
amnesty international

Australia

Up-date to briefing for the
Committee against Torture



16 April 2008
AI Index: ASA 12/001/2008

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 0DW, UNITED KINGDOM

TABLE OF CONTENTS

I. INTRODUCTION.....1

II. ISSUES OF CONCERN3

INDIGENOUS DEATHS IN POLICE CUSTODY OPERATIONS (ARTICLES 10 AND 16).....3

INDIGENOUS DEATHS IN CUSTODY (ARTICLES 10, 11 AND 16).....6

MANDATORY DETENTION (ARTICLES 10 AND 16).....8

Australia

Up-date to briefing for the Committee against Torture

I. Introduction

In May 2008, the Committee against Torture (the Committee) is scheduled to examine Australia's third periodic report on its implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture or the Convention). The Committee's consideration of Australia's report was originally scheduled for November 2007, but was suspended at the request of the State Party, because it coincided with the care-taker period before the Federal Election on 24 November 2007. Amnesty International and two other non-government organisations were nevertheless permitted to present their reports to the Committee on 5 November 2007. This briefing represents an up-dating of Amnesty International's October 2007 report (AI Index: ASA 12/001/2007 available on <http://www.amnesty.org/en/library/info/ASA12/001/2007/en>) to the Committee.

Amnesty International notes the following positive developments:

The new Government has announced that it has commenced consultations with a view to signing the Optional Protocol to the Convention, and will consider incorporating a prohibition against torture into the Commonwealth Criminal Code;

The election platform of the Australian Labor Party (ALP), the party of the new Government, includes conduct of a national consultation on a Bill of Rights, to which new Attorney General has made a public commitment¹;

The election platform gives strong emphasis to the protection and promotion of internationally recognised human rights, including incorporation of all treaties ratified by Australia into domestic law, and Parliamentary scrutiny of all legislative instruments to ensure consistency with Australia's human rights obligations²;

¹ "Do-it-yourself charter to right future wrongs" Jonathan Pearlman SMH December 1, 2007 available at <http://www.smh.com.au/news/national/doityourself-charter-to-right-future-wrongs/2007/11/30/1196394622534.html> (15/03/08)

² Australian Labor Party National Platform & Constitution 2007, See especially para. 45 pp. 196-7, Chapter Thirteen 13 "Respecting Human Rights and a Fair Go for All", pp. 206-7, available at www.alp.org.au/download/now/2007_national_platform.pdf (11/03/08)

The election platform also promises humane treatment of asylum seekers, including restriction of mandatory detention to the time necessary for health and security checking, management of detention facilities by the government rather than private security contractors³, and replacement of temporary protection visas with permanent protection for individuals who have been recognised as refugees;⁴

The Government has ended the “Pacific Solution” whereby individuals seeking to enter Australia without documentation in order to claim asylum were moved to a processing facility on Nauru to have their claims assessed;⁵

The Government has announced that it is considering complementary protection arrangements for failed asylum seekers who cannot be safely returned to their country of origin;⁶

The election platform includes abolition of mandatory custodial sentencing for juveniles and adults convicted of minor crimes, without limiting the use of appropriate non-custodial programs;⁷

The election platform also includes review of progress in implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody⁸; and

The Victorian Government, in response to a recommendation of the Royal Commission into Aboriginal Deaths in Custody, has commenced construction of a culturally appropriate residential facility for Indigenous offenders undergoing community-based court orders.⁹ Such a facility would be expected to reduce Indigenous imprisonment and recidivism rates.

³ Management is currently performed under contract by Global Solutions Ltd,

⁴ Australian Labor Party, National Platform and Constitution, 2007 See particularly para. 53, p. 222, available at www.alp.org.au/download/now/2007_national_platform.pdf (as at 7/03/08)

⁵ See HREOC welcomes end of ‘Pacific Solution’ 5 February 2008, available at http://www.hreoc.gov.au/about/media/media_releases/2008/12_08.html (11/03/08) The last of the detainees arrived in Australia on 8 February 2008. See “First 100 Days: Achievements of the Rudd Government” February 2008, p. 39, available at http://www.pm.gov.au/docs/first_100_days.pdf (26/03/08)

⁶ Minister for Immigration and Citizenship, Senator Evans, Senate Committee on Legal and Constitutional Affairs, Estimates (Additional Budget Estimates), 19 February 2008, p.27, available at: <http://www.aph.gov.au/hansard/senate/committee/S10636.pdf> (11/03/08)

⁷ *Ibid.*, para. 24, pp. 193-4.

