still outstanding in response to one. The Committee found Australia in breach of article 3 of the Convention in one of the eight cases considered (Communication No. 120/1998).

### **Communication No. 120/1998**

43. In *Sadiq Shek Elmi v Australia* the author claimed that his background and clan membership in Somalia would render him personally at risk of being subjected to torture if forcibly returned to Somalia by Australia. It was alleged that Australia would thereby violate article 3 of the Convention.

44. The Committee found substantial grounds for believing that the author would be in danger of being subjected to torture if returned to Somalia.<sup>19</sup> Accordingly, the Committee considered that Australia had an obligation, in accordance with article 3 of the Convention, to refrain from forcibly removing the author to Somalia or to any other country where he was at risk of being expelled or returned to Somalia.<sup>20</sup>

45. In light of new evidence which arose following the Committee's consideration of Mr Elmi's communication, the Minister for Immigration and Multicultural Affairs decided that it was in the public interest to exercise his powers under section 48B of the Migration Act to allow Mr Elmi to make a subsequent application for a protection visa.<sup>21</sup> This application was unsuccessful and Mr Elmi lodged an application for review with the RRT. The Tribunal affirmed the decision that Mr Elmi was not a person to whom Australia owed protection obligations. Mr Elmi departed Australia voluntarily in January 2001.

### **Communications under the International Covenant on Civil and Political Rights**

46. As a party to the first Optional Protocol to the ICCPR Australia has been the subject of a number of complaints to the United Nations Human Rights Committee alleging a violation of article 7 of the ICCPR within the reporting period. Article 7 provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. These complaints will be addressed in Australia's upcoming Fifth Report under the ICCPR.

## **III. EDUCATION, TRAINING, REVIEW AND OTHER PREVENTATIVE MEASURES - ARTICLES 10, 11 AND 16 (1)**

### **3.1 Preventative measures**

47. In its Concluding Observations on Australia's Second and Third Report the Committee recommended that Australia '*...continue its education and information efforts for law enforcement personnel regarding the prohibition against torture and further improve its efforts in training, especially of police, prison officers and prison medical personnel*'.<sup>22</sup> The Committee further recommended that Australia '*...keep under constant review the use of instruments of restraint that may cause unnecessary pain and humiliation, and ensure that their use is appropriately recorded*'.<sup>23</sup> These recommendations are addressed below.

#### **Police officers**

48. Relevant legislation and policy instructions direct police in every jurisdiction in Australia to assume responsibility for the safety and welfare of the public, including prisoners (see Table 1 and paragraphs 66-67 of Australia's Second and Third Report).

#### *Education and training*

49. The Australian Federal Police and all State and Territory police services in Australia continue to maintain regular education and training for police officers in the relevant law applicable to their duties, particularly with regard to the use of force, management of people in custody, the use of restraints, and reporting requirements.

50. For example, in 2000 the South Australia Police introduced Incident Management and Operational Safety Training as a prerequisite course for police undertaking operational duties. This course emphasises safe prisoner management, and includes refresher training on:

- safe handcuffing techniques to minimise injuries to police and prisoners;

- the use of flexcuffs as an alternative/adjunct to handcuffs;<sup>24</sup>
- restraint techniques to minimise or avoid injuries associated with positional asphyxia and conveyances in cage cars; and
- lawful and appropriate use of Oleoresin Capsicum spray and Asp batons.

#### *National guidelines on use of force*

51. In 2002, a set of national reporting guidelines was established to provide jurisdictions with a framework and minimum standards to develop use of force information systems that will allow for the meaningful and comparable interpretation of data at a national level. This data is intended to identify training needs for operational safety purposes; monitor the effectiveness of operational training, tactics, procedures and equipment to ensure appropriate behaviour; and monitor use of force trends. Jurisdictions report to the Senior Officers' Group and Australasian Police Ministers' Council (APMC) each year.<sup>25</sup>

52. On 17 November 2004, APMC endorsed the *National Guidelines for Incident Management, Conflict Resolution and Use of Force: 2004*, and agreed that the guidelines be reviewed again in two years to ensure their relevance and currency. The revised guidelines are strategic in nature and outline a set of general, guiding principles, allowing police organisations scope to implement innovative and appropriate solutions to specific situations.

#### **Prison officers**

53. All States and Territories in Australia have established intensive and regular programs in which prison officers receive information about their statutory obligations relating to the management and use of weapons, restraint devices, use of force, and reporting requirements (see Table 1 and paragraphs 68-69 of Australia's Second and Third Report).

#### *On-going monitoring and review*

54. Use of force by prison officers in Australia is subject to on-going monitoring and review. For example, in 2002-2003 the former Victorian Chief Commissioner for Police conducted a review into use of force in the Victorian prison system. The review was requested to make recommendations on legislation and procedural and operational guidelines relating to use of force; use of firearms and other operational equipment; best practice training methodology and programs with regard to use of force; and ways of ensuring the consistent application of policies and procedures related to use of force across Victoria.

55. The review recommended various changes to the way in which situations of risk are managed, including in relation to the use of particular operational equipment and specific training methods and programs. The Victorian Minister for Corrections has endorsed the findings of the review and a working party has been formed to progress implementation of the recommendations.

## **Public school teachers**

56. In every State and Territory in Australia legislation and policy guidelines circumscribe disciplinary measures which may be used by public school teachers (see Table 1 and paragraphs 84-85 of Australia's Second and Third Report).

### *Corporal punishment*

57. Corporal punishment in Australian government schools and some non-government schools has been prohibited in the ACT, New South Wales, South Australia, Queensland, Tasmania and Western Australia. Corporal punishment in government schools is prohibited in Victoria.

58. The issue of corporal punishment was considered by the Model Criminal Code Officers Committee who reported on this issue in September 1998.<sup>26</sup> The Model Criminal Code Officers Committee recommended that a legislative standard of reasonableness be established and that the use of objects in such a way as to cause or risk causing injury be prohibited.<sup>27</sup>

59. In 2003, the Queensland Government amended the *Education (Teacher Registration) Act 1988* to prevent teachers moving between the public and private sector when suspected of harmful behaviour to children. Employers of both public and private schools are required to inform the Teacher Registration Board if a teacher is dismissed or resigns as a result of the employer investigating allegations that the teacher's conduct harmed or could have harmed a child. Similar legislation is in place or is currently being considered in a number of other States and Territories in Australia.

## **Military personnel**

60. Australian Defence Force (ADF) members participating in international or non-international armed conflict are now bound by Division 268 of the Criminal Code Act which was inserted by the *International Criminal Court (Consequential Amendments) Act 2002* and includes war crimes, genocide and crimes against humanity (see paragraph 25). This legislation replaces Part 2 of the *Geneva Conventions Act 1957* which previously covered such crimes. Australian Defence Force members are also bound by the *Defence Force Discipline Act 1982*.

61. Throughout their careers, and particularly prior to deployment, service members receive extensive training in humanitarian law principles (see paragraphs 70-72 of Australia's Second and Third Report).

## **Immigration officers**

62. In February 1998 the Government contracted out detention and removal services at immigration detention centres. This contract is currently held by Global Solutions Limited (Australia) Pty Ltd. The contractor is required to deliver detention services in accordance with the *Immigration Detention Standards (IDS)* developed by DIMIA in consultation with the Commonwealth Ombudsman's Office and HREOC.<sup>28</sup>

63. With regard to use of force and instruments of restraint, the IDS provide that:
- only such force as is reasonably necessary and proportionate in the circumstances is to be used;
  - non-compliance, uncooperative behaviour or conflict are to be addressed as far as practicable through communication, negotiation and conflict resolution;
  - use of force is to be a measure of last resort where all other control methods have failed or have been assessed as inadequate;
  - collective, corporal, cruel, inhumane or degrading treatments and punishments are not to be used; and
  - only such instruments of restraint are to be used as are reasonably necessary and proportionate in the circumstances and are never to be used as punishment.<sup>29</sup>
64. For further information the Committee is referred to paragraphs 76-77 of Australia's Second and Third Report.

### **3.2 Indigenous peoples and criminal justice**

65. In its Concluding Observations on Australia's Second and Third Report the Committee recommended that Australia '*continue its efforts to address the socio-economic disadvantage that, inter alia, leads to a disproportionate number of indigenous Australians coming into contact with the criminal justice system*'.<sup>30</sup> This issue does not appear to relate to Australia's obligations under the Convention against Torture. The preventative measures detailed in this and previous reports are designed to ensure that all persons who come into contact with the criminal justice system are protected against torture or cruel, inhuman or degrading treatment or punishment.

66. For information relating to the programs and initiatives in Australia targeting indigenous disadvantage the Committee is referred to the *Combined Thirteenth and Fourteenth Periodic Report of the Government of Australia under Article 9 of the International Convention on the Elimination of all Forms of Racial Discrimination*, submitted to the Committee on the Elimination of Racial Discrimination on 28 November 2003.

### **3.3 Mandatory sentencing provisions**

67. In its Concluding Observations on Australia's Second and Third Report, the Committee recommended that Australia '*keep under careful review legislation imposing mandatory minimum sentences, to ensure that it does not raise questions of compliance with its international obligations under the Convention and other relevant international instruments, particularly with regard to the possible adverse effect upon disadvantaged groups*'.<sup>31</sup>

68. Where mandatory sentencing provisions exist in Australian law they serve important policy functions. Such provisions are not imposed in a manner that is inconsistent with Australia's international obligations under the Convention or other relevant international instruments.

