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Office of the High Commissioner for Human Rights
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By email: urgent-action@ohchr.org

To: UN Special Rapporteur on the Right to Health, Mr Paul Hunt
And To: UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Mr Manfred Nowak
And To: UN Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism, Mr Martin Scheinin
And To: UN Special Rapporteur on Freedom of Religion or Belief, Ms Asma Jahangir
And To: Chairperson of the UN Working Group on Arbitrary Detention, Ms Leila Zerrougui

Copy To: The Hon Philip Ruddock, Attorney General of Australia
And To: The Hon Chris Ellison, Federal Minister for Justice
And To: The Hon Tim Holding, Victorian Minister for Corrections

**Request for Urgent Joint Action on
Conditions of Detention of Unconvicted Remand Prisoners
in Victoria, Australia**

We write in relation to the situation of Mr Amer Haddara, Mr Shane Kent, Mr Izzydeen Attik, Mr Fadal Sayadi, Mr Abdullah Merhi, Mr Ahmed Raad, Mr Ezzit Raad, Mr Hany Taha, Mr Aimen Joud, Mr Shoue Hammoud, Mr Majed Raad, Mr Bassam Raad and Mr Abdul Nacer Benbrika (collectively, 'the Detainees').

The Detainees have been held as unconvicted remand prisoners in the maximum security Acacia Unit of Barwon Prison in Victoria, Australia since November 2005 in the case of nine Detainees and since March 2006 in the case of the remaining three Detainees.

We are gravely concerned that the type, length, conditions and effects of the Detainees' detention amount to serious ongoing human rights violations, including in relation to:

- (a) the right to be free from cruel, inhuman or degrading treatment or punishment under art 7 of the *International Covenant on Civil and Political Rights* ('*ICCPR*');
- (b) the right to freedom from arbitrary detention under art 9 of the *ICCPR*;
- (c) the right of prisoners to be treated with dignity and respect under art 10(1) of the *ICCPR*;
- (d) the right to a fair trial, including the right to adequate time and facilities to prepare a defence, under art 14(3) of the *ICCPR*;
- (e) the right to freedom of religion under art 18(1) of the *ICCPR*; and
- (f) the right to the highest attainable standard of physical and mental health under art 12 of the *International Covenant on Economic, Social and Cultural Rights* ('*ICESCR*').

These allegations are discussed in detail below.

We would be deeply grateful if you would urgently jointly investigate and respond to this situation.

2. Facts

2.1 Charges

2.2 The Detainees have been charged with various terrorist offences under the anti-terror provisions of the *Criminal Code Act 1995* (Cth). The offences relate primarily to membership and support of a terrorist organisation. None of the Detainees has been charged with engaging in a terrorist act or doing an act in preparation of a terrorist act.

2.3 On 8 November 2005, nine of the Detainees were arrested and charged following a series of co-ordinated police raids in Sydney and Melbourne. On 31 March 2006, the remaining three Detainees were arrested and charged following police raids conducted in Melbourne.

2.4 Detention of the Detainees

2.5 The Detainees are being held on remand and have been classified by the state correctional authority, Corrections Victoria, to the maximum security Acacia Unit at Barwon Prison in Victoria, Australia. All applications for bail made on behalf of the Detainees to both the Magistrates' Court and the Supreme Court of Victoria to date have been unsuccessful.

2.6 We understand that the type, length, conditions and effects of the Detainees' detention include the following:

- (a) at various stages, the Detainees have been held with convicted prisoners;
- (b) most of the Detainees are being ,or have been, held in solitary confinement;
- (c) the Detainees are permitted out of their cells for up to six hours per day; however, this time limit varies frequently to as low as one hour per day;
- (d) most of the Detainees have either no contact, or contact with only one other prisoner, while they are out of their cells for exercise purposes;
- (e) in terms of family access, the Detainees are permitted only one non-contact visit per week (through glass) and only one contact visit per month. The contact visit is limited to children under the age of 16 and is not permitted to spouses, partners or other family members. The visit occurs in a cubicle and Detainees remain shackled and manacled throughout;
- (f) the Detainees are strip searched both before and after every contact visit and both before leaving and upon returning to prison to attend court;
- (g) the Detainees have very limited access to legal representatives. The capacity of legal representatives to take adequate instructions is also very limited, with professional visits, telephone calls and videoconferences usually terminated by 2.30pm;
- (h) all communications between the Detainees and their legal representatives are video- and audio-taped.
- (i) the mental health of some of the Detainees has been severely and deleteriously affected as a result of the conditions of their detention;

- (j) the conditions of detention are likely to endure for at least another 18 months until the conclusion of the Detainees' committal and trial.