⁸ *Ibid.*, para. 116, p. 217.

⁹ Comment by Victorian Government on Report on Government Services 2008, Chapter 8 Corrective Services, p. 31, available at http://www.pc.gov.au/_data/assets/pdf_file/0004/74668/chapter08.pdf. The report is available at <http://www.pc.gov.au/gsp/reports/rogs/2008/justice> (7/03/08)

While noting these developments, Amnesty International would like to draw attention to the fact that since coming to power the Government has stated that its party platform constitutes a guide rather than a set of commitments.¹⁰ The extent to which the election platform will be translated into active government policy, therefore, remains to be seen.

The present briefing focuses on the following concerns:

Further reports of Indigenous deaths in police custody operations, and in prison custody, which highlight inadequacies in training and the standards of care respectively;

A recent report from the Human Rights and Equal Opportunity Commission highlights on-going concerns with conditions in immigration detention; and

The Government has announced that it will continue to process claims off-shore from asylum-seekers who arrive without documents, using the detention facility on Christmas Island, one of the many islands to the north of Australia which have been “excised from the Migration Zone”. Appeal to Australian Courts will not be available to these individuals;

II. Issues of concern

Indigenous deaths in police custody operations (articles 10 and 16)

In 2006, there were 22 deaths in police custody or police custody operations.¹¹

On 28 November 2007, the Western Australian Deputy Coroner released a report on the death of a 35 year old Indigenous man during police custody operations on 11 April 2006.¹² The Coroner’s report provided an account of the circumstances in which the deceased person had been arrested and placed in the back of a police van. The following details are taken from that report.

¹⁰ “First of all, just so we are clear: the Australian Labor Party platform provides broad guidance to government. It is not the same as one’s election commitments. It generally speaks in broad principles, and that is the role the platform plays. Governments use it as a point of direction for implementing policy over time.” Remark by Minister for Immigration & Citizenship, Senate Standing Committee on Legal & Constitutional Affairs Estimates (Additional Budget Estimates) 19 Feb. 2008 p. 51, available at: <http://www.aph.gov.au/hansard/senate/commtee/S10636.pdf> (27/03/08)

¹¹ Report on Government Services, Part C Justice, Police Services Ch. 6, Table 6.3, available at http://www.pc.gov.au/_data/assets/pdf_file/0007/74662/Chap06.pdf The report is available at <http://www.pc.gov.au/gsp/reports/rogs/2008/justice> (7/03/08)

¹² Record of Investigation of Death, Deputy Coroner of Western Australia, Ref No: 32/07

Many independent witnesses testified that the deceased had displayed symptoms of acute methamphetamine intoxication – subsequently confirmed by the pathologist’s report. His behaviour had been disturbed, aggressive and occasionally paranoid. He had been apprehended by police after he broke into a house, where a woman and her grandchild were present. Four police officers attended the arrest, which the deceased had resisted with abnormal strength. After a struggle which resulted in substantial injuries to the deceased¹³ and damage to the knee of one of the arresting officers, the deceased had been restrained and placed in the back of a police van with his hands cuffed behind his back. As he appeared to have lost a significant quality of blood, the officers had called an ambulance, but by the time it arrived he had stopped breathing. He was pronounced dead at hospital.

The Coroner found that the deceased, whose autopsy had revealed considerable evidence of atherosclerosis, had died:

“as the result of Cardiac Arrhythmia due to Ischaemic Heart Disease (Severe Coronary Atherosclerosis), Associated with Acute Methylamphetamine Toxicity, Following Recent Violent Exertion and Manual Restraint.”¹⁴

She concluded that the death “arose by way of Accident”¹⁵. However, given the position in which he had been placed in the back of the police van – on his stomach, with his hands cuffed behind his back - the pathologist had been unable to rule out “positional asphyxia” as a contributory cause of death.¹⁶

The Coroner noted that the arresting officers had been trained in the “use of force” and that the relevant training manual warned of the dangers of “positional asphyxia” which it defined as “Circumstances that induce an increased oxygen need that the body is unable to supply”, with the highest risk occurring in a person who is:

- Highly stressed

¹³ The Coroner reported: “The lower left central and lower right central incisors were “avulsed” (knocked out) with part of the jawbone attached. These were the teeth located within the bloodstain at [the house where the deceased had been arrested]. The lower right lateral incisor had also been avulsed but was still attached by gum tissue. The upper right central incisor had been pushed up into the gum above toward the base of the nose. This tooth and the two teeth to the left of it had also been fractured on the biting edge. Dr Knott[a Forensic Odontologist] concluded; “the injuries sustained appear to be the result of a single heavy upward directed force to the front of the mouth by a padded object (...a padded object being a fist, elbow, knee etc)” (Exhibit 36, page 3). Dr Knott also agreed it must have been a centrally directed force and one which was significant. Dr Cadden [the Forensic pathologist who conducted the post-mortem] agreed it must have been significant force to cause such an injury. Both stated it was consistent with the scenario of Constable Johnson kneeling the deceased in the manner he described, although Dr Knott also agreed it was possible the injury could have been caused by the top of a shoe or boot if upwardly and centrally directed.” op. cit. p.42

¹⁴ Coroner’s report op. cit. p.1.

¹⁵ Op. cit. p. 56

¹⁶ Op. cit. p.48

- Exhibiting wild, threatening or bizarre behaviour
- Exhibiting violent behaviour or resistance
- Restrained, especially handcuffed and lying in the face down position
- Affected by alcohol and/or other drugs
- Male
- Obese.¹⁷

However, the two officers who had known of the importance of ensuring that the deceased was kept on his side after being restrained, evidently did not communicate this to the others.¹⁸ The Coroner recommended that the “WA Police ‘Use of Force Manual’ be amended to more accurately define ‘Positional Asphyxia’ ”¹⁹ and that police training be improved to make officers better aware that:

“When dealing with disturbances involving possibly drug affected or mentally disturbed persons there is a potential for sudden death, most critical once a situation is brought under control.”²⁰

It is clear that such situations test individual police officers to the limit, but they also expose potential weaknesses in training. The goals of such training would be to ensure that even under pressure to secure public safety and to protect themselves from an individual who has become dangerous because of alcohol, other drugs or mental illness, arresting officers have the skills to effect an arrest using the minimum force necessary and to call on any medical assistance that would be required, for example to administer sedatives, without delay.

Further, the nature of the injuries sustained by the deceased gives rise to concerns about training in accordance with Article 10 of the Convention, so as to ensure compliance with Articles 2(1) and 16(1) of the Convention. In relation to the severe injury to jaw and teeth of the deceased, the Coroner noted the extreme amount of force required to subdue to the deceased:

It appears during efforts to bring the deceased to the ground, front first, he was struck to the mouth by the knee of Constable Johnson. The blood staining, post mortem findings and injury to Constable Johnson’s knee are all consistent with the injury to the mouth having being caused by a significant impact with Constable Johnson’s knee, being brought upward as the deceased bent forward, then the deceased falling to the floor which caused the droplets to be projected from his mouth onto the floor at about floor level.

¹⁷ Op. cit. p.29

¹⁸ Op. cit. p.60

¹⁹ Op. cit. p. 63

²⁰ Ibid.

The injury was significant, and although it had no direct involvement in the cause of the deceased's death, it probably had a further negative impact on the deceased's mental state at that time. I accept it was an unfortunate accident on the part of Constable Johnson and was one for which he took responsibility. It did, however, result in an ambulance being called.²¹

The Coroner found that the arresting officers "were unaware of the fact paramedics could, and in the proper circumstances would, use chemical sedation as a way to calm people suffering extreme agitation"²² but made no further recommendation on this issue. Amnesty International is concerned that procedures consistent with the principles of necessity and proportionality in accordance with the provisions of the Convention are yet to be developed and promoted.

*Indigenous deaths in custody*²³ (articles 10, 11 and 16)

Deaths in custody from apparent unnatural causes²⁴ have declined nationally from 0.10 deaths per 100 prisoners in 2002-03 to 0.04 in 2006-07.²⁵ Amongst Indigenous prisoners, this death rate fell from 0.07 deaths per hundred to 0.05 per hundred over the period.²⁶ Only New South Wales and Western Australian recorded Indigenous deaths from apparent unnatural causes in 2006-07, with death rates per hundred prisoners of 0.10 and 0.07 respectively.²⁷

On 27 January 2008, an Indigenous elder from Warburton collapsed and died after being transported for over 4 hours in the back of a prison van. A witness is reported to have heard one of the guards tell a hospital doctor that it was "bloody hot" in the back of the

²¹ Op cit., pp. 58-0

²² Op. cit. p.61

²³ See Chapter III of Amnesty International's October 2007 report to the Committee (AI Index: ASA 12/001/2007 available at <http://www.amnesty.org/en/library/info/ASA12/001/2007/en>) for a discussion of the factors underpinning high rates of Indigenous arrest and imprisonment.

