

Addendum

Shadow Report

**prepared for the
United Nations Committee Against Torture**

**on the occasion of its review of
Australia's Third Periodic Report under the**

**Convention Against Torture and
other Cruel, Inhuman or Degrading
Treatment or Punishment**

Date submitted: 16 September 2007

About the NSW Council for Civil Liberties

The New South Wales Council for Civil Liberties ('CCL') is committed to protecting and promoting civil liberties and human rights in Australia.

CCL is an NGO in Special Consultative Status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

CCL was established in 1963 and is one of Australia's leading human rights and civil liberties organisations. Our aim is to secure the equal rights of everyone in Australia and oppose any abuse or excessive power by the State against its people.

To this end CCL attempts to influence public debate and government policy on a range of human rights issues. We try to secure amendments to laws, or changes in policy, where civil liberties and human rights are not fully respected.

We also listen to individual complaints and, through volunteer efforts, attempt to help members of the public with civil liberties problems. We prepare submissions to government, conduct court cases defending infringements of civil liberties, engage regularly in public debates, produce publications, and conduct many other activities.

Abbreviations

ABC	Australian Broadcasting Corporation
ASIO	Australian Security Intelligence Organisation
CAT	Convention Against Torture & other Cruel, Inhuman or Degrading Treatment or Punishment
CCL	NSW Council for Civil Liberties
Cth	Commonwealth of Australia
DCS	NSW Department of Corrective Services
HREOC	Human Rights and Equal Opportunity Commission (Australia's NHRI)
HRMU	High Risk Management Unit (at Goulburn Correctional Centre, NSW)
ICCPR	International Covenant on Civil and Political Rights
MHRT	Mental Health Review Tribunal
MRRC	Metropolitan Remand and Reception Centre (Silverwater, Sydney, NSW)
NSW	New South Wales
UNHRC	United Nations Human Rights Committee
USA	United States of America
Vic	Victoria
WA	Western Australia

Table of Contents

1.	NOTE ON ADDENDUM.....	4
2.	ARTICLE 16: CRUEL, INHUMAN, DEGRADING TREATMENT OR PUNISHMENT ...	5
2.1	SUPERMAX PRISON: HIGH RISK MANAGEMENT UNIT.....	5
2.1.1	<i>background.....</i>	5
2.1.2	<i>'the worst of the worst': placement in the HRMU as retribution</i>	6
2.1.3	<i>segregation</i>	7
2.1.4	<i>the mental health of HRMU inmates generally.....</i>	8
2.1.5	<i>placement of the mentally ill in the HRMU</i>	9
2.1.6	<i>conditions.....</i>	12
2.1.7	<i>no right of review of placement in the HRMU.....</i>	13
2.1.8	<i>political interference.....</i>	14
2.1.9	<i>other supermax prisons in Australia.....</i>	15
3.	NOTES.....	16

1. Note on Addendum

- A1. On 30 July 2007, the NSW Council for Civil Liberties ('CCL') submitted to the UN Committee against Torture a Shadow Report to Australia's Third periodic report ('the Third Report').¹ The Shadow Report relates to Australia's compliance with its obligations under the *Convention against Torture and other cruel, inhuman or degrading treatment or punishment* ('the Convention').
- A2. This document is an addendum to that Shadow Report. It offers further material to support CCL's recommendation that:²
- ...the State Party invite the Special Rapporteur on Torture to visit the 'supermax' prison-within-a-prison (High Risk Management Unit) at the Goulburn Correctional Centre.
- A3. This Addendum relates to the High Risk Management Unit ('HRMU') at the Goulburn Correctional Centre in New South Wales. More information about the HRMU, specifically the placement of terrorist suspects in the facility, is available in CCL's Shadow Report.³

2. Article 16: cruel, inhuman, degrading treatment or punishment

2.1 Supermax prison: High Risk Management Unit

The Committee remains concerned about the extremely harsh regime imposed on detainees in “supermaximum prisons”. The Committee is concerned about the prolonged isolation periods detainees are subjected to, the effect such treatment has on their mental health, and that its purpose may be retribution, in which case it would constitute cruel, inhuman or degrading treatment or punishment (art. 16).

The State party should review the regime imposed on detainees in “supermaximum prisons”, in particular the practice of prolonged isolation.

Committee against Torture, *Conclusions and Recommendations: USA* (July 2006)
CAT/C/USA/CO/2, [36].

2.1.1 background

- A4. Australia's first 'supermax' prison was opened in June 2001.⁴ The High Risk Management Unit ('HRMU'), a prison within a prison, was built inside the Goulburn Correctional Centre at a cost of \$25.188 million (\$US20.7m).⁵
- A5. From the day it was opened the HRMU has attracted controversy. The regime within the HRMU is very strict and involves the routine segregation of inmates. Inmates are unable to appeal their placement in the facility. Remand and convicted inmates with mental illnesses have been, and are still, housed in the HRMU: a situation which the Human Rights and Equal Opportunity Commission found was contrary to Articles 7 and 10 of the ICCPR; and which a parliamentary inquiry and a coronial inquest considered unsatisfactory. The NSW Ombudsman has reported and verified some of the complaints made by inmates about conditions within the HRMU. The NSW courts have recognised the harshness of conditions inside the supermax prison. There have also been allegations of political interference in the operation of the facility.
- A6. Despite the weight of criticism, the NSW government maintains that the HRMU does not contravene the Convention against Torture.⁶ CCL is concerned that conditions in the 'supermax' facility could constitute a violation of Article 16 of the Convention and this Addendum details those concerns. CCL reiterates its recommendation from its Shadow Report:⁷

CCL recommends that the State Party invite the Special Rapporteur on Torture to visit the 'supermax' prison-within-a-prison (High Risk Management Unit) at the Goulburn Correctional Centre.