69. In October 2001, the Northern Territory Parliament passed legislation repealing all mandatory minimum sentences that previously applied for property offences in relation to both adults and juveniles in the Northern Territory.<sup>32</sup>

70. In Western Australia, mandatory sentences of 12 months imprisonment or detention continue to apply for convicted home burglars who have two or more previous convictions for home burglary. A review of these provisions, tabled in the Western Australian Parliament on 15 November 2001, concluded that the provisions have had little effect on the criminal justice system and that courts generally sentence adult repeat offenders to periods of imprisonment greater than the minimum 12 months mandated by the legislation. In response to the review, the Western Australian Government announced its intention to retain the 'repeat offender' provisions on the grounds that Western Australia has the highest rate of burglary in Australia; the legislation has the support of both major parties and the people of Western Australia; the legislation has been appropriately targeted, in that it has affected the small number of repeat juvenile offenders; and in the case of juveniles, the Court can (and does) exercise its discretion where there are exceptional circumstances by imposing a Juvenile Conditional Release Order instead of detention.

71. The *Border Protection (Validation and Enforcement Powers) Act 2001*, commencing 27 September 2001, amended the Migration Act to include mandatory penalties for certain offences. Section 233C of the Migration Act provides that a court must impose sentences of imprisonment and non-parole periods for persons convicted of organising the bringing of groups, defined under the Migration Act as five or more persons, of non-citizens into Australia or if convicted of certain other offences relating to groups of non-citizens. The Government notes that this legislation is consistent with Australia's international obligations and does not adversely impact upon disadvantaged groups in the community. Rather, the provisions constitute part of a broader policy to strengthen deterrents against people smuggling and serve to protect disadvantaged groups by ensuring stiffer penalties for convicted smugglers.

### **3.4 Efforts to reduce overcrowding in prisons**

72. In its Concluding Observations on Australia's Second and Third Report the Committee recommended that Australia '*continue its efforts to reduce overcrowding in prisons*'.<sup>33</sup>

73. Overcrowding in prisons does not necessarily mean that the conditions under which prisoners are held amount to torture or to cruel or inhuman or degrading treatment or punishment. However, corrections facilities in Australia are regularly reviewed to ensure that they can safely accommodate and manage diverse groups of prisoners in humane conditions conducive to rehabilitation. In the reporting period a number of States and Territories in Australia have reviewed existing corrections facilities and have undertaken to upgrade those facilities or to develop new facilities as required.

74. Diversionary programs are also utilised throughout Australia and provide an effective means of reducing incarceration rates. For example, in Tasmania the *Youth Justice Act 1997* provides for a range of diversionary mechanisms to reduce the number of young people in custodial facilities. These include formal and informal cautions, fines, probation orders, good behaviour undertakings and community conferences. The Tasmanian Department of Health and Human Services has also sought to reduce the number of young Indigenous people in detention through a program that allows young Indigenous offenders to live in an Indigenous community and participate in activities that increase their cultural and traditional connections as an alternative to a custodial sentence.

#### **IV. THE RIGHT TO PROCEDURAL GUARANTEES - ARTICLES 12, 13, 14, 15 AND 16**

##### **4.1 Investigation and complaints mechanisms**

75. Most public officers in Australia are governed by specific legislative frameworks and are accountable to specialist complaints authorities that regulate the conduct of particular occupational groups (see Appendix 2). For further information the Committee is referred to Part Five of Australia's Second and Third Report.

##### **Complaint mechanisms, access to legal redress, and use of evidence in the ASIO questioning regime**

76. With the amendment of the ASIO Act in this reporting round (see paragraphs 26-29), significant safeguard mechanisms were put in place to ensure that persons subject to a questioning warrant have access to appropriate procedural protections. The ASIO Act expressly provides that the subject of a warrant can contact the Inspector-General of Intelligence and Security (IGIS) or the Commonwealth Ombudsman at any time to make a complaint. Appropriate facilities must be provided for this purpose, including ensuring that a complaint can be made in private.

77. The IGIS is an important accountability mechanism for Australia's intelligence agencies. It operates independently of Government and has extensive investigatory powers similar to that of a standing Royal Commission.<sup>34</sup> The IGIS may be present during questioning proceedings and, if the IGIS is concerned about an illegal act or an impropriety occurring during questioning, he or she may advise the prescribed authority. The prescribed authority may suspend questioning until the IGIS's concerns have been addressed.

78. At any time, the subject of a warrant has a right to seek a remedy relating to the warrant, or the treatment of the subject in connection with the warrant, from a federal court. The subject of a warrant may also contact a lawyer of his or her choice at any time. The lawyer may be present during questioning subject to the direction of the prescribed authority on a case being made out by ASIO for the exclusion of a particular lawyer. If exclusion occurs, the subject may choose another lawyer.

### **Complaints relating to the conditions of immigration detention centres**

79. The IDS establish a complaints mechanism for immigration detainees and ensure that detainees are able to comment or complain without hindrance or fear of reprisal:

- about any matter relating to the conditions of detention to the Services Provider, DIMIA, HREOC or the Commonwealth Ombudsman, or
- in the case of a suspected criminal offence, to the police, or
- in the case of suspected child abuse, to the relevant State/Territory welfare agency.<sup>35</sup>

80. The IDS also require that detainees be informed of their rights and that material advising of the right to complain to HREOC and the Commonwealth Ombudsman be displayed prominently throughout the facilities at all times and be available to detainees on request.

### **4.2 Protection of complainants**

81. In its Concluding Observations on Australia's Second and Third Report the Committee recommended that Australia '*ensure that complainants are protected against intimidation and adverse consequences as a result of their complaint*'.<sup>36</sup>

#### **Protection against adverse consequences as a result of making a complaint**

82. Legislation covering a wide range of areas, including health and community services, correctional services and public administration, protects complainants in all Australian jurisdictions (see Table 1). For example, the *Health and Community Services Complaints Act* enacted in the Northern Territory in July 2003 makes it an offence to intimidate or take any action against a complainant as a result of making a complaint. A penalty of up to \$10,000 or 12 months imprisonment applies for contravention of this provision. Both the Community Services Complaints Commissioner and the Ombudsman are able to investigate any complaint relating to harassment, intimidation or victimisation of a complainant as a result of making a complaint.

83. Another example is section 26 of the *Human Rights and Equal Opportunity Commission Act 1986*. This section protects a person who provides information or makes a complaint to HREOC, or who alleges that there has been an act or practice inconsistent with or contrary to human rights, by making it an offence to intimidate or coerce such a person.

#### **Disclosure of public interest information**

84. A range of legislation throughout Australia also protects individuals, including natural persons and public officers, who make public interest disclosures. Such legislation offers special protection to disclosures about unlawful, negligent or improper public sector conduct. For example, in July 2003 Western Australia enacted the *Public Interest Disclosure Act 2003*. This Act facilitates the disclosure of public interest information by providing protection for those who make disclosures and those who are the subject of disclosures. It also enables disclosed matters to be investigated and appropriate action to be taken. A person making a disclosure is protected

under the Act against any reprisals; civil and criminal liability in the event of making a disclosure; dismissal or having services dispensed with; and breach of confidentiality or secrecy agreements.

85. Similar legislation is in place or is currently being developed in all other Australian jurisdictions.

#### **4.3 Sample of investigations and complaints in the reporting period**

##### *Investigation into allegations of brutality in the Army's Parachute Battalion*

86. In April 2001 the Joint Standing Committee on Foreign Affairs, Defence and Trade (Joint Standing Committee) of the Australian Parliament released a report into allegations of systematic mistreatment within the Third Battalion Royal Australian Regiment (3 RAR) which arose in September 1998.<sup>37</sup> These allegations led to a police investigation and charges in a number of instances.

87. The report concluded that an unauthorised system of extra-judicial punishment existed at 3 RAR between 1996 and 1998. The punishment was perpetrated without a hearing on private soldiers who were presumed guilty of certain offences, typically involving theft or drugs, or who were considered to be underperforming. The report found that the punishment primarily took the form of illegal bashings, most often perpetrated on victims by fellow privates, or junior Non-Commissioned Officers.

88. An internal audit of the ADF conducted in response to the allegations found that nothing pointed to the existence of any *systemic* substitution of violence in any form for the due processes of lawful discipline in the ADF.<sup>38</sup> However, in response to one of the principal recommendations of the audit report, the position of Inspector-General of the Australian Defence Force (IGADF) was established in January 2003. The IGADF provides the Chief of the Defence Force with internal audit and review of the military justice system independent of the ordinary chain of command. The aim of this mechanism is to expose and examine any failures in military justice and to ensure that review and remedy are available.

89. The Government has also implemented a number of further measures in response to the recommendations of the Joint Standing Committee. For example, the Government established the Registrar of Military Justice. The Registrar is currently implementing a case management system to capture all ADF inquiries and matters of ADF discipline. This information is available to the IGADF to support that office in ensuring compliance with due processes, timeliness, transparency and relevant standards in military justice.

##### *The Commission of Inquiry into the Abuse of Children in Queensland Institutions (Forde Inquiry)*

90. In August 1998 the Forde Inquiry was established to investigate and report on any unsafe, improper or unlawful care or treatment of children, or any breach of statutory

obligation during the care, protection or detention of children in Queensland in certain government and non-government institutions and detention centres between 1911 and 1998. The Report of the findings of this Inquiry was tabled in Queensland Parliament in June 1999.

91. Although the Inquiry identified fewer incidents of abuse, neglect and breaches of statutory obligation in recent history, it considered that such incidents had occurred in many institutions and that children in the care of the State remained at risk of harm at that time. It also found that accountability systems were inadequate and did not ensure that abuse would be prevented or that complaints would be dealt with appropriately.