²⁴ This is defined as "The death wherever occurring (including hospital) of a person: • who is in prison custody • whose death is caused or contributed to by traumatic injuries sustained, or by lack of proper care, while in such custody • who dies or is fatally injured in the process of prison officers attempting to detain that person • who dies or is fatally injured in the process of that person escaping or attempting to escape from prison custody • there is sufficient evidence to suggest, subject to a Coroner's finding, that the most likely cause of death is homicide, suicide, an accidental cause or a drug overdose. The rate is expressed per 100 prisoners, calculated by dividing the number of deaths by the daily average prisoner population, multiplied by 100" from Report on Government Services Part C Justice, Chapter 8 Corrective Services, p. 42, available at http://www.pc.gov.au/_data/assets/pdf_file/0004/74668/chapter08.pdf The report is available at <http://www.pc.gov.au/gsp/reports/rogs/2008/justice> (7/03/08)

²⁵ Op. cit. Figure 8.7.

²⁶ Report on Government Services, annex to Chapter 8, Table 8A.16, available at http://www.pc.gov.au/_data/assets/pdf_file/0006/74670/attachment08.pdf (7/03/08)

²⁷ Report on Government Services, Table 8.7.

van.²⁸ On this basis it seems likely that the van's air-conditioning system, which had broken down the previous week, was not operating. Outside temperatures would have exceeded 40 degrees during the journey, and without windows or air-conditioning the back of the van would have become dangerously hot. The vans are government owned, but operated by private contractors, Global Solutions.²⁹

The Inspector of Custodial Services said that the case "highlighted the failures of the prisoner transport system in Western Australia" and noted that he had filed reports on the "parlous" state of this system since 2001, when he had personally witnessed the arrival of 12 Indigenous people after a 12 hour journey in prisoner transport. He stated:

During the longest journeys – from the North and Northwest of the State down south and from the Eastern Goldfields and the Lands - as many as 95% of those transported are Aboriginal. Whilst it is not suggested that deliberate racism underlies the neglect of this longstanding problem, it is probable that it would not be tolerated if the passengers on these journeys were 95% non-Aboriginal.³⁰

The Inspector called for an immediate review and up-grading of the system to meet minimum standards under the Convention.³¹

A Coronial Inquiry will be held into the Indigenous elder's death. At the time of writing the pathologist's report had not been released.³² In the meantime, the West Australian Department of Corrective Services has tabled the results of an internal review of prison vans, and the responsible Minister has undertaken to act on all 18 recommendations, including checking temperature monitoring facilities in all vehicles.³³

Although the number of indigenous people dying in police custody has declined, the extremely high over-representation of Indigenous people in custody remains of serious concern³⁴ as do, more generally, accounts of deaths in custody that appear to have been

²⁸ "Death in custody guard told of 'bloody hot' van", Paige Taylor The Australian 31 January 2008, available at <http://www.news.com.au/story/0,23599,23134420-421,00.html> (26/03/08)

²⁹ WA prisoner transport fleet 'parlous', The Age.com, January 31, 2008 - 7:59PM, available <http://news.theage.com.au/wa-prisoner-transport-fleet-parlous/20080131-1pbv.html> (7/03/08)

³⁰ Media release, Prisoner transport" by Inspector of Custodial Services, available at <http://www.custodialinspector.wa.gov.au/index.cfm?objectID=D377712C-E7F2-2F96-329D566D217F1626> 7/03/08)

³¹ *Ibid.*

³² Mourners farewell Aboriginal elder 1st March 2008, available <http://kalgoorlie.thewest.com.au/Regionals.aspx?MenuID=326&ContentID=60867> (26/03/05)

³³ "Prisoner transport to change" Feb 26, 2008 ABC <http://www.abc.net.au/news/stories/2008/02/26/2173368.htm> (26/03/08)

³⁴ The ratio of Indigenous to non-Indigenous people imprisoned in Australia is assessed at 12.9: Steering Committee for the Review of Government Service Provision *Overcoming Indigenous Disadvantage Key Indicators 2007 Report* Productivity Commission, Canberra p. 126, available at:

preventable, given adequate training and commitment to working within a rights based policy framework.