The Special Rapporteur should take the opportunity to speak to the inmates, their families and their legal representatives, as well as representatives of the NSW Ombudsman, HREOC and non-government organisations representing civil society.

2.1.2 'the worst of the worst': placement in the HRMU as retribution

A7. In 1996, the US National Institute of Corrections defined a 'supermax' facility as:⁸

A freestanding facility, or a distinct unit within a freestanding facility, that provides for the management and secure control of inmates who have been officially designated as exhibiting violent or seriously disruptive behavior while incarcerated. Such inmates have been determined to be a threat to safety and security in traditional high-security facilities and their behavior can be controlled only by separation, restricted movement, and limited access to staff and other inmates.

A8. The Goulburn HRMU satisfies this definition of an American 'supermaximum' prison. According to the NSW Department of Corrective Services' own operations manual:⁹

The High Risk Management Unit (HRMU) at Goulburn Correctional Complex is a 75-bed purpose-built maximum-security facility to accommodate male inmates who have been assessed as posing a high security risk to the community, correctional centre staff and/or other correctional centre inmates or present a serious threat to the security and good order of a correctional centre.

A9. When considering the placement of an inmate in the HRMU, the Department considers the following factors:¹⁰

- escape risk beyond the management capacity of secure correctional centres
- high public interest due to extremely serious criminal activities
- organising or perpetrating serious criminal activity whilst in custody

A10. When opening the HRMU, NSW Premier Bob Carr stated that the HRMU would house:¹¹

...the worst [inmates] in the NSW prison system...these are the psychopaths, the career criminals, the violent standover men, the paranoid inmates and gang leaders.

A11. CCL is concerned that some inmates are being placed in the HRMU for other than legitimate reasons. CCL submits that, while it is legitimate to separate from the general prison population those inmates who present a serious physical risk to prison staff and to other inmates, it is not legitimate to place inmates in the HRMU because they present a 'high security risk to the community' or because there is 'high public interest due to extremely serious criminal activities'. Placing people in the HRMU because of the nature of, or public interest in, the crimes they have committed amounts to double punishment. Nor is it appropriate to place

inmates in the HRMU simply because they are deemed to be 'psychopaths', 'career criminals' or 'paranoid'. Some HRMU placements seem to be motivated by retribution, rather than any legitimate concern for prison security. Other placements seem to be motivated by a desire on the part of some populist politicians to be seen to be 'tough on crime'.

- A12. CCL endorses the following statement of illegitimate purpose for supermax prisons, which was published in a recent US report:¹²

The purpose of such facilities is not, or should not be, to exact additional punishment. Nor should such a facility be used as the repository for inmates who are simply bothersome, self destructive, or mentally ill; who need protection; or who have an infectious disease.

- A13. CCL also notes that the Nagle Royal Commission into NSW prisons in 1978 called for the closure of the Katingal prison-within-a-prison, which in many ways was a prototype of today's supermaximum prisons. The Royal Commissioner recommended that 'the most dangerous prisoners should be dispersed throughout the corrections system rather than concentrated in one place'.¹³ By creating the HRMU, NSW authorities appear to have forgotten or ignored the lessons of the Royal Commission.

2.1.3 segregation

The Committee is of the view that solitary confinement is a harsh penalty with serious psychological consequences and is justifiable only in case of urgent need; the use of solitary confinement other than in exceptional circumstances and for limited periods is inconsistent with article 10, paragraph 1, of the Covenant.

UN Human Rights Committee, *Concluding Observations: Denmark* (2000) CCPR/CO/70/DNK, [12].

- A14. When inmates first arrive at the HRMU, they are placed in "Unit 7" for assessment by prison staff.¹⁴ During the course of this assessment inmates are the subject of a 'segregated custody direction'.¹⁵ The process of assessment is meant to take two weeks, but it has been known to take 'significantly longer' in some cases.¹⁶ In two reported cases, this process took over one month.¹⁷
- A15. HRMU inmates can also be the subject of a segregation custody direction at the discretion of prison staff.
- A16. In segregation, all of an inmate's personal items are taken from them. They are kept in a cell measuring 2 by 3 metres. Inmates are not allowed to associate with other inmates.¹⁸ However, segregated inmates can converse 'relatively freely' in the rear caged yards of their cells,¹⁹ when prison staff permit inmates to enter the rear yards and only then for a limited number of hours. Under segregation, inmates are generally kept in their cells for 22 hours a day.
- A17. In 2006, a NSW parliamentary inquiry established that some inmates were held in segregation, denied the right to associate with other inmates, without the appropriate legal procedure of placing the inmate

under a segregated custody direction.²⁰ The significance of this is that those inmates had no avenue to appeal their segregation, because they are not the subject of an official administrative direction and therefore the courts have no power to intervene. In 2005, the NSW Ombudsman reported that two inmates had been illegally held in segregation without segregated custody orders.²¹

- A18. The parliamentary committee recommended that all HRMU inmates denied association with other inmates should be placed under a segregated custody direction.²² It is encouraging that the Department of Corrective Services advised the committee that it supported this recommendation.²³

2.1.4 the mental health of HRMU inmates generally

- A19. CCL is concerned that the administrators of the HRMU do not take the mental health of those in their care seriously enough. In 2005, the Clinical Director at the HRMU was asked about the impact of confinement on the mental health of inmates and in reply he stated his belief that:²⁴

...in terms of evidence that long-term incarceration or incarceration in more restricted conditions contributes to poorer mental health, I don't think there's a great deal of evidence to support that. ...Where there have been studies done even on, say, 60-day segregation orders or something like that, there has been no deterioration in the mental health status of inmates on those kind of orders. Longer term I think the jury's still out.