92. The Inquiry made 42 recommendations aimed at addressing past abuse as well as preventing abuse in the future. The Queensland Government accepted 41 of the recommendations, undertaking to address past abuse and improve youth justice and residential care services. The Government also broadened the application of the recommendations beyond residential care to include child protection and alternative care.

93. A number of significant legislative measures arose out of the Forde Inquiry recommendations. These included the *Child Protection Act 1999*, the *Children's Services Tribunal Act 2000*, the *Commission for Children and Young People Act 2000*, and the *Child Protection (International Measures) Act 2003*. Respectively, these instruments increase safeguards for children in the child protection system; establish a merits review process in relation to service provision for children and young people; strengthen the role of the Commission for Children and Young People in promoting and advocating for the rights, interests and wellbeing of children; and implement the child protection aspects of the *Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children* in Queensland.

94. In August and September 2000, an independent Committee appointed to monitor the implementation of the Forde Inquiry recommendations reported to Parliament and described the Queensland Government as having taken major steps forward in implementing the recommendations.

*HREOC Report, A last resort? The report of the National Inquiry into Children in Immigration Detention*

95. On 13 May 2004, HREOC released its Report, *A last resort? The report of the National Inquiry into Children in Immigration Detention*, covering the period from 1 January 1999 - 31 December 2002. The second of HREOC's three major findings was that:

Children in immigration detention for long periods of time are at high risk of serious mental harm. The Commonwealth's failure to implement the repeated recommendations by mental health professionals that certain children be removed from the detention environment with their parents amounted to cruel, inhumane or degrading treatment of those children in detention.<sup>39</sup>

96. HREOC was of the opinion that detention of children breached article 37 (a) of the CRC in this regard. That article provides that '[n]o child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment'.<sup>40</sup>

97. The Government rejects the major findings and recommendations of HREOC's report. The Government also rejects HREOC's view that Australia's system of immigration detention is inconsistent with Australia's obligations under the CRC. The reasons for these views are discussed further below.

98. Placement of children in immigration detention in Australia only occurs 'in conformity with the law', specifically the Migration Act, as required by article 37 (b) of the CRC. A variety of programs are run within immigration detention facilities to ensure detainee development and quality of life as appropriate to the general needs, age and gender of each detainee. For example, general educational, recreational, cultural and religious programs are available to all adult and children detainees. In particular, children may participate in external schooling with children in the community, with the consent of their parents. Medical or other health care, including psychiatric care and referral to specialists, is also available to all detainees as required. All such programs and services are subject to ongoing monitoring and review.

99. The Government has also developed and implemented innovative alternative detention strategies for women, children and detainees with special needs, including voluntary participation for women and children in Residential Housing Projects, foster care placements and community detention arrangements with community groups and NGOs. More information on these measures can be found on DIMIA's website: [www.immi.gov.au](http://www.immi.gov.au).

100. Finally, the Government has developed a system that ensures that the number of children in immigration detention is as limited as possible, that children are only detained as a last resort, and that those who are detained are well cared for. As at 15 December 2004, there was only one child classified as an unauthorised boat arrival in mainland detention centres in Australia and 26 children in alternative detention arrangements in the community.

#### **4.4 Medical and psychological rehabilitation after acts of torture or other cruel, inhuman or degrading treatment or punishment**

101. Torture and trauma victims in Australia are predominantly refugees and people who have entered Australia on special humanitarian grounds. Specialist torture and trauma services exist in all Australian States and Territories to assist such people.

102. For example, New South Wales has two specialised services that target survivors of torture and other human rights abuses:

- the Service for the Treatment of Torture and Trauma Survivors which provides counselling, training and medical support to those who have been tortured or traumatised as part of a refugee experience; and
- the New South Wales Refugee Health Service which provides assessments and information and generally protects the health of persons with a refugee background living in New South Wales.

103. The Committee is referred to paragraphs 137-138 of Australia's Second and Third Report for further information.

## Notes

<sup>1</sup> Australia's First Report under the Convention, submitted to the Committee on 27 August 1991; Australia's Second and Third Report, submitted to the Committee on 19 October 1999.

<sup>2</sup> *Core Document Australia*, 19 April 1994. At the time of preparation of this report, Australia is in the process of updating its Core Document.

<sup>3</sup> The Committee is referred to Australia's Core Document for a more detailed description of Australia's federal constitutional system. In particular, see the following sections: 'Law in Australia - Nature and Composition' and 'Implementing Human Rights Obligations in a Federal System'.

<sup>4</sup> In its Concluding Observations on Australia's Second and Third Report, the Committee recommended that Australia 'ensure that all States and territories are at all times in compliance with its obligations under the Convention': *Concluding Observations of the Committee against Torture: Australia*, twenty-fifth session, 13-24 November 2000.

<sup>5</sup> Joint Standing Committee on Treaties, *Report 58, Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, March 2004, at: <http://www.aph.gov.au/house/committee/jsct/OPCAT/report/front.pdf>.

<sup>6</sup> *Ibid*, v.

<sup>7</sup> *Ibid*, Recommendation 1, xi.

<sup>8</sup> For further information the Committee is referred to *Australia's Combined Second and Third Reports under the Convention on the Rights of the Child 2003*, submitted to the Committee on the Rights of the Child on 30 September 2003.

<sup>9</sup> *International Criminal Court Act 2002* ([http://www.austlii.edu.au/au/legis/cth/consol\\_act/icca2002303/](http://www.austlii.edu.au/au/legis/cth/consol_act/icca2002303/)); *International Criminal Court (Consequential Amendments) Act 2002* ([http://www.austlii.edu.au/au/legis/cth/consol\\_act/iccaa2002543/sch1.html](http://www.austlii.edu.au/au/legis/cth/consol_act/iccaa2002543/sch1.html)).

<sup>10</sup> The *Australian Security Intelligence Organisation Act 1979* can be accessed at [http://www.austlii.edu.au/au/legis/cth/consol\\_act/asioa1979472/](http://www.austlii.edu.au/au/legis/cth/consol_act/asioa1979472/).

<sup>11</sup> The Protocol is available at: [http://nationalsecurity.ag.gov.au/agd/WWW/nationalsecurityHome.nsf/Page/Legislation\\_NS\\_Detention\\_and\\_Questioning\\_Protocols](http://nationalsecurity.ag.gov.au/agd/WWW/nationalsecurityHome.nsf/Page/Legislation_NS_Detention_and_Questioning_Protocols).

<sup>12</sup> *Concluding Observations of the Committee against Torture: Australia*, twenty-fifth session, 13-24 November 2000.

<sup>13</sup> Section 417 provides:

- (1) If the Minister thinks that it is in the public interest to do so, the Minister may substitute for a decision of the Tribunal under section 415 another decision, being a decision that is more favourable to the applicant, whether or not the Tribunal had the power to make that other decision.

<sup>14</sup> Section 454 provides:

- (1) If the Minister thinks that it is in the public interest to do so, the Minister may substitute for a decision of the Administrative Appeals Tribunal in relation to an RRT-reviewable decision another decision, being a decision that is more favourable to the applicant, whether or not the Administrative Appeals Tribunal had the power to make that other decision.

<sup>15</sup> Section 501J provides:

- (1) If the Minister thinks that it is in the public interest to do so, the Minister may set aside an AAT protection visa decision and substitute another decision that is more favourable to the applicant in the review, whether or not the Administrative Appeals Tribunal had the power to make that other decision.

<sup>16</sup> *Migration Series Instructions 386 - Guidelines on Ministerial Powers Under Sections 345, 351, 391, 417, 454 and 501J of the Migration Act 1958*. A copy of the Guidelines is attached, Annex 1.

<sup>17</sup> General Direction No. 9, *Criminal Deportation under Section 200 of the Migration Act 1958*. A copy is attached, Annex 2.

<sup>18</sup> Communication No. 211/2002; Communication No. 177/2001; Communication No. 168/2000; Communication No. 167/2000; Communication No. 165/2000; Communication No. 162/2000; Communication No. 158/2000; Communication No. 157/2000; Communication No. 154/2000; Communication No. 153/2000; Communication No. 152/1999; Communication No. 151/1999; Communication No. 148/1999; Communication No. 139/1999; Communication No. 138/1999; Communication No. 136/1999; Communication No. 120/1998; Communication No. 106/1998; Communication No. 102/1998.

<sup>19</sup> Communication No. 120/1998, pr 6.9.

<sup>20</sup> Communication No. 120/1998, pr 7.

<sup>21</sup> Section 48B provides:

- (1) If the Minister thinks that it is in the public interest to do so, the Minister may, by written notice given to a particular non-citizen, determine that section 48A does not apply to prevent an application for a protection visa made by the non-citizen in the period starting when the notice is given and ending at the end of the seventh working day after the day on which the notice is given.

<sup>22</sup> *Concluding Observations of the Committee against Torture: Australia*, twenty-fifth session, 13-24 November 2000.

<sup>23</sup> *Ibid.*

<sup>24</sup> Flexcuffs are a smooth single-use plastic strip with a one way lock. They allow for the binding of both legs and larger wrists. Flexcuffs were introduced in South Australia in 1999.

<sup>25</sup> The Senior Officers' Group is a standing Committee of officials from Australia and New Zealand which advises APMC. APMC consists of the Ministers responsible for police affairs from each State and Territory, the Australian federal Government, and New Zealand.

<sup>26</sup> Report of the Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General, Chapter 5, Non Fatal Offences Against the Person, September 1998, pages 131-139.

<sup>27</sup> For further information the Committee is referred to paragraphs 184-188 of *Australia's Combined Second and Third Reports under the Convention on the Rights of the Child*, submitted to the Committee on the Rights of the Child on 30 September 2003.