2.7 The type, length and conditions of detention of the Detainees is in contrast with the detention regimes normally accorded to unconvicted remand prisoners, with the *Minimum Standard Guidelines for Australian Prisons* (2004), developed and agreed to jointly by every Australian state and territory government, recognising the particular importance of ensuring fair conditions and treatment of remand prisoners. The *Guidelines* relevantly provide that:

- (a) unconvicted remand prisoners should be treated without restriction other than those necessary for prison organisation and the security of the prison and prisoner;
- (b) the treatment of unconvicted remand prisoners should be no less favourable than that of convicted prisoners;
- (c) where practicable, unconvicted remand prisoners should not be held with convicted prisoners; and
- (d) unconvicted remand prisoners should have increased visitor access at the discretion of the prison manager.¹

2.8 Further details about these conditions and effects, together with their relevance to the human rights violations alleged, are discussed in Parts 3, 4, 5, 6, 7 and 8 below.

¹ *Standard Guidelines for Corrections in Australia* (2004) 13-14.

3. Legal Framework

3.1 Legal Obligations of Australia under International Human Rights Law

3.2 Australia is a State Party to the following instruments relevant to the situation of the Detainees:

- (a) The *International Covenant on Civil and Political Rights*, which entered into force for Australia on 13 August 1980;
- (b) The *International Covenant on Economic, Social and Cultural Rights*, which entered into force for Australia on 10 December 1975; and
- (c) The *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, which entered into force for Australia on 8 July 1989.

3.3 Under international law, these instruments oblige Australia to respect, protect and fulfil the rights contained therein. These obligations apply to federal, state and territory governments and authorities, including correctional services and prisons. In this respect it is important to note that the international human rights framework makes it explicitly clear that both federal and state governments have responsibilities in relation to the realisation of human rights. Article 28 of the *ICESCR* and art 50 of the *ICCPR*, expressly provide that, in federations such as Australia, the obligations of the Covenants are binding on the federation as a whole and must extend across all parts of that federation, without any limitations or exceptions. This means that, in Australia, all branches of government (legislative, executive and judicial) and other public or governmental authorities, at whatever level – national or state – must act to respect, protect and fulfil human rights.²

3.4 Although not legally binding, the following international instruments are also relevant to the rights and conditions of detention of the Detainees:

- (a) the *UN Standard Minimum Rules for the Treatment of Prisoners*;
- (b) the *UN Basic Principles for the Treatment of Prisoners*; and
- (c) the *UN Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment*.

3.5 Human Rights and Counter-Terrorism Measures

3.6 While recognising the importance of effective counter-terrorism measures, the UN General Assembly, the UN Security Council, the UN High Commissioner for Human Rights and the UN Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism have reiterated that States must 'ensure that any measures taken to combat

² HRC, *General Comment 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc CCPR/C/21/Rev.1/Add13 (26 May 2004) [4]. See also art 27 of the *Vienna Convention on the Law of Treaties* which provides that a State Party 'may not invoke the provisions of its internal law as justification for its failure to perform a treaty': *Vienna Convention on the Law of Treaties*, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980).

terrorism comply with all their obligations under international law, in particular international human rights, refugee and humanitarian law'.³

3.7 Domestic Remedies Unavailable to the Detainees

3.8 The conditions of the Detainees' detention have been considered in three separate bail applications.

3.9 In January 2006, Robert Stary & Associates made an application for bail to the Supreme Court of Victoria on behalf of Mr Haddara.⁴ In deciding Mr Haddara's application for bail, Justice Osborn considered the circumstances of his custody. Although Justice Osborn ultimately dismissed Mr Haddara's application on the basis that his circumstances did not give rise to 'exceptional circumstances' as required pursuant to section 15AA of the *Crimes Act 1914* (Cth), his Honour stated that:

In the present case the applicant is held in seriously confined conditions. It can be said that he has access to a variety of facilities within his confined circumstances and is one of a group which appears to be mutually supportive. Nevertheless the basic fact remains that Unit 1 is restricted in space with very little access to the open air and his opportunities for outside contact are materially limited. The fact that Unit 1 and in turn the block which contains it are fully or substantially occupied on an ongoing basis exacerbates these problems. These conditions, which I have personally observed, are not those in which ordinary Australians would expect any member of the public to be held on remand for extended periods of time when charged with no more than membership of an organisation.