- A20. This opinion is contrary to the evidence provided by psychiatric experts in the NSW Coroner's Court:²⁵

All of the psychiatrists who gave evidence stated that prolonged periods in solitary confinement would most likely exacerbate an inmate's mental illness, particularly if he were suffering from paranoia. As Dr Lewin commented,

"Solitary confinement is not a medical treatment. There is no circumstance in which that is appropriate in the care of a mentally ill person. ...I regard it as fundamentally inappropriate for someone as disturbed as this man [Scott Simpson] to be in solitary confinement outside hospital."

- A21. A recent report of the Inspector of Custodial Services in Western Australia suggests that the 'studies' to which the HRMU's Clinical Director refers simply do not exist:²⁶

A review of the literature by Haney could find no study where a significant negative impact was not seen when solitary confinement was enforced for prolonged periods. Further, the more isolated and punitive the confinement, the more negative the impact was found to be. This has even been found in segregations of relatively short duration. The risk of negative complications has been found to be

greatest in the mentally ill and those with a predisposition for mental illness but has been shown to impact on all prisoners. Severe punishment or restrictions on prisoners have also not been associated with meaningful reductions in prisoners' disruptive behaviour. The available prison studies (most of which are of questionable rigour and design) show a strong negative impact on the prisoner.

- A22. CCL is concerned that the conditions in the HRMU are having an adverse impact on the mental health of its inmates. The situation is even more dire for inmates in the facility who suffer a mentally illness.

2.1.5 placement of the mentally ill in the HRMU

I would rather be dead than get this torcher every day 24/7 non stop.

Scott Simpson, HRMU inmate (May 2003)

...the Commission submits that Mr Simpson's protracted detention in isolation from all other inmates was inconsistent with the right to be treated with humanity and dignity within article 10(1) and the prohibition on inhuman and degrading treatment and punishment within article 7 of the ICCPR.

Human Rights and Equal Opportunity Commission,
Submission to Inquest into the Death of Scott Simpson (2006), [4.16].

- A23. When a prisoner in New South Wales is found not guilty of an offence by reason of mental illness, they become a 'forensic patient' and are held indefinitely in prison "at the Governor's pleasure". A prisoner can also become a 'forensic patient' by being found by a court to be unfit to be tried or by developing a mental illness while incarcerated. After expert psychiatric assessment, the NSW Mental Health Review Tribunal ('MHRT') can recommend to the NSW Health Minister that a forensic patient be released, subject to conditions if necessary, when the MHRT is satisfied that the safety of the patient or any member of the public will not be seriously endangered by the person's release.²⁷ The Minister is not obliged to adopt these recommendations. This Executive discretion amounts to a ministerial veto power and has been heavily criticised by the legal profession and mental health advocates.²⁸
- A24. Most mentally ill inmates in NSW are kept in the general prison population. They are not automatically transferred to hospitals, because of a lack of hospital resources to cope with the increasing numbers of mentally ill inmates. In 2006, the Department of Corrective Services admitted to a NSW parliamentary committee that some HRMU inmates are mentally ill.²⁹ More widely, the solitary confinement of mentally ill inmates is practiced across Australia to varying degrees.³⁰
- A25. In 2006, a NSW parliamentary committee recommended a review of the policy of referring mentally ill inmates to the HRMU.³¹ The NSW government ignored this recommendation. Instead, the government pointed to evidence (given by departmental officers) that staff at the HRMU cooperate with health professionals to monitor the mental health of HRMU inmates. The effectiveness of that 'cooperation' was put into

serious question by the findings of the NSW Deputy Coroner when her Honour conducted a coronial inquest in 2006 into the death of Mr Scott Simpson.

- A26. The case of Mr Scott Simpson illustrates the plight of the mentally ill in NSW prisons. Mr Simpson, a paranoid schizophrenic, was held *on remand* in the HRMU for almost 12 months. For a considerable amount of that time, Mr Simpson was held in segregation and denied association with other inmates.
- A27. On 30 March 2002, Scott Simpson was refused bail and placed in a cell with Andrew Parfitt in the MRRC, a remand facility in Sydney. Within 15 minutes Mr Simpson had brutally attacked his cell mate, inflicting fatal injuries.³² Two years later, Mr Simpson was found not guilty of Mr Parfitt's murder by reason of mental illness, based on psychiatric evidence that Mr Simpson suffered from paranoid schizophrenia and was suffering a psychotic episode when he attacked Mr Parfitt.³³ Within weeks of the verdict, Mr Simpson was found dead, having hanged himself, in a prison cell in Sydney's Long Bay Gaol. The corrective services officers who discovered Mr Simpson hanging from the bars of his cell did not immediately attend him or attempt to resuscitate him, because they feared for their own safety if Mr Simpson was feigning his hanging.³⁴
- A28. Throughout his remand and after, Mr Simpson was never transferred to the specialised 'D Ward', the acute psychiatric wing in the prison hospital at Sydney's Long Bay Gaol. Instead, Mr Simpson was kept in Goulburn prison, where he was only given anti-psychotic medication and offered no therapeutic treatment.³⁵ The Human Rights and Equal Opportunity Commission detailed Mr Simpson's treatment in this way:³⁶

In April 2002, Mr Simpson was transferred from the MRRC to the Goulburn correctional centre. He was initially housed in the Multi Purpose Unit ('MPU') at Goulburn where he was placed on consecutive segregation orders.

