

29 January 2004

Ms Gillian Gould
Secretary
Joint Standing Committee on Treaties
Parliament of Australia
Parliament House
CANBERRA ACT 2600

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BY: *Gillian Gould*

Dear Ms Gould

**Re: THE OPTIONAL PROTOCOL OF THE UNITED NATIONS CONVENTION AGAINST TORTURE AND
OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

Enclosed please find a copy of my submission to the Joint Standing Committee on Treaties.

I would be pleased to make an oral presentation to the Joint Standing Committee on Treaties, to support this written submission.

I am contactable on Mobile 0407 270 034, or email levym@chs.health.nsw.gov.au

Yours sincerely

Associate Professor Michael Levy
DIRECTOR
CENTRE FOR HEALTH RESEARCH IN CRIMINAL JUSTICE

**SUBMISSION TO THE JOINT STANDING COMMITTEE ON
TREATIES WITH REGARD TO THE POSSIBLE ADOPTION BY
AUSTRALIA OF THE OPTIONAL PROTOCOL OF THE UNITED
NATIONS CONVENTION AGAINST TORTURE AND OTHER
CRUEL, INHUMAN OR DEGRADING TREATMENT OR
PUNISHMENT**

I respectfully make this submission, aware of the submission by Professor Richard Harding, from the Office of the Inspector of Custodial Services (Western Australia). Accordingly, I will not provide information so expertly provided in that other submission. Rather, I am in a position to relate a more personal account of the application of the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

I hold a unique position, being a public health physician working solely in the custodial environment. The Centre for Health Research in Criminal Justice is fully funded by Corrections Health Service. Corrections Health Service is the sole health service provider to inmates in public correctional centres in New South Wales.

In May-June 2003 I was invited by the Council of Europe to join the mission of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment¹, to Hungary. My role on the mission was to provide medical support, namely the review of the health services provided to detainees and persons deprived of their liberty.

I believe that I am the first non-European to have been invited to join a CPT Mission.

The conduct of the Mission was of the highest professional order. While the visit was deemed *ad hoc*, it was announced. The Hungarian Government was given six days warning, and provided with the terms of reference of the review – namely, follow-up of a 1999 visit by the CPT. Our arrival less than a week later had given enough time for an announcement of our possible inspection to be placed in every police station!

No activities were undertaken unless they were strictly within the terms of reference of the mission. An example of this was a finding that certain public health practices undertaken within prison had implications for the general community. However as this finding could not find a place within the terms of reference, the Mission did not raise it with the Government of Hungary.

The mission was provided unfettered access to facilities of detention (including 'closed' mental asylums and immigrant detention centres), and to all relevant documents – when this was challenged by one junior official, the protocols governing the activities of the Committee were fearlessly applied, and the obstacle immediately overcome.

¹ Also referred to as the Council of Europe Anti-torture Committee, or more simply as "CPT"

The tone of the entire mission was to identify points of assistance for any humane initiatives already underway within that jurisdiction. The process was one of administrative review, rather than punitive and shaming.

The CPT has documented a number of successes as a result of its work, both in western Europe and also in central and eastern Europe. The abolition of the death penalty in all countries from Turkey to Ireland is a credit to the European application of the *United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Significant issues have been raised with the Government of the United Kingdom regarding conditions of incarceration, and with the Royal Government of the Netherlands regarding detention of asylum seekers in that country.

Most notably, countries in eastern and central Europe have sought guidance from the CPT on steps to modernise existing custodial systems. However documentation for this would be hard to obtain, as CPT only releases for public examination the results of formal reviews, and then only when the host country has specifically assented to that release.

Australia has a number of citizens in overseas prisons. While the minority would be in European prisons, they are beneficiaries of a level of protection not offered to other Australian prisoners overseas, nor to Australian prisoners at home.

Western Australia is the only jurisdiction in Australia with an independent inspectorial system. The Office of the Inspector General in New South Wales has recently been disbanded. This is contrary to the international trend to institute an independent prison inspection service. The Inspectorate of Prisons in the United Kingdom is perhaps the best-known example.

Current reporting on activity to the Council of Australian Government by Australian correctional authorities provides no insight into the complexity of imprisonment and its multiple consequences on those engaged by the system.

- Reporting 'hours-in-cell' alludes systematic to human rights abuse, but what is 'acceptable' has never been defined.
- Reporting 'Deaths in Custody', similarly refers to an abuse of human rights, but the singular inability of Australian custodial authorities to grapple with the issue of disproportionate incarceration of Aboriginal and Torres Strait Islander People.
- Reporting inmate-on-inmate trauma and inmate-on-officer trauma, notably does not report officer-on-inmate trauma – clearly a concern of human rights and abuse of "duty of care".

Australia has no enforceable standards of custodial care. The Australian community, and those deprived of their liberty in Australian and overseas prisons, have much to gain from codification of standards of humane containment.