...

In my view the conditions in which the applicant is confined are such that if such confinement continued for a protracted period pending trial it might be regarded as constituting exceptional circumstances.⁵

3.10 In May 2006, Robert Stary & Associates again made an application for bail to the Supreme Court of Victoria on behalf of Mr Haddara on the basis of 'exceptional circumstances'. Although Justice Eames rejected the application, he accepted that, in light of the restrictive conditions of detention,

preparation of the case is difficult for the legal advisors. The fact that the prisoner is at a remote location only adds to the difficulties that the maximum security status of the unit already imposes.

3.11 Justice Eames further accepted that the Acacia Unit at Barwon Prison,

certainly is much more restrictive than would apply elsewhere in the prison system, but it is the state's maximum security prison, one originally designed not for remand prisoners but for prisoners serving sentences.

³ See, eg, GA Res 57/219, 58/187 and 59/191 and SC Res 1456 (2003) and 1624 (2005).

⁴ *Haddara v DPP* [2006] VSC 8 (20 January 2006).

⁵ *Ibid* [21] and [23].

- 3.12 In addition to the bail applications made on behalf of Mr Haddara, in April 2006, Robert Stary & Associates made an application for bail to the Magistrates' Court of Victoria on behalf of Mr Attik on the basis of his mental health, the impact of oppressive detention on such health, and the lack of access to adequate health care in custody. The application was unsuccessful.
- 3.13 In our view, there are no further effective administrative or judicial domestic remedies available to the Detainees. In particular, the following domestic remedies are either unavailable or manifestly futile:

(a) Further Bail Applications

As discussed above, the three bail applications made to date have been unsuccessful. Further, in the recent decision of *Re Rigoli*, the Victorian Court of Appeal stated:

If, as is suggested in some of the material, the facilities made available for the medical and psychological care of prisoners are said to be deficient in some respect, that is not a matter which this Court can ordinarily investigate on a bail application. A court of law is peculiarly unsuited to evaluating the adequacy of the treatment of a particular person having a particular condition, whether medical or psychological. Whether the care in a particular case is adequate or not is a matter for expert opinion. Accordingly, in my view, it would be a rare case indeed in which this Court would come to the view that the standard of medical care provided to a person in custody fell so far below what was required as to warrant a grant of bail pending appeal where bail would not otherwise be granted.⁶

(b) Application for Judicial Review of Conditions of Detention

An application for judicial review of the classification of the Detainees and their conditions of detention is also likely to be futile. The case law demonstrates that Australian Courts are extremely reluctant to consider or review conditions or treatment in detention, and are instead very deferential to prison administrators, particularly with respect to prison and prisoner 'management'.⁷

(c) Direct Negotiation with Corrections Victoria

At the request of Robert Stary & Associates, Barwon Prison has made various undertakings to improve the Detainees' access to their legal representatives. For example, at the hearing of Mr Haddara's January 2006 bail application in the Supreme Court, Mr Delphine, on behalf of Barwon Prison and Corrections Victoria, undertook to improve the 'accommodation for visits to [Mr Haddara]' and also 'expressed a willingness to respond to further requests for improved conditions'.⁸ Notwithstanding this undertaking, Robert Stary & Associates do not consider that adequate steps have been taken to improve the situation, although Justice Eames did comment in the context of the May 2006 bail application that there did seem to be some improvement in the extent of access to and for lawyers.

⁶ *Re Rigoli* [2005] VSC 325 (16 December 2005), [5].