In April 2003, he was transferred to the High Risk Management Unit ('HRMU') where, for the most part, he remained on a segregation order. The HRMU houses inmates who require a higher level of security and management than can be provided by mainstream maximum security institutions. During the periods 17 June 2003 to 21 September 2003 and 11 October 2003 to 6 November 2003, Mr Simpson was allowed to associate with one other inmate. However, in the later of those two periods, the association took place through a secure barrier. The decision to terminate all associations in November 2003 was made for security reasons, as the Deputy Governor of the HRMU considered that Mr Simpson posed a risk to other inmates.

At the HRMU, Mr Simpson was allowed out of his cell into the 'day yard' for 2.5 hours each day and on occasion from 9am to 2.30pm. Again, the 'day yard' is an open air caged in area at the rear of the inmate's cell. It is a little larger than a cell, and contains only a

concrete bench. Certain cells have access to a larger 'day yard' (three to four times the size of a cell). Inmates are moved every 28 days to allow them occasional access to these larger yards.

...

A29. From his HRMU prison cell, in April and May 2003, Mr Simpson wrote:³⁷

They took all my property. I'm in a cell with nothing. They are trying to blackmail me by saying, 'see the sych and take the medication he wants you to take and we give you a radio and TV etc'... I will talk to sychs just not jail sychs. I will not take any medication as what I am experiencing is due to the fact certain Agencies mainly ASIO are TORCHERING me and all other Inmates with "REMOTE MIND CONTROL". Everyone knows this is no secret.

...

I would rather be dead than get this torcher every day 24/7 non stop. The very fact I'm speaking about this shows how despret I am for this TORCHER to stop. They can kill me with what I said by transmitting a compensating demodulated waveform from a remote location witch in tern effects the neurological (nervis system) and any region of the brain, thoughts and emotions with a single measurement. Better known as "REMOTE MIND CONTROL".

A30. The Human Rights and Equal Opportunity Commission, as *amicus curiae*, submitted to the NSW Deputy Coroner that Mr Simpson's treatment amounted to inhuman and degrading treatment and punishment:³⁸

The Commission submits that Mr Simpson's detention in isolation from all other inmates, for almost two years, was not compatible with the standard of treatment required in respect of a seriously mentally ill person detained on remand, and later as a forensic patient. In all the circumstances, the Commission submits that Mr Simpson's protracted detention in isolation from all other inmates was inconsistent with the right to be treated with humanity and dignity within article 10(1) and the prohibition on inhuman and degrading treatment and punishment within article 7 of the ICCPR.

A31. The Department of Corrective Services operations manual states that the inmate referral process to the HRMU includes input from health professionals.³⁹ That policy statement is seriously undermined by evidence at Mr Simpson's coronial inquiry and the findings of the NSW Deputy Coroner.

A32. Evidence at the coronial inquiry established that psychiatric and nursing staff at Goulburn repeatedly recommended Mr Simpson's transfer to hospital.⁴⁰ One nurse even wrote to the director of mental health at Justice Health, the government agency responsible for the health of NSW inmates, concerned that the Department was breaching its duty of care to Mr Simpson by keeping him at the HRMU.⁴¹

A33. The NSW Deputy Coroner was blunt in her assessment. Her Honour found that:⁴²

...the HRMU is solely the domain of DCS. All decisions about an HRMU inmate, including segregation, are made without any input from Justice Health.

A34. The NSW Deputy Coroner recommended that the Department of Corrective Services adopt the policy that inmates diagnosed with a mental illness should be placed in segregation only in exceptional circumstances and for a limited period.⁴³ The NSW government has responded by launching an inquiry to review the treatment of mentally ill inmates and forensic patients in NSW prisons.⁴⁴ The inquiry is headed by the President of the Mental Health Review Tribunal. To date, the inquiry has not reported.

2.1.6 conditions

A35. Each cell in the HRMU measures two-by-three metres. Each cell contains a bed, shelf, toilet and basin.⁴⁵ Inmates remain alone in their cells from 16 to 22 hours a day.⁴⁶ Inmate complaints about lack of fresh air and natural light have been investigated by the NSW Ombudsman, who reported that:⁴⁷

The entire unit is air-conditioned and most cells have both yards and day rooms. Except for lock downs, inmates have access to their day room during 'out of cell hours'. They also have access to the yards attached to the cells for a number of hours on most days. These yards are open to the fresh air. There is also some access to sports yards, but that depends on staff availability, inmate privilege and association levels.

A36. The Ombudsman also reported that there were problems with the air conditioning and that vents are placed immediately above inmates' beds.⁴⁸ The Ombudsman also reported that a strip window in each cell allows in natural light.

