

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

**Concluding observations of the Committee against Torture**  
*(Extracts for follow-up of CAT/C/AUS/CO/3)*

**AUSTRALIA**

(...)

**C. Principal subjects concerns and recommendations**

(...)

9. The Committee is concerned that the Convention has been only partially incorporated into Federal law and noted that the State party does not have a constitutional or legislative protection of human rights at the Federal level, i.e. a Federal Bill or Charter of Rights protecting, inter alia, the rights contained in the Convention.

**The State party should fully incorporate the Convention into domestic law, including by speeding up the process to enact a specific offence of torture at the Federal level. The State party should continue consultations with regard to the adoption of a Bill of Rights to ensure a comprehensive constitutional protection of basic human rights at the Federal level.**

10. The Committee, while noting that there are a number of legislative and procedural safeguards ensuring that individuals are treated in accordance with their rights, is nonetheless concerned about the following issues related to the State party's anti-terrorism laws and practice:

(a) The increased powers provided to the Australian Security Intelligence Organization (ASIO), including the possibility of detaining a person for renewable periods of seven days for questioning, which pose some difficulties especially due to the lack of a right to a lawyer of choice to be present during the questioning and of the right to seek a judicial review of the validity of the detention;

(b) The lack of judicial review and the character of secrecy surrounding imposition of preventative detention and control orders, introduced by the Anti-Terrorism Act (No. 2) 2005;

(c) Reports concerning the harsh conditions of detention of unconvicted remand prisoners charged with terrorism-related offences, also taking into account their status of accused (and not convicted) persons.

**The State party should:**

- (a) Ensure that the increased powers of detention of ASIO are in compliance with the right to a fair trial and the right to take proceedings before a court to determine the lawfulness of the detention;**
- (b) Guarantee that both preventative detention and control orders are imposed in a manner that is consistent with the State party's human rights obligations, including the right to a fair trial including procedural guarantees;**
- (c) Ensure that accused remand prisoners are separated from convicted persons and are subject to separate treatment appropriate to their status as unconvicted persons.**

11. The Committee is concerned at the mandatory detention policy for those persons who enter irregularly the State party's territory. In this respect, the Committee is especially concerned at the situation of stateless persons in immigration detention who cannot be removed to any country and risk being potentially detained 'ad infinitum'.

**The State party should:**

- (a) Consider abolishing its policy of mandatory immigration detention for those entering irregularly the State party's territory. Detention should be used as a measure of last resort only and a reasonable time limit for detention should be set; furthermore, non-custodial measures and alternatives to detention should be made available to persons in immigration detention;**
- (b) Take urgent measures to avoid the indefinite character of detention of stateless persons.**

(...)

25. The Committee welcomes the amendment to the Migration Act in 2005 and the commitment of the new Government that children will no longer be housed in immigration detention centres under any circumstances. However, the Committee regrets that children may still be kept in alternative forms of detention and that during the reporting period a considerable number of children spent long periods of time in detention centres. Furthermore the Committee is concerned about the inadequate mental health care for detained asylum-seekers.

**The State party should;**

- (a) Abide by the commitment that children no longer be held in immigration detention centres under any circumstances. Furthermore, it should ensure that any kind of detention of children is always used as a measure of last resort and for a minimum period of time;**
- (b) As a matter of priority, ensure that asylum-seekers who have been detained are provided with adequate physical and mental health care, including routine assessments.**

(...)

37. The Committee requests the State party to provide, within one year, information on its

response to the Committee's recommendations contained in paragraphs 9, 10, 11 and 25 above.

(...)

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