⁷ See, eg, *Anderson v Pavic* [2005] VSCA 244 (4 October 2005), [32]; *Kelleher v Commissioner, Department of Corrective Services* [1999] NSWSC 86, [7]; *The Herald and Weekly Times Ltd v Correctional Services Commissioner* [2001] VSC 329, [95]; *R v Hillingdon LBC; Ex parte Pulhofer* [1986] 1 AC 434, 518.

⁸ *Haddara v DPP* [2006] VSC 8 (20 January 2006), [22].

(d) Administrative Remedies

It may be open to the Detainees to make a complaint to the Victorian Ombudsman. However, in the recent case of *Brough v Australia* concerning the conditions of detention of a 16 year old Aboriginal boy, the UN Human Rights Committee ('HRC') considered that such a remedy cannot be considered 'effective' because it would have only an 'hortatory rather than binding effect so far as the authorities are concerned'.⁹

⁹ *Brough v Australia*, HRC, Communication No 1184/2003, Un Doc CCPR/C/96/D/1184/2003 (17 March 2006), [8.6]. See also *C v Australia*, HRC, Communication No 900/1999 (28 October 2002), [7.3].

4. Violation of the Right to Freedom from Cruel, Inhuman or Degrading Treatment or Punishment

4.1 Content of the Right to Freedom from Cruel, Inhuman or Degrading Treatment or Punishment

4.2 Article 7 of the *ICCPR* states that:

no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

4.3 The right to freedom from cruel, inhuman or degrading treatment is also enshrined in art 16(1) of the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* and is recognised as a peremptory norm of customary international law.

4.4 The purpose of art 7 of the *ICCPR* is to 'protect both the physical and mental integrity ... and the dignity of the individual'.¹⁰

4.5 Article 7 is an absolute, non-derogable right. It cannot be modified or relaxed in light of extenuating circumstances.¹¹ For example, in *Mukong v Cameroon*,¹² the HRC rejected an attempt by the State Party to justify appalling prison conditions on the basis of economic and budgetary problems. Further, notions of 'proportionality' are not relevant to an assessment of whether treatment breaches art 7.¹³

4.6 Article 7 should be interpreted broadly and in favour of the individual. The HRC has stated that:

what constitutes inhuman and degrading treatment falling within the meaning of article 7 depends on all the circumstances of the case, such as the duration and manner of the treatment, its physical or mental effects as well as the sex, age and state of health of the victim.¹⁴

4.7 Further, determination of whether 'art 7 treatment' has occurred is part of a subjective evaluation, and factors such as the person's age and mental health can aggravate the effect of treatment.¹⁵ It may also be relevant that a person is a remand prisoner rather than a convicted prisoner.

4.8 The definition of inhumane treatment in art 7 changes according to the changing values in contemporary society. For instance, in *Catholic Commission for Justice and Peace in Zimbabwe v Attorney-General*, the Supreme Court of Zimbabwe stated that '[w]hat might not

¹⁰ HRC, *General Comment No. 20 (Replaces General Comment No. 7), on prohibition of torture and cruel treatment or punishment* (2001) [1]-[2].

¹¹ *Ibid* [3].

¹² *Mukong v Cameroon*, HRC, Communication No 458/1991, UN Doc CCPR/C/51/D/458/1991 (1994), [9.93].

¹³ S Joseph, J Schultz and M Castan, *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary* (2000) 151.

¹⁴ *Vuolanne v Finland*, HRC, Communication No 265/1987, UN Doc CCPR/c35/D/265/1987 (1989).

¹⁵ S Joseph, J Schultz and M Castan, *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary* (2000) 150.

have been regarded as inhuman decades ago may be revolting to the new sensitivities which emerge as civilization advances'.¹⁶ Further, the Court noted that the State must also take account of the contemporary norms operative in that particular State and of the sensitivities of its people.

4.9 Right to Freedom from Cruel, Inhuman or Degrading Treatment or Punishment of Persons in Detention

4.10 While the HRC has dealt with most cases regarding poor general conditions of detention under art 10(1) of the *ICCPR*, a number of cases have found breaches of art 7 on the basis of oppressive conditions of incarceration, including:

- (a) *Deidrick v Jamaica*,¹⁷ where the applicant was locked up in his cell 23 hours a day, without mattress or bedding, integral sanitation, natural light, recreational facilities, decent food, or adequate medical care; and
- (b) *Young v Jamaica*,¹⁸ where the applicant had been detained in a tiny cell, allowed few visitors, assaulted by prison wardens, had his effects stolen and his bed repeatedly soaked.