A37. During evidence to a parliamentary committee, the Corrective Services Commissioner was asked about whether the conditions in the HRMU meet the UN *Standard Minimum Rules for the Treatment of Prisoners*. Mr Woodham expressed the view that the UN rules are out-of-date and that it 'was not intended that all of the rules would be applicable to all countries at all times'.⁴⁹

A38. Though NSW courts are extremely reluctant to intervene in the administration of NSW prisons,⁵⁰ the courts have accepted that the harsh regime in the HRMU may constitute a mitigating circumstance on sentence, especially for remand inmates.⁵¹

A39. Inmates in the HRMU are subject to a 'hierarchy of privileges and sanctions':⁵²

All inmates in the HRMU are managed on the basis of a behaviour

modification program which links behaviour changes to a hierarchy of privileges and sanctions and progression criteria. Inmates can progress through a number of stages: stages 1, 2, and 3 are conducted at the HRMU.

A40. The NSW Ombudsman made these observations about the hierarchy of privileges and sanctions:⁵³

All inmates in the HRMU are subject to a hierarchy of sanctions and privileges. This hierarchy governs things like the property they can have in their cell, how many phone calls they can make each week, how often they can have visitors, and whether or not they are allowed to associate with anyone other than staff.

A41. This system of privileges also governs whether inmates can associate with other inmates. At first, inmates cannot associate with others. Gradually, inmates can associate only with inmates nominated by prison staff. Later, some inmates can choose with whom they will associate. However, only two inmates may associate at any one time and they will always be outnumbered by prison staff.⁵⁴

A42. CCL notes that the Nagle Royal Commission into NSW prisons in 1978 was highly critical of the scaled system of rewards and privileges used in the Katingal supermax facility.⁵⁵ Despite this criticism by the Royal Commissioner, the hierarchy of sanctions and privileges implemented in the HRMU closely resembles the flawed and discredited system used in Katingal. It appears that the lessons of the Royal Commission have been forgotten.

2.1.7 no right of review of placement in the HRMU

A43. HRMU inmates can complain about their conditions to the governor of the facility, the NSW Ombudsman and the Official Visitor. Though, those held on terrorism-related charges are not permitted to see the Official Visitor.⁵⁶

A44. The NSW Ombudsman began receiving complaints about the HRMU almost as soon it was opened. In December 2001, a complaint was received by the first remand prisoner placed in the HRMU, who was subjected to the same tough restrictions as convicted inmates: namely, one visit a week from his family.⁵⁷ After the Ombudsman's intervention, the remand prisoner was permitted two family visits a week.

A45. The Ombudsman sends officers to the HRMU twice a year to inspect records and interview inmates.⁵⁸ Over recent years the Ombudsman has noted a drop in complaints from HRMU inmates, which the Ombudsman attributes to disaffection with the complaints procedure rather than any improvement in conditions:⁵⁹

The number of complaints from inmates in the high risk management unit...dropped slightly in the past year. It is likely that a contributing factor to this is the fact that we have no power to help them with their

major complaint, which is their continued placement in the HRMU, and inmates are becoming aware of this.

- A46. There is no mechanism for HRMU inmates to challenge their placement and continued detention in the facility.⁶⁰ The courts have no power to intervene. The Ombudsman has expressed concerned that good behaviour in the facility will not necessarily be enough to lead to placement elsewhere.⁶¹ The Corrective Services Commissioner is of the view that some HRMU inmates will remain in the facility for the term of their natural lives.⁶²

2.1.8 political interference

- A47. Allegations of political interference in the running of the HRMU are often raised. CCL is concerned that this interference is illegitimate and that there is no remedy available to inmates who are adversely affected by it.
- A48. One example of political interference occurred in June 2006, when a tabloid newspaper ran a front-page campaign against one inmate who had been granted access to a sandwich-maker and television in his cell at the HRMU.⁶³ These privileges were the result of his good behaviour in the facility. The inmate concerned was a sentenced serial murderer and had attempted to escape from prison on several occasions. In response to the tabloid campaign, the state Opposition spokesman described conditions in the HRMU as akin to 'holiday units' and victim support groups expressed their outrage.
- A49. The very same day, the NSW Premier called a media conference to announce that the television and sandwich-maker had been taken off the inmate.⁶⁴ Premier Iemma was reported to be 'disturbed' that the inmate had been given the items.⁶⁵ The Premier ordered the Corrective Services Commissioner to review the hierarchy of privileges and sanctions in the HRMU. The inmate concerned threatened to kill himself and was placed on suicide watch.⁶⁶ After a review of the privileges system, these items were returned to the inmate – about four weeks after they were removed.⁶⁷
- A50. There have also been a constant stream of selective government and departmental leaks from the HRMU to the popular media. So much so, that an opposition spokesman accused the government of using the HRMU as a 'freak show to generate stories proving it is tough on violent criminals'.⁶⁸ One high-profile inmate of the HRMU, convicted of aggravated sexual assault in company, was the subject of several of these leaks to the media.⁶⁹ Government officials released CCTV footage of the inmate's mother accepting letters from the inmate during a visit; and, they also released some of the inmate's correspondence to the media. Another inmate's x-rays were released to the media.⁷⁰ When the NSW Privacy Commissioner suggested that these breaches of privacy might lead to compensation for these inmates and their families, the NSW government rushed legislation through Parliament to change the law to

ensure that they could not be compensated.⁷¹ According to the government:⁷²

...criminals whose crimes are so serious that they warrant incarceration should not enjoy the full range of remedies available to others when their rights are infringed. In particular, the Government...believes that the right to damages for breaches of privacy is not a right that should be extended to prisoners or their relatives, friends or associates.