<sup>28</sup> The Immigration Detention Standards can be accessed at: [http://www.immi.gov.au/detention/standards\\_index.htm#standards](http://www.immi.gov.au/detention/standards_index.htm#standards).

<sup>29</sup> Immigration Detention Standards, Part 6.4, *Obeying laws, orders and directions, including conflict resolution*, [http://www.immi.gov.au/detention/standards\\_six.htm](http://www.immi.gov.au/detention/standards_six.htm).

<sup>30</sup> *Concluding Observations of the Committee against Torture: Australia*, twenty-fifth session, 13-24 November 2000.

<sup>31</sup> Ibid.

<sup>32</sup> The *Juvenile Justice Amendment Act (No.2) 2001* repealed mandatory sentencing for juvenile offenders and the *Sentencing Amendment Act (No. 3) 2001* repealed mandatory sentencing for property offences for adults.

<sup>33</sup> *Concluding Observations of the Committee against Torture: Australia*, twenty-fifth session, 13-24 November 2000.

<sup>34</sup> As an example, see the powers set out in section 2 of the *Royal Commissions Act 1902* (see: <http://scale/html/pasteact/1/525/0/PA000080.htm>).

<sup>35</sup> Immigration Detention Standards, Part 8.1 *Complaints Mechanisms*, [http://www.immi.gov.au/detention/standards\\_eight.htm](http://www.immi.gov.au/detention/standards_eight.htm).

<sup>36</sup> *Concluding Observations of the Committee against Torture: Australia*, twenty-fifth session, 13-24 November 2000.

<sup>37</sup> Joint Standing Committee on Foreign Affairs, Defence and Trade, *'Rough Justice? An Investigation into Allegations of Brutality in the Army's Parachute Battalion'*, 11 April 2001. A transcript of the Report can be found at: [http://www.aph.gov.au/house/committee/jfadt/DOD\\_Rept/MJindex.htm](http://www.aph.gov.au/house/committee/jfadt/DOD_Rept/MJindex.htm).

<sup>38</sup> Mr J.C.S. Burchett, QC, *A Report of an Inquiry into Military Justice in the Australian Defence Force*, 13 July 2001.

<sup>39</sup> Human Rights and Equal Opportunity Commission, *A Last Resort? The report of the National Inquiry into Children in Immigration Detention*, p. 850. A copy of the report can be accessed at: [http://www.humanrights.gov.au/human\\_rights/children\\_detention\\_report/](http://www.humanrights.gov.au/human_rights/children_detention_report/).

## Appendices and tables

### APPENDIX I. OFFENCES AND PENALTIES

Section	Offence	Maximum penalty
---------	---------	-----------------

#### **Federal**

#### ***Criminal Code Act 1995***

Division 268	Proscribes: Genocide Crimes against humanity War crimes	Life 17 years - life 10 years - life
-----------------	--	--

#### **Australian Capital Territory**

#### ***Crimes Act 1900***

s. 19	Intentionally inflicting grievous bodily harm	15 years
s. 20	Recklessly inflicting grievous bodily harm	10 years
s. 21	Wounding	5 years
s. 22	Assault with intent to commit certain indictable offences (i.e. those which are punishable with a maximum period of imprisonment for 5 years or more)	5 years
s. 23	Inflicting actual bodily harm	5 years
s. 24	Assault occasioning actual bodily harm	5 years
s. 25	Causing grievous bodily harm	2 years
s. 26	Common assault	2 years
s. 27	Acts endangering life	Where the offence is intentional and unlawful - 10 years; and where there is intention to commit an indictable offence against the person) punishable with more than 10 years imprisonment - 15 years
s. 28	Acts endangering health	5 years
s. 30	Threat to kill	10 years
s. 31	Threat to inflict grievous bodily harm	5 years
s. 32	Demands accompanied by threats	20 years
s. 33	Possession of an object with intent to kill	5 years
s. 34	Forcible confinement	10 years
s. 35	Stalking	5 years if in breach of injunction or court order; or in possession of offensive weapons; 2 years otherwise
s. 36	Torture	10 years

Section	Offence	Maximum penalty
s. 37	Abduction of young person	5 years
s. 38	Kidnapping	20 years
s. 39	Neglect etc of children	200 penalty units for ill treatment, abuse or neglect/ 2 years/both; 100 penalty units for leaving unattended in circumstances where a child could suffer injury or sickness or otherwise be in danger/ 1 year/both
s. 40	Unlawfully taking a child	10 years
s. 41	Exposing or abandoning a child	5 years
s. 42	Child destruction	15 years
s. 43	Childbirth - grievous bodily harm	10 years
s. 48	Misconduct with regard to corpses	2 years
s. 51	Sexual assault in the first degree (i.e. inflicting grievous bodily harm with intent to have sexual intercourse)	17 years; and where the accused acted in company with any other person - 20 years
s. 52	Sexual assault in the second degree (i.e. inflicting actual bodily harm with intent to engage in sexual intercourse)	14 years; and where the accused acted in company with any other person - 17 years
s. 53	Sexual assault in the third degree (i.e. unlawfully assaulting, or threatening to inflict grievous or actual bodily harm with intent to engage in sexual intercourse)	12 years; and where the accused acted in company with any other person - 14 years
s. 54	Sexual intercourse without consent	12 years; and where the accused acted in company with any other person - 14 years
s. 55	Sexual intercourse with a young person	Where the young person is under 10 years of age - 17 years; and where the young person is under 16 years of age - 14 years
s. 56	Maintaining a sexual relationship with a young person	7 years; and where a person convicted of this offence was found to have committed another offence in relation to the young person, if the other offence is punishable by imprisonment for less than 14 years - 14 years; and if the other offence is punishable by imprisonment for 14 years or more - life imprisonment

Section	Offence	Maximum penalty
s. 57	Act of indecency in the first degree (i.e. inflicting grievous bodily harm with intent to engage in an act of indecency)	15 years
s. 58	Act of indecency in the second degree (i.e. inflicting actual bodily harm with intent to engage in an act of indecency)	12 years
s. 59	Act of indecency in the third degree (i.e. unlawfully assaulting, or threatening to inflict grievous or actual bodily harm with intent to engage in an act of indecency)	10 years
s. 60	Act of indecency without consent	5 years; and where the accused acted in company with any other person - 7 years
s. 61	Act of indecency with a young person	Where the young person is under 10 years of age - 12 years; and where the young person is under 16 years of age - 10 years
s. 62	Incest and similar offences	Under the age of 10 - 20 years Under the age of 16 - 15 years Over the age of 16 - 10 years
s. 63	Abduction for purposes of sexual intercourse	10 years
s. 63	Employment of young people for pornographic purposes	10 years
s. 66	Using the internet to deprave young people	First offence - 5 years Second offence - 10 years
s. 74	Female genital mutilation	15 years
s. 75	Remove child from Territory for purposes of female genital mutilation	7 years
s. 79	Sexual servitude offences	Aggravated offence - 19 years Any other case - 15 years
s. 80	Deceptive recruiting for sexual services	Aggravated offence - 9 years Any other case - 7 years

***Criminal Code 2002***

s. 106	Threat to cause property damage - fear of death or serious harm	700 penalty units/ 7 years/ both
--------	---	----------------------------------

***Children and Young People Act 1999***

s. 369	Employment of children and young people in certain businesses	100 penalty units/ 1 year/ both
s. 370	Employment of young children	50 penalty units/ 6 months/ both

Section	Offence	Maximum penalty
s. 374	Dangerous employment	200 penalty units/ 2 years contrary to condition 100 penalty units/ 1 year
s. 376	Duty of employers of children and young people	50 penalty units
s. 388	Tattooing of children and young people	50 penalty units
s. 389	Offences in relation to child or young person subject to an order	50 penalty units/ 6 months/ both

One penalty unit = \$ 100 for an individual

**New South Wales**

***Crimes Act 1900***

s. 18	Murder	Life
s. 24A	Manslaughter	25 years
s. 26	Conspiring to commit murder	25 years
s. 27	Acts done to person with intent to murder	25 years
s. 28	Acts done to property with intent to murder	25 years
s. 29	Attempts to commit murder	25 years
s. 33	Wounding with intent to do bodily harm or resist arrest	25 years
s. 33A	Maliciously discharge a loaded weapon	14 years
s. 35	Malicious wounding or inflicting grievous bodily harm	7 years
s. 35A	Maliciously cause dog to inflict grievous or actual bodily harm	7 years and 5 years respectively
s. 36	Causing grievous bodily disease	25 years
s. 37	Attempts to choke, suffocate or strangle	25 years
s. 38	Using chloroform to commit an offence	25 years
s. 39	Using poison so as to endanger life	10 years
s. 40	Discharging loaded arms with intent	14 years
s. 43	Exposing or abandoning a child under 7 years	5 years imprisonment
s. 43A	Failure of persons with parental responsibility to care for child	5 years imprisonment
s. 44	Not providing wife, child or servant with food etc	5 years imprisonment
s. 55	Possessing or making explosives with intent to injure the person	5 years
s. 58	Assault with intent to commit a serious indictable offence on certain officers	5 years
s. 59	Assault occasioning actual bodily harm	5 years
s. 61	Common assault	2 years
s. 61I	Sexual assault	14 years