4.11 In a series of determinations, the HRC has also recognised that mental distress and deterioration caused by detention may constitute a breach of art 7, particularly where there is inadequate health care available in the prison:

- (a) In *Massera v Uruguay*,¹⁹ the HRC found that detention in conditions detrimental to a person's health constituted a breach of art 7;
- (b) In *Williams v Jamaica*,²⁰ the HRC concluded that inadequate medical treatment for a mental health condition while detained on death row constituted a violation of art 7;
- (c) In *Setelich / Sendic v Uruguay*,²¹ HRC considered that the denial of medical treatment required by a prisoner for his medical condition disclosed a violation of art 7; and
- (d) In *C v Australia*,²² the applicant was an asylum seeker who was being held in detention while his immigration status was being determined. He was detained for over two years, and claimed that the lengthy period caused him to develop a serious mental illness. The HRC stated that 'the continued detention of the author when the State party was aware of the author's mental condition and failed to take steps necessary to ameliorate the author's mental deterioration' constituted a breach of art 7.

¹⁶ Judgment No SC 73/93, (1993) 14 *Human Rights Law Journal* 323 (Gubbay CJ).

¹⁷ HRC, Communication No 619/1995, UN Doc CCPR/C/62/D/619/1995 (4 June 1998).

¹⁸ HRC, Communication No 615/1995 (1998).

¹⁹ HRC, Communication No R 1/5, 15 August 1979.

²⁰ HRC, Communication No 609/1995, UN Doc CCPR/C/61/D/609/1995 (1997), [6.5].

²¹ HRC, Communication No 63/1979, UN Doc CCPR/C/OP/1 (1985), [20].

²² HRC, Communication No 900/1999, UN Doc CCPR/C/76/D/900/99 (2002).

4.12 Breaches of the Detainees' Right to be Free from Cruel, Inhuman or Degrading Treatment or Punishment

4.13 As discussed at para 4.8 above, what constitutes cruel, inhuman or degrading treatment or punishment is, at least in part, to be defined by reference to contemporary norms and values in a particular State. In this respect it is important to note Justice Osborn's comments in the context of Mr Haddara's bail application of January 2006 that:

the applicant is held in seriously confined conditions ... These conditions ... are not those in which ordinary Australians would expect any member of the public to be held on remand for extended periods of time when charged with no more than membership of an organisation.²³

4.14 The *Minimum Standard Guidelines for Australian Prisons*, discussed at 2.7 paragraph above, also provide guidance as to contemporary values, norms, expectations and standards regarding conditions of detention and treatment of prisoners in Australia. Relevantly, those Guidelines provide that prisoners should be:

- (a) treated with respect as human beings and not subject to harsh or degrading treatment, physical or psychological abuse;
- (b) free from discrimination on the grounds of, inter alia, race, religious belief, or national or social origin;
- (c) managed according to the level of risk posed by the prisoner;
- (d) located so as to be as accessible as practicable to the community of interest of the prisoner; and
- (e) individually managed, including with respect to the needs of specific minority groups.²⁴

4.15 The Guidelines recognise the particular importance of ensuring fair conditions and treatment of remand prisoners, providing that:

- (a) unconvicted remand prisoners should be treated without restriction other than those necessary for prison organisation and the security of the prison and prisoner;
- (b) the treatment of unconvicted remand prisoners should be no less favourable than that of convicted prisoners;
- (c) where practicable, unconvicted remand prisoners should not be held with convicted prisoners; and
- (d) unconvicted remand prisoners should have increased visitor access at the discretion of the prison manager.²⁵

4.16 In terms of prisoner classification and placement, the Guidelines state that:

- (a) prisoners should be classified and placed at the lowest level of security appropriate to their circumstances, including the nature of their crime, risk of escape and behaviour in custody;

²³ *Haddara v DPP* [2006] VSC 8, [21] and [23].

²⁴ *Standard Guidelines for Corrections in Australia* (2004) 12.

²⁵ *Ibid* 13-14.

