



ATTORNEY-GENERAL
THE HON ROBERT McCLELLAND MP

09/23926 MC09/23191

23 FEB 2010

Ms Julia Irwin MP
Chair
Standing Committee on Petitions
Parliament House
CANBERRA ACT 2600

Dear Ms Irwin

Thank you for your letter of 19 November 2009 regarding a petition submitted for the Committee's consideration concerning the death in custody of Mr Ward.

The petition states that the treatment of Mr Ward violated Australia's obligations under the International Covenant on Civil and Political Rights, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention of the Elimination of Racial Discrimination. It further states that these violations need to be remedied and their recurrence prevented. The petition calls for a review of the legal framework for giving effect to Australia's human rights treaty obligations and to international standards within the criminal justice system, with particular attention to the role of imprisonment in punishment, rehabilitation and public security, the conditions of imprisonment and the transport of prisoners, and the comparative capacity of private and state run custodial services to conform with minimum human rights standards and rehabilitate prisoners.

With respect to questions of violation of international treaties, I note that the coronial inquest into the death of Mr Ward found that Australia's obligations under the ICCPR had been breached – in particular article 10(1) which requires that “[a]ll persons deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person”.

The UN Special Rapporteur on Torture has made a request for information about the case. The Government's response to this request has been referred to in a report to the UN by the Special Rapporteur dated 25 February 2010. In addition, both the Human Rights Committee and the Committee Against Torture have taken a keen interest in Aboriginal deaths in custody.

Because of the importance the Government places on compliance with Australia's international human rights obligations I have drawn the Government's concerns to the attention of the Western Australian Government, and asked that it keep the Commonwealth updated about its attitude to the human rights implications raised by this case.

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Australia is a party to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which aims to prevent torture around the world. The Government has taken further steps to demonstrate its position against torture by enacting a law to create a Commonwealth offence of torture. This law, the Crimes Legislation Amendment (Torture Prohibition and Death Penalty Abolition) Act 2010, commenced on 14 April 2010.

The Government has also signed the Optional Protocol to the Convention against Torture (OpCAT). The OpCAT is a further prevention and enforcement mechanism aimed at achieving the purposes of the Convention against Torture. Ratification of the OpCAT will mean allowing the UN Subcommittee on Prevention of Torture to conduct periodic inspections of all our prisons and other places of detention; and establishing a national preventive mechanism at the domestic level, responsible for conducting regular inspections to examine the treatment of persons in detention. These mechanisms will complement arrangements already in place in Australia that ensure detainees are treated with humanity, and are not subject to cruel inhuman or degrading treatment.

The petition also calls for the House to direct and resource the Australian Human Rights Commission (AHRC) to conduct a public inquiry into systemic rights violations that underpin the extreme overrepresentation of Indigenous Australians at all levels of contact with the criminal justice system and to propose remedies for addressing them, including reviewing the outstanding recommendations of the Royal Commission into Aboriginal Deaths in Custody. I also draw your attention to the role of the Aboriginal and Torres Strait Islander Social Justice Commissioner within the AHRC to carry out functions, including reporting annually on enjoyment and exercise of human rights by Aboriginal and Torres Strait Islanders and recommending action where necessary to ensure those rights are observed. The most recent Social Justice Commissioner report was tabled out of session in Parliament on 20 January 2009. The Government gives close consideration to the recommendations contained in these reports.

Following the conclusion of the Royal Commission into Aboriginal Deaths in Custody, the Commonwealth Government and the States and Territories took immediate action in response to the individual recommendations of the Royal Commission. More recently Governments have embedded their broader responses to the Royal Commission into strategic planning and policy documents, such as Aboriginal Justice Agreements.

The Commonwealth Government has been monitoring the overrepresentation of Indigenous Australians in the criminal justice system and is working closely with State and Territory Governments to remedy the situation. A key initiative is the National Indigenous Law and Justice Framework (the Framework) which is a national policy direction that articulates a good practice approach to improving Indigenous law and justice outcomes across all States and Territories. In addition, the Commonwealth House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs is currently undertaking an inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system. When available, the Committee's report will inform the Commonwealth Government's continuing work in this area. A public inquiry of the kind suggested in the petition is unlikely to provide any evidence over and above that which was taken into account by Governments when developing the Framework and that which is being taken into account as part of the current Inquiry.

Although the States and Territories are largely responsible for criminal justice matters, the Commonwealth Government continues to provide leadership through initiatives such as the Framework and the Indigenous Community Safety Roundtable held on 6 November 2009. The Roundtable was attended by Commonwealth, State and Territory Attorneys-General, Indigenous Affairs Ministers, Police Ministers and Commissioners and Indigenous delegates. Ministers agreed that further proposals would be developed around an effective approach to law enforcement, alcohol related violence and crime, information sharing and integrated service delivery and victim support services. A working group of Commonwealth, State and Territory representatives has developed proposals which will be provided to Attorneys-General, Police Ministers and Indigenous Affairs Ministers for consideration and endorsement in the first half of 2010.

The petition asks the Commonwealth Government to lead the State and Territory Governments to enact reforms that create obligations on governments to respond to coronial recommendations. Through the Standing Committee of Attorneys-General, I have encouraged my State and Territory counterparts to take steps to monitor the progress of initiatives to promote responsiveness to coronial recommendations. The National Coroners Information Service is currently exploring options to record responses to coronial recommendations on the NCIS system. The outcomes of that work will be reported back to SCAG.

I hope this information is of assistance to the Committee when considering this petition.

The action officer for this matter in my Department is [REDACTED] who can be contacted on [REDACTED].

Yours sincerely

Robert McClelland