Section	Offence	Maximum penalty
s. 61J	Aggravated sexual assault	20 years
s. 61JA	Aggravated sexual assault in company	Life
s. 61L	Indecent assault	5 years
s. 61M	Aggravated indecent assault	7 years
s. 61N(1)	Acts of indecency with a person under 16 years	2 years
s. 61N(2)	Acts of indecency with a person above 16 years and under 18 years	18 months
s. 61O	Aggravated acts of indecency Under 16 years of age Above 16 years of age Under 10 years of age	5 years 3 years 7 years
s. 80D(1)	Causing sexual servitude	15 years
s. 80D(2)	Aggravated sexual servitude	19 years
s. 80E(1)	Conducting a business that involves sexual servitude	15 years
s. 80E(2)	Conducting a business that involves sexual servitude in aggravated circumstances	19 years
s. 344A	Attempts to commit an act shall be liable to the penalty of that act	
s. 345	Principals in the second degree in any felony shall be liable to the penalty of that felony	
s. 346	Accessories before the fact shall be liable to same punishment as the principal felon	
s. 347	Accessories after the fact shall be liable to the same punishment as the principal felon	

***Children (Care and Protection Act) 1987***

s. 51	Endangering children in employment	Not exceeding 10 penalty units or imprisonment exceeding 12 months
-------	------------------------------------	--

***Children and Young Persons (Care and Protection) Act 1998***

s. 175	Special medical treatment	7 years imprisonment
s. 222	Endangering children in employment	200 penalty units
s. 227	Child and young person abuse	200 penalty units
s. 228	Neglect of children and young persons	200 penalty units
s. 229	Unauthorised removal of children and young people	200 penalty units
s. 230	Tattooing a child or young person	200 penalty units
s. 231	Leaving a child or young person unsupervised in cars	200 penalty units

Section	Offence	Maximum penalty
---------	---------	-----------------

***Guardianship Act 1987***

s. 35	Carrying out fertility or experimental treatments without consent or legal authority, in contravention of the Act; or in the case of a medical or dental treatment, in contravention of the Act.	7 years (on conviction on indictment)  1 year and/or 10 penalty units (on summary conviction)
-------	---	---

***Crimes (Administration of Sentences) Regulation 2001***

cl. 121	Use of force in dealing with inmates	Applicable penalties are found under the <i>Public Sector Management and Employment Act 2002</i>
cl. 243	Use of insulting or abusive language	Applicable penalties are found under the <i>Public Sector Management and Employment Act 2002</i>

One penalty unit = \$ 110

**Northern Territory**

***Criminal Code***

s. 125	Offering violence to officiating ministers of religion	2 years
s. 127	Sexual intercourse or gross indecency involving child under 16 years	25 years
s. 128	Sexual intercourse or gross indecency involving child over 16 years under special care	8 years
s. 130	Sexual intercourse or gross indecency by provider of services to mentally ill or handicapped person	20 years
s. 131	Attempts at procurement of young persons or mentally ill or handicapped person	5 years
s. 131A	Unlawful sexual relations with child	Life
s. 132	Indecent dealing with child under 16 years	14 years
s. 133	Gross indecency in public	2 years
s. 134	Incest	25 years
s. 154	Dangerous acts or omissions	14 years
s. 164	Murder	Life
s. 167	Manslaughter	Life
s. 165	Attempt to murder	Life
s. 166	Threats to kill	7 years

Section	Offence	Maximum penalty
s. 175	Disabling in order to commit a crime	Life
s. 176	Stupefying in order to commit a crime	Life
s. 177	Acts intended to cause grievous bodily harm or prevent apprehension	Life
s. 181	Grievous harm	14 years
s. 182	Attempting to injure by explosive substances	14 years
s. 185	Setting man-traps	3 years
s. 186	Bodily harm	2 years
s. 186B	Female genital mutilation	14 years
s. 188	Common assault	5 years
s. 189A	Assaults on police	16 years
s. 190	Assaults on the Administrator or judges or magistrates	14 years
s. 191	Assaults on member or crew of aircraft	14 years
s. 192	Sexual intercourse and gross indecency without consent	Life
s. 192B	Coerced sexual self-manipulation	17 years
s. 193	Assaults with intent to commit an offence	3 years
s. 194	Kidnapping for ransom	20 years
s. 195	Kidnapping	7 years
s. 196	Deprivation of liberty	7 years
s. 198	Concealment of matters affecting liberty	3 years
s. 199	Wrongful custody of mentally ill person	2 years
s. 200	Threats	2 years
s. 201	Abduction/ enticements or detention of child under 16 years for immoral purposes	7 years
s. 202	Abduction of children under 16 years	14 years
s. 202A(1)	Sexual servitude - adult Sexual servitude - child over 12 Sexual servitude - child under 12	15 years 20 years Life
s. 202C	Conducting business involving sexual servitude - adult Conducting business involving sexual servitude - child over 12 Conducting business involving sexual servitude - child under 12	15 years 20 years Life
s. 202D	Deceptive recruiting for sexual services Deceptive recruiting for sexual services - child	10 years 15 years
s. 211	Robbery	Life
s. 212	Assaults with intent to steal	Life

Section	Offence	Maximum penalty
<b><i>Mental Health and Related Services Act 1998</i></b>		
s. 58 (2)	A person must not perform psychotherapy on another person	\$10,000
s. 59	A person must not administer to or perform on another person, deep sleep therapy; or insulin coma or sub-coma therapy	\$10,000
s. 60	A person must not perform on another person, as a treatment for mental illness or mental disturbance, a treatment that is intended, or is reasonably likely, to render the other person permanently infertile	\$10,000
s. 61 (2)	A person must not apply mechanical restraint to a person other than in accordance with s. 61(1)	\$5,000
s. 62 (2)	A person must not keep another person in seclusion other than in accordance with s. 61(1)	\$5,000
s. 63 (2)	A person must not perform non-psychiatric treatment on a person who is an involuntary patient or subject to a community management order other than in accordance with s. 63 (1)	\$5,000
s. 64 (1)	A person must not perform a major medical procedure on a person who is an involuntary patient or subject to a community management order other than in accordance with this section	\$5,000
s. 65	A person must not perform a clinical trial or experimental treatment on a person who is an involuntary patient or subject to a community management order other than in accordance with this section	\$5,000
s. 66 (1)	A person must not perform electro convulsive therapy on another person unless in accordance with this section	\$5,000
s. 162 (2)	A person must not by fraudulent means, have or attempt to have a person who is not mentally ill or mentally disturbed, (a) admitted to an approved treatment facility; or (b) treated at an approved treatment facility or by an approved treatment agency	\$5,000

Section	Offence	Maximum penalty
---------	---------	-----------------

***Adult Guardianship Act 2004***

s. 20	A guardian must act in such a way as to protect the represented person from neglect, abuse or exploitation	Court may review guardianship order. Possible exposure to civil/criminal liability
s. 21	A person must not carry out a major medical or dental procedure in contravention of this Act	Guilty of professional misconduct

***Community Welfare Act 1983***

s. 14 (1)	Failure to report suspected child maltreatment	200 penalty units
s. 90	Drugs not to be administered to child in child care centre	100 penalty units if natural person 500 penalty units if body corporate
s. 93	Causing or permitting a child to be employed where such employment would involve activity dangerous to the health or safety of the child	100 penalty units or 6 months imprisonment if natural person 500 penalty points if body corporate
s. 96	Unlawful removal of a child from the custody of a person with whom, or a place at which, the child has been placed under the Act	200 penalty units or 12 months imprisonment
s. 98	Contravention of, or failure to comply with the Act, Regulations, or an order under the Act or Regulations, for which a penalty is not otherwise stipulated	100 penalty units or 6 months imprisonment

One penalty unit = \$ 110

**Queensland*****Criminal Code 1899***

s. 75	Threatening violence	2 years
s. 78	Interfering with political liberty	(a) 2 years; and (b) 3 years if offender is a public officer
s. 119B	Retaliation against judicial officer, juror, witness or family	7 years
s. 127	Corruption of witnesses	7 years
s. 136	Justices acting oppressively or when interested	3 years
s. 137	Delays to take person before magistrate	2 years
s. 200	Refusal by public officer to perform duty	2 years

Section	Offence	Maximum penalty
s. 208	Unlawful sodomy	(a) 14 years; and (b) Life - if committed against a child under 12 years; or a child, or an intellectually impaired person, who is offender's lineal descendant or under offender's care
s. 209	Attempted sodomy	(a) 7 years; and (b) 14 years in circumstances outlined above
s. 210	Indecent treatment of children under 16	(a) 14 years; and (b) 20 years - if child is under 12 years or if child is lineal descendant of the offender or under the offender's care
s. 213	Owner etc permitting abuse of children on premises	(a) 10 years; and (b) 14 years - if child under 12 years and life - if child was subjected to sodomy or carnal knowledge
s. 215	Carnal knowledge with or of children under 16 years	(a) 14 years; and (b) life - if child is under 12 years
s. 216	Abuse of intellectually impaired persons	(a) 14 years - if offender has, or attempts to have carnal knowledge of person (but life - if offender is the guardian/carer of that person); (b) 10 years - for acts of indecent dealing (but 14 years - if offender is the guardian/carer of that person)
s. 217	Procuring young person etc for carnal knowledge	14 years
s. 218	Procuring sexual acts by coercion etc	14 years
s. 219	Taking child for immoral purpose	(a) 10 years; (b) 14 years - if child under 12 years and life - if child taken for purpose of carnal knowledge or sodomy
s. 229B	Maintaining a sexual relationship with a child	Life
s. 295	Causing death by threats	Mandatory life or life, according to the circumstance of the case

Section	Offence	Maximum penalty
s. 296	Acceleration of death	Mandatory life or life, according to the circumstances of the case
s.305	Murder	Mandatory life or an indefinite sentence per Penalties and Sentences Act 1992
s. 306	Attempt to murder	Life
s. 307	Accessory after the fact to murder	Life
s. 309	Conspiring to murder	14 years
s. 310	Manslaughter	Life
s. 315	Disabling in order to commit indictable offence	Life