- A51. Even the parliamentary committee enquiring into the HRMU was not immune from the political controversy that attaches to the facility. On 23 March 2006, members of the parliamentary committee visited the HRMU (but they did not meet any of the inmates). Significantly, committee members from both major political parties combined to deny the Greens MP, Ms Lee Rhainnon who is a long-time critic of the facility, the right to join the visiting delegation to the HRMU.⁷³

2.1.9 other supermax prisons in Australia

- A52. Australia's second supermax prison, the Melaleuca High Security Unit, was opened in Victoria in August 2007.⁷⁴ Victoria has a statutory bill of rights which prohibits cruel, inhuman or degrading treatment or punishment.⁷⁵ As a consequence, the Melaleuca facility is not expected to exhibit the problems inherent in the HRMU at Goulburn in NSW.
- A53. In 2005, an independent inquiry into prisons in Western Australia concluded that that State did not immediately need a supermax facility.⁷⁶ A parallel inquiry by the WA Inspector of Custodial Services concluded that a supermax facility should be built, but rejected the 'separation, isolation and restrictive movement' model used by US supermax facilities (and at the HRMU).⁷⁷ Western Australia is also considering the introduction of a statutory bill of rights.⁷⁸
- A54. Neither New South Wales nor the federal Commonwealth of Australia have bills of rights and there is, therefore, no statutory or constitutional prohibition of cruel, inhuman or degrading treatment or punishment in those jurisdictions.

3. Notes

¹ NSW Council for Civil Liberties, *Shadow Report* (prepared for the United Nations Committee Against Torture on the occasion of its review of Australia's Third Periodic Report under the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment), 27 July 2007,

<<http://www.nswccl.org.au/docs/pdf/CAT%20shadow%20report.pdf>>.

² NSW Council for Civil Liberties, *Shadow Report*, n 1, [194].

³ NSW Council for Civil Liberties, *Shadow Report*, n 1, [184]-[194].

⁴ Linda Doherty, 'High-security Prison To House The Very Worst', *Sydney Morning Herald* (Sydney), 2 June 2001, 6; and, Luke McIlveen, 'Worst killers get a jail of their own', *The Australian* (Sydney), 2 June 2001, 5.

⁵ General Purpose Standing Committee No. 3, NSW Parliament, *Issues relating to the operations and management of the Department of Corrective Services* (June 2006) [4.1], <<http://www.parliament.nsw.gov.au/prod/PARLMENT/Committee.nsf/0/FEA6EE9D24D0E7F5CA2570C300016768>>.

⁶ NSW, *Parliamentary Debates*, Legislative Council, 17 November 2004, 12953 (John Hatzistergos, Minister for Justice).

⁷ NSW Council for Civil Liberties, *Shadow Report*, n 1, [194].

⁸ quoted in: Chase Riveland, *Supermax Prisons: Overview and General Considerations* (January 1999) <<http://www.nicic.org/pubs/1999/014937.pdf>>, 3; and reproduced in Mahoney, n 76, [5.4].

⁹ NSW Department of Corrective Services, *Inmate and Classification Procedures Manual* (November 2005) 222-4; reproduced at <http://www.nswccl.org.au/docs/dcs/CLASSMAN_UPD%202005%20DRAFT%204%20-%20interim.doc>.

¹⁰ General Purpose Standing Committee No. 3, NSW Parliament, n 5, [4.38].

¹¹ General Purpose Standing Committee No. 3, NSW Parliament, n 5, [4.1].

¹² Riveland, n 8, 22.

¹³ General Purpose Standing Committee No. 3, NSW Parliament, n 5, [4.16].

¹⁴ General Purpose Standing Committee No. 3, NSW Parliament, n 5, [4.47].

¹⁵ NSW Department of Corrective Services, *Inmate and Classification Procedures Manual*, n 9, 222-4.

¹⁶ General Purpose Standing Committee No. 3, NSW Parliament, n 5, [4.109]. See also: NSW Council for Civil Liberties, *Shadow Report*, n 1, [186].

¹⁷ Neal Funnell, 'Where the Norm is not the Norm: Goulburn Correctional Centre and the Harm-U', annexed to Justice Action, *Submission to Inquiry into Issues Relating to the Operations and Management of the Department of Corrective Services* (March 2006), <[http://www.parliament.nsw.gov.au/prod/PARLMENT/Committee.nsf/0/1854b771eae2071dca257140000a76a2/\\$FILE/sub%20028.pdf](http://www.parliament.nsw.gov.au/prod/PARLMENT/Committee.nsf/0/1854b771eae2071dca257140000a76a2/$FILE/sub%20028.pdf)>.

¹⁸ NSW Ombudsman, *Annual Report 2004-2005* (2005), <<http://www.ombo.nsw.gov.au/show.asp?id=394>>, 111-2.

¹⁹ General Purpose Standing Committee No. 3, NSW Parliament, n 5, [4.107].

²⁰ General Purpose Standing Committee No. 3, NSW Parliament, n 5, [4.118]-[4.121].

²¹ NSW Ombudsman, *Annual Report 2004-2005* (2005), <<http://www.ombo.nsw.gov.au/show.asp?id=394>>, 111-2.

