***Issue 3: condition in prisons***

1. In 2001 the Committee recommended that Australia ‘continue its efforts to reduce overcrowding in prisons’ and expressed concern about:  
   1. The use by prison authorities of instruments of physical restraint that may cause unnecessary pain and humiliation;
   2. Allegations of excessive use of force or degrading treatment by police forces or prison guards;
   3. Allegations of intimidation and adverse consequences faced by inmates who complain about their treatment in prisons.[7](https://www.humanrights.gov.au/our-work/legal/australias-compliance-convention-against-torture" \l "endnote7)

**Monitoring prison conditions**

1. HREOC can not provide commentary on the experiences of prisoners because there is no regular program of prison visits by HREOC. HREOC has no power to compel entry to prisons and no jurisdiction to receive complaints from state prisoners about breaches of human rights under the ICCPR or the CRC.
2. While HREOC does not have the resources or the jurisdiction to investigate whether conditions in state prisons comply with CAT (in particular, the prohibition on cruel, inhuman and degrading treatment), HREOC is concerned about human rights conditions in Australian prisons.  In expressing these concerns, HREOC emphasizes the importance of preventative actions to reduce the risk of people in detention being subjected to cruel, inhuman or degrading treatment.
3. In particular, HREOC is concerned about the protection of the rights of the mentally ill in Australian prisons.[8](https://www.humanrights.gov.au/our-work/legal/australias-compliance-convention-against-torture" \l "endnote8) HREOC notes with concern a 2006 report by the *Anti-Discrimination Commission Queensland*found:  
   1. many women with mental illness are inappropriately detained in prison while their mental health needs are left unintended; and
   2. Indigenous women are especially at risk of discrimination in prison.[9](https://www.humanrights.gov.au/our-work/legal/australias-compliance-convention-against-torture" \l "endnote9)

**Case Study: the death of Scott Simpson**

1. Mr Simpson hanged himself at the Long Bay Correctional Centre, Malabar, New South Wales on 7 June 2004. He had paranoid schizophrenia.
2. HREOC intervened in the Coroner’s inquest into Mr Simpson’s death. HREOC made submissions that the treatment of Mr Simpson during his incarceration was inconsistent with both article 7 and article 10(1) of the ICCPR in the following respects:  
   1. (a) the prolonged detention of Mr Simpson in segregated custody, particularly in light of his serious mental illness;
   2. (b) the failure to transfer Mr Simpson to ‘D ward’, contrary to the recommendations of numerous psychiatrists that Mr Simpson required hospital treatment; and
   3. (c) the failure to provide adequate medical care, including psychiatric care, to Mr Simpson while he remained in the correctional environment.[10](https://www.humanrights.gov.au/our-work/legal/australias-compliance-convention-against-torture" \l "endnote10)
3. The Coroner found that:  
   1. Mr Simpson was not provided with adequate medical treatment during his incarceration;
   2. the time Mr Simpson spent in segregation lead inevitably to a deterioration of his mental state until the crisis point was reached on 7 June 2004;
   3. more could have been done to secure a hospital bed for Mr Simpson, but wasn't;
   4. Justice Health administrators were reluctant to admit Mr Simpson to D ward, whether unconvinced of the clinical urgency or because of security considerations or a combination of both.

**Mandatory minimum sentencing**

1. In 2001 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 instruments, particularly with regard to the possible adverse effect upon disadvantaged groups’.
2. HREOC notes that although the Northern Territory (NT) Parliament made changes to the ‘mandatory sentencing’ laws for property offences effective from 22 October 2001, the *Sentencing Act 1995*(NT) still contains forms of mandatory sentencing in cases involving offences of violence.[11](https://www.humanrights.gov.au/our-work/legal/australias-compliance-convention-against-torture" \l "endnote11)
3. Mandatory sentencing laws are still in place in Western Australia (WA).[12](https://www.humanrights.gov.au/our-work/legal/australias-compliance-convention-against-torture" \l "endnote12)Like the NT provisions, the WA laws have resulted in situations of injustice, with individuals receiving sentences that are disproportionate to the circumstances of their offending.[13](https://www.humanrights.gov.au/our-work/legal/australias-compliance-convention-against-torture" \l "endnote13)

**Disproportionate incarceration of Indigenous Australians**

1. In 2001 the Committee recommended that Australia ‘address the socio-economic disadvantage that, inter alia, leads to a disproportionate number of indigenous Australians coming into contact with the contact with the criminal justice system’.[14](https://www.humanrights.gov.au/our-work/legal/australias-compliance-convention-against-torture" \l "endnote14)
2. HREOC notes that Indigenous Australians are still incarcerated at a disproportionate rate when compared to non-Indigenous Australians.  The Australian Bureau of Statistics report, *Prisoners in Australia 2006,* states that Indigenous prisoners represented 24% of the total prisoner population at 30 June 2006, the highest proportion at 30 June since 1996.
3. One of the clear messages of Royal Commission into Aboriginal Deaths in Custody (RCIADIC) was that a reduction in the unacceptable rate at which Aboriginal people were dying in custody required a reduction in the rates of arrest, detention and imprisonment of Aboriginal people. Many of the 339 recommendations contained in the RCIADIC are yet to be implemented.

**Case study: Mulrunji’s Death**

1. The death of a man living on Palm Island in Northern Queensland, in a police cell on 19 November 2004, highlighted many systemic problems with policing in Aboriginal communities which could have been avoided by implementation of the recommendations of RCIADIC. An inquest into the death of Mulrunji was conducted by the Queensland Deputy State Coroner in 2006.
2. Mulrunji was arrested for disorderly behaviour as he walked along a street on Palm Island after he said certain words to a police officer and a Police Liaison Officer. Upon being removed from the police wagon at the police station, Mulrunji struck the arresting officer, Senior Sergeant Hurley, and a scuffle ensued which resulted in the two men falling to the floor of the police station.
3. The Deputy State Coroner found that Senior Sergeant Hurley hit Mulrunji while he was on the floor. This broke four of Mulrunji’s ribs and caused his liver to rupture. The bleeding from this injury resulted in his death.
4. HREOC intervened in the Coroner’s inquest. HREOC’s submissions included 40 suggested recommendations aimed at protecting human rights and preventing future deaths[15](https://www.humanrights.gov.au/our-work/legal/australias-compliance-convention-against-torture" \l "endnote15) all of which were adopted by the Coroner.
5. Despite the Coroner’s findings, the Queensland Director of Public Prosecutions recommended that no charges be laid against Senior Sergeant Hurley. A subsequent independent report by former New South Wales Chief Justice Sir Lawrence Street found that there was sufficient evidence to charge Senior Sergeant Hurley. Senior Sergeant Hurley has now been formally charged with manslaughter.