***Corrective Services Act 2000***

s. 11	Prisoners to be informed of entitlements and duties	Whilst this is not a legally punishable offence, it is now a positive duty to inform a prisoner of their entitlements and duties
-------	---	--

***Juvenile Justice Act 1992***

s. 279	A person must not enter a detention centre without lawful authority or convey or deliver into a centre any prohibited article (liquor, drugs, money)	1 year or 40 penalty units
--------	--	----------------------------

***Mental Health Act 2000***

s. 518	Offences relating to ill-treatment	100 penalty units or 1 year
s. 522	False or misleading documents	40 penalty units

One penalty unit = \$75

***South Australia******Criminal Law Consolidation Act 1935***

s. 11	Murder	Life
s. 12	Conspiring or soliciting to commit murder	Life
s. 12a	Cause death by an intentional act of violence	Life
s. 19	Unlawful threats	5-12 years
s. 19AA	Unlawful stalking	3-5 years
s. 19A	Cause death and injury by reckless driving etc	4-15 years
s. 21	Wounding etc. with intent to do grievous bodily harm	Life
s. 23	Malicious wounding etc	5-8 years
s. 25	Choking or stupefying to commit indictable offence	Life

Section	Offence	Maximum penalty
s. 27	Maliciously administering poison etc with intent to injure, aggrieve or annoy any other person	3 years
s. 29	Acts endangering life or creating risk of grievous bodily harm	5-15 years
s. 30	Fail to provide food etc in certain circumstances	3 years
s. 31	Possess object with intent to kill or cause grievous bodily injury	5-10 years
s. 33A	Prohibition of female genital mutilation	7 years
s. 33B	Removal of child from State for genital mutilation	7 years
s. 39	Common assault	2-3 years
s. 40	Assaults occasioning harm	5-8 years
s. 47A	Threaten another person with a firearm	4 years
s. 48	Rape	Life
s. 49	Unlawful sexual intercourse	Life
s. 56	Indecent assault	8-10 years
s. 58	Acts of gross indecency	3-5 years
s. 58A	Incite or procure commission by child of indecent act for prurient purposes	2-3 years
s. 59	Abduction of male or female person	14 years
s. 64	Procure sexual intercourse	7 years
s. 74	Persistent sexual abuse of a child	Life
s. 80	Abduction of child under 16 years	7 years

***Mental Health Act 1993***

s. 30	Neglect or ill treatment	2 years or \$8,000 fine
s. 31	Offences in relation to authorisations and orders	2 years or \$8,000 fine

***Guardianship and Administration Act 1993***

s. 61	Prescribed treatment not to be carried out without Board's consent	2 years or \$10,000 fine
s. 76	Ill treatment or neglect of a person with mental incapacity	2 years or \$10,000 fine
s. 77	Offences in relation to certain certificates and reports	2 years or \$20,000 fine

**Tasmania**

***Criminal Code 1924***

s. 115	Omission by public officer to perform duty	21 years
s. 126	Unlawful sexual intercourse with insane persons or defectives	21 years
s. 127	Indecent assault	21 years

Section	Offence	Maximum penalty
s. 127A	Aggravated sexual assault	21 years
s. 144	Duty to provide necessities	21 years
s. 152	Omission of duty	21 years
s. 158	Murder	21 years
s. 159	Manslaughter	21 years
s. 161	Accessory after the fact to murder	21 years
s. 170	Committing an unlawful act intending to cause bodily harm	21 years
s. 172	Wounding or causing grievous bodily harm	21 years
s. 175	Causing injury by poison	21 years
s. 176	Administering poison	21 years
s. 177	Failing to supply necessities	21 years
s. 183	Aggravated assault	21 years
s. 184	Assault	21 years
s. 185	Rape	21 years

***Alcohol and Drug Dependency Act 1968***

s. 63	Ill treatment or neglect of patients in treatment centres	12 months
-------	---	-----------

***Children, Young Persons and Their Families Act 1977***

s. 13	Responsibility to prevent abuse or neglect	Fine not exceeding 20 penalty units
s. 91	Failure to protect child from harm	50 penalty units or imprisonment for a term not exceeding 2 years or both

One penalty point = \$ 100

***Guardianship and Administration Act 1995***

s. 38	Carrying out medical treatment contrary to the Act on indictment	21 years
-------	--	----------

***Mental Health Act 1963***

s. 106 (1)	Ill treatment or neglect of patients by staff	6 months
s. 106 (3)	Ill treatment or neglect of mental illness patients by responsible persons	6 months
s. 107	Improper use of restraint and seclusion of patients with mental illness	6 months

***Mental Health Act 1996***

s. 87	Ill treatment or neglect of patients	2 years
-------	--------------------------------------	---------

Section	Offence	Maximum penalty
---------	---------	-----------------

**Victoria*****Crimes Act 1958***

s. 3	Punishment for murder	Life or imprisonment for such other term as is fixed by the court
s. 3A	Unintentional killing in the course of furtherance of a crime of violence	Person liable to be convicted of murder. Penalties as above
s. 5	Punishment of manslaughter	20 years imprisonment or a fine in addition to or instead of a term of imprisonment
s. 16	Causing serious injury intentionally	20 years
s. 17	Causing serious injury recklessly	15 years
s. 18	Causing injury intentionally or recklessly	10 years if the injury was caused intentionally; 5 years if the injury was caused recklessly
s. 20	Threats to kill	10 years
s. 21	Threats to inflict serious injury	5 years
s. 21A	Stalking	10 years
s. 22	Conduct endangering life	10 years
s. 23	Conduct causing serious injury	5 years
s. 24	Negligently causing serious injury	5 years
s. 27	Extortion with threat to kill	15 years
s. 31	Criminal assaults	5 years
s. 38	Rape	25 years
s. 39	Indecent assault	10 years
s. 40	Assault with intent to rape	10 years
s. 321	Conspiracy to commit an offence against a law or laws of Victoria	Penalty for the relevant offence fixed by law; if penalty for relevant offences is imprisonment where maximum length of term is not prescribed by law, then 15 years; if the relevant offence is murder, the person is liable to life imprisonment or imprisonment for a term fixed by the court

Section	Offence	Maximum penalty
s. 321G	Incitement	Penalty for the relevant offence fixed by law; if penalty for relevant offence/s is imprisonment where maximum length of term is not prescribed by law, then 15 years; if the relevant offence is murder, the person is liable to life imprisonment or imprisonment for a term fixed by the court
s. 323	Abettors in indictable offences	A person who aids, abets, counsels or procures the commission of an indictable offence can be punished as a principal offender
s. 325	Accessories - a person who does any act with the purpose of impeding the apprehension, prosecution, conviction or punishment of a principal offender is guilty of an indictable offence	If the principal offence is one for which the maximum penalty is life imprisonment, then a maximum penalty of 20 years; in any other case, to imprisonment for a term which is neither more than 60 months in length; nor more than one-half the length of the longest term which may be imposed on first conviction for the principal offence
Common law	Common assault	5 years
Common law	False imprisonment	10 years
Common law	Kidnapping	25 years

***Summary Offences Act 1966***

s. 23	Common assault	\$1500 fine or 3 months imprisonment
s. 24	Aggravated assault	\$2500 fine or 6 months imprisonment

Section	Offence	Maximum penalty
---------	---------	-----------------

***Mental Health Act 1986***

Part 5	<p>Proscribed conduct in relation to mentally ill persons, unless the procedure is carried out in accordance with legislation or with the consent of the person:</p> <ul style="list-style-type: none"> <li>• psychosurgery</li> <li>• electroconvulsive therapy</li> <li>• mechanical restraint, seclusion, and non-psychiatric</li> <li>• medical treatment</li> </ul>	\$2,000 fine. A community based order may also be imposed
--------	--	---

***Intellectually Disabled Persons' Services Act 1986***

Div 3 of Part 5	<p>Proscribed actions in relation to intellectually disabled persons unless the procedure is carried out in accordance with legislation</p> <ul style="list-style-type: none"> <li>• mechanical or chemical bodily restraint</li> <li>• seclusion</li> <li>• aversive therapy</li> </ul>	\$2,000 fine. A community based order may also be imposed
-----------------	--	---

***Alcoholics and Drug Dependent Persons Act 1968***

s. 23	To strike, wound, ill treat or wilfully neglect any person detained in an alcohol and drug assessment or treatment centre	3 years
-------	---	---------

***Children and Young Persons Act 1989***

s. 261	<p>It is an offence for any person who has a duty of care in relation to a child to take action that results in the child suffering significant harm from physical injury or sexual abuse, significant emotional or psychological harm, or which is likely to result in the child's physical development or health being significantly harmed.</p> <p>It is also an offence to intentionally fail to take action that results in the child's physical development or health being harmed</p>	\$5,000 or imprisonment for up to 12 months. The full range of sentencing options under the Sentencing Act 1991 (i.e. intensive correction orders; community based orders) are also available
--------	--	---