Mandatory detention (articles 10 and 16)

In January 2008 the Human Rights and Equal Opportunity Commission (HREOC) released a report on its 2007 inspection of immigration detention facilities. HREOC had requested the assistance of former Ministers of Immigration³⁵ to facilitate visits to the immigration detention facility on Nauru, used as part of the “Pacific Solution”, but these requests were refused.³⁶ It is apparent that, because of the arrangements with Nauru, which issued detainees with visas, and with the International Organisation for Migration, which was responsible for supervising detainees at night (as detainees generally had liberty during the day), the Department of Immigration and Citizenship did not consider the facility on Nauru to be an immigration detention facility for which it had responsibility.³⁷

As noted above in November 2007 Australia saw a change in government, with the new government outlining its commitment to ending the processing and detaining of refugees and asylum seekers on Nauru. On 8 February 2008, the Australian Government announced that the last remaining recognised refugees on Nauru would be taken to Australia, where they would be granted permanent protection.

The new government also announced it would be looking at the current detention centres in Australia, particularly focusing on the situation facing those who have been detained for over two years.

Previously Amnesty International and other leading human rights organisations, as well as Australia’s Ombudsman’s office, have made recommendations outlining how Australia’s mandatory detention regime could be reformed to ensure that it is in compliance with human rights standards.³⁸ The recent HREOC report includes a number of these recommendations.

http://www.pc.gov.au/_data/assets/pdf_file/0004/64750/keyindicators2007.pdf 13 March 2008

³⁵ Ministers Ruddock (2002) and Minister Andrews (2007) respectively

³⁶ Human Rights and Equal Opportunity Commission, “Observations on Mainland Immigration Detention Facilities 2007” p. 11, available at

http://www.hreoc.gov.au/pdf/human_rights/asylum_seekers/summary_idc_report07.pdf

³⁷ Private communication to AI Australia, 5 March 2007, in response to a question about a reported death in detention on Nauru, which did not appear in Departmental records. Notes recorded in diary.

³⁸ See Chapter V of Amnesty International’s October 2007 report to the Committee (AI Index: ASA 12/001/2007 available at <http://www.amnesty.org/en/library/info/ASA12/001/2007/en>) for a discussion of the impact of indefinite detention and the risk of refoulement created through a system that gives the Minister for Immigration non-reviewable, non-compellable discretion over a range of visa decisions.

First among HREOC's recommendations was a reiteration of its call for an end to mandatory detention:

“While detention may be acceptable for a short period in order to conduct security, identity and health checks, currently mandatory detention laws require detention for more than these purposes, for unlimited periods of time and in the absence of independent review of the need to detain. HREOC believes that any decision to detain a person should be under the prompt scrutiny of the judicial system. Further, there should be outer limits on the periods for which immigration detention is permitted.”³⁹

Failing that, HREOC called for a strict 3 month limit on detention by:

- a. resolving substantive visa decisions
- b. releasing detainees on bridging or removal-pending visas
- c. transferring detainees to residence determinations⁴⁰
- d. transferring detainees to places of alternative detention (in the event that (a) – (c) cannot be achieved).⁴¹

Amongst other recommendations to improve conditions and services for detainees, HREOC recommended that Stage 1 of the Villawood detention centre be replaced as a matter of urgency.⁴²

The former Government is reported to have considered, and finally rejected, a proposal to replace Villawood. The new Minister for Immigration and Citizenship is said to have requested advice on options to improve the “unacceptable” centre.⁴³

³⁹ HREOC Report p. 6. See note 13 supra.

⁴⁰ “ In June 2005, the Act was amended to give the Minister the power to make a ‘residence determination’ for individual detainees to be able to live in the community at specified locations.” HREOC Report Op. Cit. p16.

⁴¹ Ibid.

⁴² Op. cit. p 9 The following description of the deficiencies of Villawood is at p. 43 : Villawood holds the largest number of detainees of all the centres. It also has a large number of long-term detainees with ever-worsening mental health problems. Further, as Stage 1 Villawood is the largest and most secure facility, detainees who are perceived as difficult to manage seem to be placed in Villawood. This adds to an overall atmosphere at Villawood as security-driven and tense, compared to the atmosphere at the smaller centres. In particular, Stage 1 has the strong appearance of a prison. It is run-down, especially the dormitories, and the atmosphere is harsh and inhospitable. HREOC staff were shocked by the dilapidated infrastructure of Villawood Stage 1 compared to other centres and facilities we visited. Of particular note are: • the bleak visitors facilities; • the dining room, without windows or natural light or decoration; • dormitory 1, which is dark, depressing and lacks privacy; • external areas, which do not have enough greenery or outlook.