- (b) the placement of prisoners should enable them to reside as closely as possible to their families and communities of interest;
- (c) prisoners should be individually managed, including having regard to their health and any cultural issues;
- (d) prolonged solitary confinement should not be used and prisoners should not be placed in dark cells;
- (e) prisoners placed in segregation should be managed under the least restrictive conditions appropriate for their placement.²⁶

4.17 Other principles of relevance included in the Guidelines include that:

- (a) prisoners have the right to practise their religion, including in community with others where consistent with prison security and good prison management;
- (b) contact between prisoners and their family should be encouraged in recognition of the importance of family ties to rehabilitation and reintegration;
- (c) prisoners should be permitted a minimum of one visit per week and, in the case of remand prisoners, increased visits where practicable; and
- (d) unless there is a breach of security, rules or protocols directly associated with a visit, all prisoners should be permitted direct contact with visitors.²⁷

4.18 In our view, the following conditions, impacts and effects of the Detainees' detention amount to a violation of art 7, particularly in so far as it should be interpreted and applied having regard to contemporary norms and values in Australia:

- (a) the Detainees are kept in their cell for between 18 and 23 hours a day;
- (b) the Detainees who are held in solitary confinement are permitted outside their cells into a small caged area measuring three metres by four metres for between three and five hours per day. During this time, the Detainees have no contact with any other prisoners;
- (c) the Detainees who are held in solitary confinement do not have any access to an exercise yard or recreational facilities;
- (d) the Detainees are placed in leg irons and in manacles attached to a leather band around the waist when they are moved, including when they are moved from their cells to the visit box which is itself within the maximum security area. They remain manacled and shackled throughout both family and legal professional visits. This regime is applied to all of the Detainees, despite the fact that many of the Detainees have no previous criminal history of violence or of attempting to escape;
- (e) all of the Detainees except Abdullah Mehri have been held, or are being held, in solitary confinement for extended periods. For example, as at 3 July 2006, Fadal Sayadi had been held in solitary confinement for at least ten weeks, Amer Haddara was held in solitary confinement for a continual period of six weeks, Abdul Nacer Benbrika has been held in solitary confinement for all but one week of his detention

²⁶ Ibid 15-16.

²⁷ Ibid 19, 24.

(ie, a total of at least 14 weeks in solitary), and Shoue Hammoud has been held in solitary confinement for all but four weeks of his detention (ie, a total of at least ten weeks in solitary). The HRC has recognised solitary confinement as a punitive measure which should not be applied to unconvicted persons and as treatment capable of breaching art 7.²⁸ Solitary confinement resulting in prolonged isolation has also been recognised to cause 'severe suffering';²⁹

- (f) the Detainees have been held with convicted prisoners;³⁰
- (g) some of the Detainees allege that they have been subject to verbal and physical abuse by prison authorities, including being referred to as 'pieces of shit', being pushed and punched in the chest, and having their beards tugged hard in a way intended to cause affront to religious belief; and
- (h) the Detainees have very limited access rights, to both their family and friends, and to their lawyers. In particular, the Detainees are not permitted contact visits with spouses, partners and friends. Visits from spouses, partners and friends occur in a visit box, with the Detainees separated from the visitor by thick glass. In the case of children, the Detainees are permitted one contact visit per month for a maximum of one hour. This visit occurs in a room measuring 2 metres by 2.5 metres. Spouses and partners are not permitted in the room with the children but are instead required to observe the visit from behind thick glass;
- (i) some of the Detainees have experienced a significant deterioration in mental health due to the conditions of incarceration and lack of access to adequate health care.

4.19 As noted above, an assessment of the Detainees' treatment in custody must be carried out in light of the contemporary values and expectations in Australian society. There is a strong argument that the treatment of the Detainees is particularly cruel, inhuman and degrading having regard to the fact that they are not convicted persons. As stated by Justice Osborne at Mr Haddara's bail application hearing, the conditions in which the Detainees are being held 'are not those in which ordinary Australians would expect any member of the public to be held on remand for extended periods of time when charged with no more than membership of an organisation'.³¹

²⁸ HRC, *General Comment No 21 (replaces General Comment 9) on humane treatment of persons deprived of liberty* (1992) [6]. See also HRC, *Polay Campos v Peru*, Communication No 577/1994, UN Doc CCPR/C/61/D/577/1994 (1998) [8.4].