²² General Purpose Standing Committee No. 3, NSW Parliament, n 5, recommendation 7.

²³ Minister for Justice (Tony Kelly MLC), *Government Response to Legislative Council Inquiry into Issues relating to the operations and management of the Department of Corrective Services* (15 January 2007), 3, <[http://www.parliament.nsw.gov.au/prod/PARLMENT/Committee.nsf/0/ead3d0609ce89607ca2571840001d322/\\$FILE/070115%20Government%20Response.pdf](http://www.parliament.nsw.gov.au/prod/PARLMENT/Committee.nsf/0/ead3d0609ce89607ca2571840001d322/$FILE/070115%20Government%20Response.pdf)>.

²⁴ ABC TV, 'Supermax', n 46.

²⁵ *Inquest into the Death of Scott Ashley Simpson*, n 32, 16.

²⁶ WA Inspector of Custodial Services, n 77, [5.6].

-
- ²⁷ *Mental Health Act 1990* (NSW) Ch 5.
- ²⁸ e.g. NSW Council for Civil Liberties, *Submission to the Review of the Forensic Provisions of the Mental Health Act* (March 2007), [9]-[11],
<<http://www.nswccl.org.au/docs/pdf/forensic%20mental%20health%20FB%20Mar%2007.pdf>>.
- ²⁹ General Purpose Standing Committee No. 3, NSW Parliament, n 5, [4.124].
- ³⁰ Elisabeth Wynhausen, 'Jailed in body and mind', *The Australian* (Sydney), 28 August 2006, 10, reproduced at: <<http://www.ssristory.com/show.php?item=1087>>.
- ³¹ Minister for Justice (Tony Kelly MLC), *Government Response to Legislative Council Inquiry into Issues relating to the operations and management of the Department of Corrective Services* (15 January 2007), 4,
<[http://www.parliament.nsw.gov.au/prod/PARLMENT/Committee.nsf/0/ead3d0609ce89607ca2571840001d322/\\$FILE/070115%20Government%20Response.pdf](http://www.parliament.nsw.gov.au/prod/PARLMENT/Committee.nsf/0/ead3d0609ce89607ca2571840001d322/$FILE/070115%20Government%20Response.pdf)>.
- ³² *Inquest into the Death of Scott Ashley Simpson* (17 July 2006) NSW Deputy State Coroner, <[http://www.agd.nsw.gov.au/lawlink/Coroners_Court/ll_coroners.nsf/vwFiles/SimpsonInquest.doc/\\$file/SimpsonInquest.doc](http://www.agd.nsw.gov.au/lawlink/Coroners_Court/ll_coroners.nsf/vwFiles/SimpsonInquest.doc/$file/SimpsonInquest.doc)>, 1.
- ³³ *Inquest into the Death of Scott Ashley Simpson*, n 32, 1.
- ³⁴ *Inquest into the Death of Scott Ashley Simpson*, n 32, 17.
- ³⁵ *Inquest into the Death of Scott Ashley Simpson*, n 32, 10.
- ³⁶ Human Rights and Equal Opportunity Commission, Written Submissions to the NSW Coroner's Inquest into the Death of Scott Simpson (27 June 2006)
<http://www.humanrights.gov.au/legal/submissions_court/intervention/simpson.html>, [4.9]-[4.10], [4.13].
- ³⁷ Neal Funnell, 'Where the Norm is not the Norm: Goulburn Correctional Centre and the Harm-U', n 17.
- ³⁸ HREOC, n 36, [4.16].
- ³⁹ NSW Department of Corrective Services, *Inmate and Classification Procedures Manual*, n 9, 223.
- ⁴⁰ Richard Guillatt, 'Inquiry into death of mentally ill prisoner', *Sydney Morning Herald* (Sydney), 16 July 2005, 4.
- ⁴¹ Natasha Wallace, 'Suicide file went unread until prisoner found hanging in his cell', *Sydney Morning Herald* (Sydney), 22 February 2006, 9. See also: *Inquest into the Death of Scott Ashley Simpson*, n 32, 9.
- ⁴² *Inquest into the Death of Scott Ashley Simpson*, n 32, 16.
- ⁴³ *Inquest into the Death of Scott Ashley Simpson*, n 32, Recommendation 5.
- ⁴⁴ NSW Department of Health, *Review of the forensic provisions of the Mental Health Act*, <<http://www.health.nsw.gov.au/pubs/2007/consultpaper.html>>.
- ⁴⁵ Linda Doherty, 'High-security Prison To House The Very Worst', *Sydney Morning Herald* (Sydney), 2 June 2001, 6.
- ⁴⁶ ABC TV, 'Supermax', *Four Corners* (7 November 2005),
<<http://www.abc.net.au/4corners/content/2005/s1499699.htm>>.
- ⁴⁷ NSW Ombudsman, *Annual Report 2003-2004* (2004),
<<http://www.ombo.nsw.gov.au/show.asp?id=237>>, 90.
- ⁴⁸ NSW Ombudsman, *Annual Report 2003-2004* (2004),
<<http://www.ombo.nsw.gov.au/show.asp?id=237>>, 90.
- ⁴⁹ General Purpose Standing Committee No. 3, NSW Parliament, n 5, [4.83]-[4.84].
- ⁵⁰ *R v Hamzy* [2004] NSWCCA 243, [129]-[130],
<<http://www.austlii.edu.au/au/cases/nsw/NSWCCA/2004/243.html>>.
- ⁵¹ *R v Penisini* [2003] NSWSC 892, [103],
<http://www.austlii.edu.au/au/cases/nsw/supreme_ct/2003/892.html>.
- ⁵² NSW Department of Corrective Services, *Inmate and Classification Procedures Manual*, n 9, 222-4.
- ⁵³ NSW Ombudsman, *Annual Report 2005-2006* (2006),
<<http://www.ombo.nsw.gov.au/show.asp?id=394>>, 94.
- ⁵⁴ General Purpose Standing Committee No. 3, NSW Parliament, n 5, [4.32]-[4.35].
- ⁵⁵ General Purpose Standing Committee No. 3, NSW Parliament, n 5, [4.18].
- ⁵⁶ see NSW Council for Civil Liberties, *Shadow Report*, n 1, [189].