⁴³ “Push to abandon Villawood centre”, Stephanie Peatling, Sydney Morning Herald.com, January 14, 2008, available at <http://www.smh.com.au/news/national/push-to-abandon-villawood-centre/2008/01/13/1200159276775.html> (11/03/08)

Amnesty International shares the view of the United Nations High Commissioner for Refugees (UNHCR) that “As a general principle asylum-seekers should not be detained,”⁴⁴ and is therefore opposed to the mandatory detention of migrants or asylum seekers, including failed asylum seekers and those awaiting removal from the country. With this caveat in mind, the organization believes that the Government should generally respond positively to HREOC’s recommendations on this issue. It notes recent community calls for the closure of Villawood following the death in hospital of a Villawood detainee.⁴⁵ Although there is no publicly available report on the cause of death, it does not appear to have been from unnatural causes, although fellow detainees claim that the Department had been aware that the man needed medical attention long before he was taken to hospital, where he died of a heart attack.⁴⁶ The 62 year old man had spent 3 months in Villawood awaiting return to Iran, following completion of a 5 year prison term for a drug-related offence. Whether this long period in detention was necessary in order to ensure that he was well enough to be returned,⁴⁷ as reportedly stated by the Departmental spokesman, or because there were difficulties in arranging his travel papers, it seems likely that his health and well-being could have been better protected by his release to the community – an option which is unnecessarily complicated under the current mandatory detention arrangements.⁴⁸

Amnesty International is also concerned about the new Government’s intention to pursue a policy of deterring asylum seekers who attempt to gain access to territory to claim asylum⁴⁹ by what amounts to the “Indian Ocean Solution”. This consists of maintaining as “excised offshore places”⁵⁰ northerly off-shore islands and detaining all unauthorised arrivals in a large facility on Christmas Island pending assessment of their asylum claims. Amnesty International calls for an end to all mandatory detention, and limitation of

⁴⁴ UNHCR’s Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers, February 1999, Guideline 2. See similarly Conclusions adopted by the intergovernmental Executive Committee of the Programme of the United Nations High Commissioner for Refugees, UNHCR ExCom 44 (XXXVII) - Detention of Refugees and Asylum- Seekers. 1986, available at: <http://www.unhcr.org/publ/PUBL/3d4ab3ff2.pdf>, Conclusion (b).

⁴⁵ “Calls to ‘scrap and replace’ Villawood” 16/01/08, Amnesty International Australia, available at: http://action.amnesty.org.au/refugees/comments/calls_to_scrap_and_replace_villawood/ (11/03/08)

⁴⁶ *Ibid.*

⁴⁷ “Rally follows death of Villawood detainee”, *The Australian*, 17 January 2008, available at <http://www.theaustralian.news.com.au/story/0,25197,23059321-12377,00.html> (7/03/08)

⁴⁸ Discretion to release people under these circumstances often rests solely with the Minister, which not only lacks transparency but can be a drawn out and frustrating process.

⁴⁹ “People smuggler blocks to continue, says minister” by Jewel Topsfield, January 17, 2008 *The Age.com*, available at <http://www.theage.com.au/news/national/people-smuggler-blocks-to-continue-minister/2008/01/16/1200419885329.html> (7/03/08)

⁵⁰ Excised off-shore places are deemed not to constitute Australia for the purposes of the *Migration Act 1958*. According to Department of Immigration & Citizenship Fact Sheet 81, people who arrive without authorization, ie a visa, at an “excised offshore” place, such as Christmas Island, cannot apply for a visa except at the discretion of the Minister, can be sent to a declared safe country, and can be detained. The declared purpose of these provisions is “deterring the activities of people smugglers.” Fact Sheet available at <http://www.immi.gov.au/media/fact-sheets/81excised.htm> (16/03/08).

detention to cases where detention is absolutely necessary, and then for short and defined periods. While the new government has not made it clear how people will be processed on Christmas Island, we remain concerned that detaining people in remote locations for potentially indefinite periods may cause unnecessary hardship, impact on both their physical and mental health and ultimately raise issues under the Convention.

Amnesty International reiterates that Australia must end its policy of mandatory detention, including as a punitive measure to deter the arrival of asylum seekers. All asylum seekers should be processed onshore in a fair and satisfactory asylum procedure which is non-discriminatory in purpose and effect.