Section	Offence	Maximum penalty
---------	---------	-----------------

**Western Australia*****Criminal Code***

s. 294	Intentionally causing grievous bodily harm or prevent arrest	20 years
s. 295	Preventing escape from wreck	20 years
s. 297	Grievous bodily harm	7 years
s. 298	Causing explosion likely to endanger life	20 years
s. 299	Attempting to cause explosion likely to endanger life	14 years
s. 300	Maliciously administering poison with intent to harm	14 years
s. 301	Wounding and similar acts	5 years
s. 302	Failure to supply necessities of life	3 years
s. 303	Endangering life or health of apprentices or servants	3 years
s. 304	Endangering life of children by exposure	3 years
s. 305	Setting mantraps	3 years
s. 313	Common assault	18 months
s. 317	Assaults occasioning bodily harm	5 years
s. 317A	Assaults with intent	5 years
s. 318	Serious assaults	10 years
s. 320	Sexual offences against child under 13	20 years
s. 321	Sexual offences against child or over 13 and under 16	20 years
s. 322	Sexual offences by person in authority against child of or over 16	10 years
s. 322a	Sexual offences against juvenile male	5 years
s. 323	Indecent assault	5 years
s. 324	Aggravated indecent assault	7 years
s. 325	Sexual penetration without consent	20 years
s. 326	Aggravated sexual penetration without consent	20 years
s. 327	Sexual coercion	14 years
s. 328	Aggravated sexual coercion	20 years
s. 330	Sexual offences against incapable person	20 years
s. 332	Kidnapping	20 years
s. 333	Deprivation of liberty	10 years
s. 336	Procuring the apprehension or detention of a person not suffering from a mental disorder	3 years
s. 337	Unlawful custody of persons suffering from mental disorder	2 years
s. 338A	Threats with intent to influence	10 years

Section	Offence	Maximum penalty
s. 338B	Threats	7 years
s. 338D	Unlawful stalking	8 years
s. 554	Attempt to commit indictable offence	14 years
s. 554	Incitement to commit indictable offence	14 years
s. 555	Summary trial of attempt or incitement	Half statutory penalty on indictment; or summary conviction penalty whichever is lesser
s. 555A	Attempts and incitement (simple offences)	Statutory penalty
s. 556	Attempt to procure commission of criminal act	Statutory penalty
s. 558	Conspiracy to commit indictable offence	14 years
s. 560	Summary trial of conspiracy to commit indictable offence	Statutory penalty
s. 562	Accessory after the fact (indictable offence)	14 years
s. 563	Summary trial of accessory after the fact	(see s.555)

***Child Welfare Act***

s. 31A	Punishment for misconduct or neglect causing a child to be in need of cure and protection	1 year
--------	---	--------

***Disability Services Act 1993***

s. 53	Offence of ill-treatment	1 year or \$4,000
-------	--------------------------	-------------------

***Mental Health Act 1996***

s. 162	Offence of ill-treatment	1 year or \$4,000
--------	--------------------------	-------------------

## APPENDIX II. ADMINISTRATIVE REVIEW OF PUBLIC OFFICER CONDUCT

### Appendix 2.1. Police officers

<b>Federal</b>	Merit Protection Review Agency Ombudsman Internal investigations
<b>Australian Capital Territory</b>	Discrimination Commissioner Official Prison Visitors Ombudsman Internal investigations
<b>New South Wales</b>	Independent Commission Against Corruption Police Integrity Commission Police Service Internal Affairs Branch Ombudsman
<b>Northern Territory</b>	Anti-Discrimination Commission Police Professional Responsibility Unit Ombudsman
<b>Queensland</b>	Ethical Standards Command Commissioner for Children and Young People Crime and Misconduct Commission Misconduct Tribunal Integrity Commissioner
<b>South Australia</b>	Anti-Corruption Branch Police Complaints Authority Police Disciplinary Tribunal Internal Investigations Branch
<b>Tasmania</b>	Internal Investigation Unit Ombudsman
<b>Victoria</b>	Ethical Standards Department, Victoria Police Police Ombudsman
<b>Western Australia</b>	Corruption and Crime Commission Police Complaints Administration Centre Ombudsman

### Appendix 2.2. Prison officers

<b>Australian Capital Territory</b>	Human Rights and Discrimination Commissioner Official Prison Visitors Ombudsman Internal investigations
<b>New South Wales</b>	Employee Relations and Professional Conduct Unit, Department of Juvenile Justice Chief Executive Office, Corrections Health Service Independent Commission Against Corruption Professional Standards Unit, Department of Corrective Services Ombudsman

<b>Northern Territory</b>	Anti-Discrimination Commission Official Prison Visitors Ombudsman
<b>Queensland</b>	Administrative complaints and review mechanisms Commissioner for Children and Young People Community Visitor program Crime and Misconduct Commission Misconduct Tribunals Parliamentary Commissioner for Administrative Investigations Ombudsman
<b>South Australia</b>	Senior Investigation Officer, Department of Correctional Services Visiting Tribunal Ombudsman
<b>Tasmania</b>	Head of Agency Ombudsman
<b>Victoria</b>	Official Prison Visitors Ombudsman
<b>Western Australia</b>	Aboriginal Visitors Scheme Corruption and Crime Commission Independent Visitor Services Inspector of Custodial Services Juvenile Detention Centre Visitors Prison Visitors Department of Justice Investigations Unit Ombudsman

### **Appendix 2.3. Military personnel**

<b>Federal</b>	Boards of Inquiry Disciplinary Tribunals Federal Court of Australia General Courts of Inquiry Human Rights and Equal Opportunity Commission Commonwealth Ombudsman (Deputy Ombudsman (Defence)) Internal Investigating Officers
----------------	---

### **Appendix 2.4. Immigration officers**

<b>Federal</b>	Federal Court of Australia Human Rights and Equal Opportunity Commission Values and Conduct Section, Department of Immigration and Multicultural and Indigenous Affairs Commonwealth Ombudsman
----------------	--

**Appendix 2.5. Customs officers**

<b>Federal</b>	Federal Court of Australia Human Rights and Equal Opportunity Commission Commonwealth Ombudsman Internal investigations by the Australian Customs Service
----------------	--

**Appendix 2.6. Public medical officers**

<b>Australian Capital Territory</b>	Chief Psychiatrist Clinical Director of Mental Health Community Advocate Community and Health Services Complaints Commissioner Discrimination Commissioner Medical Board Official Visitor of Public Hospitals Public Sector Disciplinary Committee Ombudsman
<b>New South Wales</b>	Health Care Complaints Commission Independent Commission Against Corruption Mental Health Review Tribunal Ombudsman
<b>Northern Territory</b>	Anti-Discrimination Commission Community Visitor Program Health and Community Services Complaints Commission Mental Health Review Tribunal Patient Advocate, Royal Darwin Hospital Ombudsman
<b>Queensland</b>	Anti-Discrimination Commission Crime and Misconduct Commission Health Rights Commission Medical Assessment Tribunal Office of Health Registration Practitioner Boards Queensland Police Service Ombudsman
<b>South Australia</b>	Health Commission Medical Practitioners Board Medical Practitioners Tribunal Mental Health Review Tribunal Public Advocate
<b>Tasmania</b>	Head of Agency Health Complaints Commissioner Mental Health Review Tribunal Public Guardian Ombudsman

<b>Victoria</b>	Mental Health Review Board Community Visitors Health Services Commissioner Chief Psychiatrist Intellectual Disability Review Panel Ombudsman
<b>Western Australia</b>	Board of Visitors Medical Board Mental Health Review Board (Mental Health) Council of Official Visitors Office of Health Review Parliamentary Commissioner for Administrative Investigations

### Appendix 2.7. Residential carers

<b>Australian Capital Territory</b>	Community and Health Services Complaints Commissioner Discrimination Commissioner Internal investigations by Department Office of the Community Advocate Official Visitors Public Sector Management Inquiry Ombudsman
<b>New South Wales</b>	Administrative Decisions Tribunal Allegations Against Employees Unit, Department of Community Services Client Feedback and Assistance Unit, Department of Community Services Community Services Appeals Tribunal Guardianship Board Health Care Complaints Commission Independent Commission Against Corruption Mental Health Review Tribunal Ombudsman
<b>Northern Territory</b>	Minister responsible for the <i>Community Welfare Act</i> Ombudsman
<b>Queensland</b>	Adult Guardian Children's Services Tribunal Commissioner for Children and Young People Crime and Misconduct Commission Health Rights Commission Misconduct Tribunals Parliamentary Commissioner for Administrative Investigations

<b>South Australia</b>	Commissioner of Police Director, Young Offenders Unit Guardianship Board Manager, Secure Care Centre Medical Board Medical Practitioners Professional Conduct Tribunal Police Complaints Authority Ombudsman
<b>Tasmania</b>	Head of Agency Ombudsman
<b>Victoria</b>	Department of Human Services Health Services Commissioner Police Public Advocate Ombudsman
<b>Western Australia</b>	Commissioner for Equal Opportunity Guardianship and Administration Board Public Advocate Ombudsman Internal responses to complaints (Consumer Advocate, Case Review Board (child wards), Minister for Family and Children's Services)

#### **Appendix 2.8. Public schoolteachers**

<b>Australian Capital Territory</b>	Discrimination Commissioner Internal investigations by Department of Education and Children's & Family Services Bureau Public Sector Management Inquiry
<b>New South Wales</b>	Director General, Department of Education and Training Anti-Discrimination Board Independent Commission Against Corruption Privacy NSW Ombudsman
<b>Northern Territory</b>	Anti-Discrimination Commission Chief Executive Officer Department of Employment, Education and Training Minister for Employment, Education and Training Teacher Registration Board Ombudsman
<b>Queensland</b>	Anti-Discrimination Commission Crime and Misconduct Commission Disciplinary action under the <i>Public Service Act 1996</i> Disciplinary inquiries under Education ( <i>Teacher Registration</i> ) Act 1988 Misconduct Tribunals Ombudsman

<b>South Australia</b>	Commissioner for Equal Opportunity Department of Education and Children's Services Director-General, Department of Education and Children's Services District Director Manager, Ethical Standards and Merit Protection Ombudsman
<b>Tasmania</b>	Head of Agency Teachers Registration Board Ombudsman
<b>Victoria</b>	Deputy Secretary, Office of School Education Merit Protection Board
<b>Western Australia</b>	Ombudsman Internal responses to complaints (Principal, District Superintendent, Director General)