-
- ⁵⁷ NSW Ombudsman, *Annual Report 2001-2002* (2002), <<http://www.ombo.nsw.gov.au/show.asp?id=112>>, 62.
- ⁵⁸ NSW Ombudsman, *Submission to the Inquiry into Issues relating to the operations and management of the Department of Corrective Services* (18 January 2006), <[http://www.parliament.nsw.gov.au/prod/PARLMENT/Committee.nsf/0/cead74373dd73db3ca25711700014401/\\$FILE/ATTJLH6Y/sub%20008.pdf](http://www.parliament.nsw.gov.au/prod/PARLMENT/Committee.nsf/0/cead74373dd73db3ca25711700014401/$FILE/ATTJLH6Y/sub%20008.pdf)>.
- ⁵⁹ NSW Ombudsman, *Annual Report 2005-2006* (2006), <<http://www.ombo.nsw.gov.au/show.asp?id=394>>, 94.
- ⁶⁰ General Purpose Standing Committee No. 3, NSW Parliament, n 5, [4.41].
- ⁶¹ NSW Ombudsman, *Annual Report 2005-2006* (2006), <<http://www.ombo.nsw.gov.au/show.asp?id=394>>, 94.
- ⁶² General Purpose Standing Committee No. 3, NSW Parliament, n 5, [4.50].
- ⁶³ Luke McIlveen, 'Milat Prison Perks', *Daily Telegraph* (Sydney), 21 June 2006, 1.
- ⁶⁴ Editorial, "Milat's perks an insult to victims", *Daily Telegraph* (Sydney), 15 July 2007, 22. See also: Luke McIlveen, 'Whinger Milat wins back TV, toaster', *Daily Telegraph* (Sydney), 15 July 2006, 3. And see also: ABC News, "Milat's privileges suspended after outcry", ABC (Sydney), 21 June 2006, <<http://www.abc.net.au/news/stories/2006/06/21/1667867.htm>>.
- ⁶⁵ ABC News, 'Milat on suicide watch amid privileges row', ABC (Sydney), 22 June 2006, <<http://www.abc.net.au/news/stories/2006/06/22/1669152.htm>>.
- ⁶⁶ ABC News, 'Milat on suicide watch amid privileges row', ABC (Sydney), 22 June 2006, <<http://www.abc.net.au/news/stories/2006/06/22/1669152.htm>>.
- ⁶⁷ Editorial, "Milat's perks an insult to victims", *Daily Telegraph* (Sydney), 15 July 2007, 22.
- ⁶⁸ Stephen Gibbs, 'Fear, Loathing And Politics', *Sydney Morning Herald* (Sydney), 26 July 2003, 31, an extract appears at: <<http://www.smh.com.au/articles/2003/07/25/1059084204009.html>>.
- ⁶⁹ Stephen Gibbs, 'Fear, Loathing And Politics', *Sydney Morning Herald* (Sydney), 26 July 2003, 31, an extract appears at: <<http://www.smh.com.au/articles/2003/07/25/1059084204009.html>>.
- ⁷⁰ New South Wales, *Parliamentary Debates*, Legislative Council, 20 November 2002, 7045 (Mr Michael Egan, Vice-President of the Executive Council).
- ⁷¹ *Privacy and Personal Information Protection Amendment (Prisoners) Act 2002* (NSW).
- ⁷² Michael Egan (20 November 2002) n 70.
- ⁷³ Lee Rhiannon, "Major parties vote to block Greens' Supermax visit" (media release), 23 March 2006, <<http://lee.greens.org.au/index.php/content/view/937/50/>>.
- ⁷⁴ Premier of Victoria, 'Premier Visits New High Security Unit at Barwon Prison' (29 August 2007), <http://www.premier.vic.gov.au/newsroom/news_item.asp?id=1123>.
- ⁷⁵ *Charter of Human Rights and Responsibilities Act 2006* (Vic) s.10(b).
- ⁷⁶ Dennis Mahoney, *Inquiry into the Management of Offenders in Custody and in the Community* (23 November 2005), <<http://www.slp.wa.gov.au/publications/publications.nsf/Inquiries+and+Commissions?openpage>>, [19.10]-[19.11].
- ⁷⁷ Office of the Inspector of Custodial Services, *Directed Review of the Management of Offenders in Custody* (November 2005), <http://www.custodialinspector.wa.gov.au/files/00111_rp30-DirRevManageCustody1.pdf>.
- ⁷⁸ see <<http://www.humanrights.wa.gov.au/>>.