**Table 1**

**Legislation relevant to Australia's obligations under the Convention**

<b>Federal</b>	<b>Australian Capital Territory</b>	<b>New South Wales</b>
Aged Care Act 1997 Crimes Act 1914 Crimes (Aviation) Act 1991 Crimes at Sea Act 2000 Crimes (Torture) Act 1988 Criminal Code Act 1995 Customs Act 1901 Defence Act 1903 Defence Force Discipline Act 1982 Disability Discrimination Act 1992 Extradition Act 1988 Family Law Act 1975 Freedom of Information Act 1982 Human Rights and Equal Opportunity Act 1986 International Criminal Court Act 2002 Ombudsman Act 1976 Public Service Act 1999 Racial Discrimination Act 1975 (incorporating Part IIA dealing with racially offensive behaviour) Sex Discrimination Act 1984 War Crimes Act 1945	Children and Young People Act 1999 Crimes Act 1900 Crimes (Forensic Procedures) Act 2000 Criminal Code 2002 Discrimination Act 1991 Freedom of Information Act 1989 Human Rights Act 2004 Mental Health (Treatment and Care) Act 1994 Ombudsman Act 1989 (ACT) Prisoners (International Transfer) Act 1999 Protection Orders Act 2001 Rehabilitation of Offenders (Interim) Act 2001	Anti-Discrimination Act 1977 Child Protection (Offenders Registration) Act 2000 Child Protection (Prohibited Employment) Act 1998 Children and Young Persons (Care and Protection) Act 1998 Children (Care and Protection) Act 1987 Children (Detention Centres) Act 1987 Commission for Children and Young People Act 1998 Correctional Centres Act 1952 Crimes Act 1900 Crimes (Child Sexual Tourism) Amendment Act 1994 Education Reform Amendment (School Discipline) Act 1995 Freedom of Information Act 1989 Guardianship Act 1987 Independent Commission Against Corruption Act 1988 Ombudsman Act 1974 Police Integrity Commission Act 1996 Public Sector Employment and Management Act 2002 Police Service Act 1990 Protected Disclosures Act 1994

Northern Territory	Queensland	South Australia
<p>Adult Guardianship Act</p> <p>Anti-Discrimination Act 1992</p> <p>Criminal Code</p> <p>Community Welfare Act 1983</p> <p>Education Act 1979</p> <p>Health and Community Services Complaints Act</p> <p>Juvenile Justice Act</p> <p>Mental Health and Related Services Act 1998</p> <p>Ombudsman (Northern Territory) Act 1977</p> <p>Police Administration Act 1979</p> <p>Prison (Correctional Services) Act 1980</p> <p>Teacher Registration (Northern Territory) Act 2004</p>	<p>Anti-Discrimination Act 1991</p> <p>Bail Act 1980</p> <p>Child Care Act 2002</p> <p>Child Care Regulation 2003</p> <p>Child Protection Act 1999</p> <p>Child Protection (International Measures) Act 2003</p> <p>Child Protection Regulation 2000</p> <p>Children Services Tribunal Act 2000</p> <p>Commission for Children and Young People Act 2000</p> <p>Corrective Services Act 2000</p> <p>Corrective Services Regulations 2001</p> <p>Crime and Misconduct Act 2001</p> <p>Criminal Code Act 1899</p> <p>Domestic and Family Violence Protection Act 1989</p> <p>Domestic and Family Violence Protection Regulation 2003</p> <p>Education (General Provisions) Act 1989</p> <p>Education (Accreditation of Non-State Schools) Act 2001 and Regulation Education (Teacher Registration) Act 1988</p> <p>Education (Teacher Registration) By-law 1999</p> <p>Family Services Act 1987</p>	<p>Consent to Medical Treatment and Palliative Care Act 1995</p> <p>Corporal Punishment Abolition Act 1971</p> <p>Correctional Services Act 1982</p> <p>Criminal Law Consolidation Act 1935</p> <p>Equal Opportunity Act 1984</p> <p>Family and Community Services Act 1972</p> <p>Freedom of Information Act 1991</p> <p>Guardianship and Administration Act 1993</p> <p>Medical Practitioners Act 1983</p> <p>Mental Health Act 1993</p> <p>Police Act 1998</p> <p>Police Act Regulations</p> <p>General Order 226/01 (Police Corruption)</p> <p>Public and Environmental Health Act 1987</p> <p>Public Sector Management Act 1995</p> <p>Sexual Reassignment Act 1988</p> <p>Summary Offences Act 1953</p> <p>Young Offenders Act 1993</p>

Northern Territory	Queensland	South Australia
	<p>Freedom of Information Act 1992</p> <p>Guardianship and Administration Act 2000</p> <p>Guardian and Administration Regulation 2000</p> <p>Health Services Act 1991</p> <p>Judicial Review Act 1997</p> <p>Juvenile Justice Act 1992</p> <p>Juvenile Justice Regulation 2003</p> <p>Mental Health Act 2000</p> <p>Ombudsman Act 2001 (Qld)</p> <p>Penalties and Sentences Act 1992</p> <p>Police Powers and Responsibilities Act 2000</p> <p>Police Powers and Responsibilities Regulation 2000</p> <p>Police Service Administration Act 1990</p> <p>Police Service (Discipline) Regulations 1990</p> <p>Police Service (Review of Decisions) Regulations 1990</p> <p>Police Service (Administration) Regulations 1990</p> <p>Powers of Attorney Act 1998</p> <p>Whistleblowers Protection Act 1994</p>	

<b>Tasmania</b>	<b>Victoria</b>	<b>Western Australia</b>
Alcohol and Drug Dependency Act 1968	Alcoholics and Drug Dependent Persons Act 1968	Criminal Code Compilation Act 1913
Anti-Discrimination Act 1998	Children and Young Persons Act 1989	Crimes (Offences at Sea) Act 1979
Children, Young Persons and Their Families Act 1997	Corrections Regulations 1988	Child Welfare Act 1947
Corrections Act 1997	Crimes Act 1958	Equal Opportunity Act 1984
Criminal Code Act 1924	Crimes At Sea Act 1999	Education Act 1928
Freedom of Information Act 1991	Education Regulations 1998	Freedom of Information Act 1992
Guardianship and Administration Act 1995	Equal Opportunity Act 1995	Disability Services Act 1993
Health Complaints Act 1995	Freedom of Information Act 1982	Guardianship and Administration Act 1990
HIV/AIDS Preventive Measures Act 1993	Health Services (Conciliation and Review) Act 1987	Health Services (Conciliation and Review) Act 1995
Mental Health Act 1963	Intellectually Disabled Persons' Services Act 1986	Mental Health Act 1996
Ombudsman Act 1978	Mental Health Act 1986	Ombudsman Act 1971
Police Service Act 2003	Ombudsman Act 1973	Police Act 1892
Public Interest Disclosures Act 2002	Summary Offences Act 1966	Prisons Act 1981
Teachers Registration Act 2000	Whistleblowers Protection Act 2001	Public Sector Management Act 1994
Youth Justice Act 1997	Witness Protection Act 2001	Public Interest Disclosure Act 2003
		Young Offenders Act 1994

**Table 2**

**Statutory compensation schemes**

<b>Australian Capital Territory</b>	Victims of Crime (Financial Assistance) Act 1983
<b>New South Wales</b>	Victims Support and Rehabilitation Act 1996 (NSW)
<b>Northern Territory</b>	Crimes (Victims Assistance) Act 1982 (NT)
	Crimes Compensation Act 1992 (NT)
<b>Queensland</b>	Criminal Offence Victims Act 1995 (Qld)
<b>South Australia</b>	Victims of Crime Act 2001 (SA)
<b>Tasmania</b>	Criminal Injuries Compensation Act 1976 (Tas)
<b>Victoria</b>	Victims of Crime Assistance Act 1996 (Vic)
<b>Western Australia</b>	Criminal Injuries Compensation Act 2003 (WA)
	Sentencing Act 1995 (WA)
	Young Offenders Act 1994 (WA)

**Table 3**

**Bilateral extradition arrangements with States parties to the Convention**

**Extradition treaties**

Australia has an extradition treaty or arrangement in force with the following State parties to the Convention against Torture:

Argentina	Germany	Mexico	Spain
Austria	Greece	Monaco	Sweden
Belgium	Hong Kong SAR	Netherlands	Switzerland
Brazil	Hungary	Norway	Turkey
Chile	Ireland	Paraguay	USA
Croatia	Israel	Philippines	Venezuela
Ecuador	Italy	Poland	
Finland	Korea, Republic of	Portugal	
France	Luxembourg	South Africa	

**Non-treaty based extradition relationships**

Australia has non-treaty based extradition relationships with the following countries and State parties to the Convention against Torture:

Antigua and Barbuda	Iceland	Namibia
Bangladesh	Japan	New Zealand
Botswana	Jordan	Nigeria
Cambodia	Kenya	Seychelles
Canada	Latvia	Sierra Leone
Cyprus	Lebanon	Sri Lanka
Denmark	Lesotho	Uganda
Estonia	Malawi	United Kingdom
Ghana	Malta	Zambia
Guyana	Mauritius	

**List of annexes\***

- Annex 1 *Guidelines on Ministerial Powers Under Sections 345, 351, 391, 417, 454 and 501J of the Migration Act 1958.*
- Annex 2 *General Direction No. 9, Criminal Deportation under Section 200 of the Migration Act 1958, December 1998.*

-----

---

\* These annexes may be consulted in the files of the Office of the United Nations High Commissioner for Human Rights.