²⁹ See, eg, UN Special Rapporteurs, *Situation of Detainees at Guantanamo Bay*, UN Doc E/CN.4/2006/120 (27 February 2006) [52].

³⁰ Note, however, that Australia has entered a reservation to art 10(2) of the *ICCPR*.

³¹ *Haddara v DPP* [2006] VSC 8 (20 January 2006).

5. Violation of the Right to Freedom from Arbitrary Detention

5.1 Content of the Right to Freedom from Arbitrary Detention

5.2 Article 9 of the *ICCPR* states that:

everyone has the right to liberty and security of person. No one shall be subject to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as established by law.

5.3 Art 9 also states that detainees must be:

- (a) informed at the time of their arrest of the reasons for the arrest and the charges;
- (b) brought promptly before a judge;
- (c) entitled to a prompt bail hearing; and
- (d) given a trial within a reasonable time.

5.4 Art 9 is generally concerned with 'lawful detention'. However, the HRC has stated that:

the notion of 'arbitrariness' must not be equated with 'against the law' but be interpreted more broadly to include such elements as inappropriateness and injustice. Furthermore, remand in custody could be considered arbitrary if it is not necessary in all the circumstances of the case ... the element of proportionality becomes relevant in this context.³²

5.5 In *A v Australia*, the HRC also stated that the following considerations are relevant to whether detention is arbitrary:

- (a) whether there has been individual consideration of whether detention is necessary rather than a blanket decision to detain a class of people;
- (b) the length of time of non-punitive detention; and
- (c) whether detention is a disproportionate measure in the circumstances.

5.6 The HRC found in that case that administrative detention of an asylum seeker was arbitrary and in breach of art 9 on the basis that he was detained for four years on the basis of a blanket policy of detaining all persons in his situation.

5.7 Breaches of the Detainees' Right to Freedom from Arbitrary Detention

5.8 In our view, the classification and detention of all of the Detainees as high-security remand prisoners detained in the Acacia Unit amounts to arbitrary detention in violation of art 9. In particular:

- (a) the high-security detention of all the Detainees has occurred as a result of a blanket decision relating to terrorist offences per se, without consideration of their individual circumstances;

³² *A v Australia*, HRC, Communication No 560/1993, UN Doc CCPR/C/59/D/560/1993 (1997), [9.2].

- (b) significant time has elapsed since the Detainees were remanded in custody (nine months in the case of nine of the Detainees and four months in the case of the other three Detainees). The committal of the Detainees is set down for late-July 2006. If the Detainees are committed to stand trial, it is unlikely that the trial would be concluded until at least the conclusion of 2007. According to Corrections Victoria, it is also 'not possible' that the Detainees' classification and conditions of detention will change until the charges are heard and determined,³³ and
- (c) the conditions and severity of detention has not been demonstrated to be necessary, reasonable or proportionate in respect of any or all of the Detainees. Some of the Detainees have only been charged with membership of or supporting a terrorist organisation, and not with any offences involving planning, preparing or supporting a specific terrorist act. None of the Detainees have been charged with engaging in a terrorist act or doing an act in preparation of a terrorist act.

³³ *Jennifer Marian Bannan-Moss v Abdulla Merhi and Hany Taha*, Transcript of Proceedings, Melbourne Magistrates' Court, 8 November 2005, 66.

6. Violation of the Right to be Treated with Dignity and Respect in Detention

6.1 Content of the Right to be Treated with Dignity and Respect in Detention

6.2 Article 10(1) of the *ICCPR* guarantees that:

[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

6.3 Article 10(1) appears to prohibit a less serious form of treatment than that prohibited by art 7. In particular, the former is more likely to deal with prison conditions generally, whereas the latter will focus on the conditions suffered by an individual. This notwithstanding, the two are often considered together.

6.4 The rights of persons deprived of their liberty have also been espoused in the *United Nations Standard Minimum Rules for the Treatment of Prisoners* ('*UN Standard Minimum Rules*'),³⁴ the *UN Basic Principles for the Treatment of Prisoners* ('*UN Basic Principles*'), and the *UN Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment* ('*UN Body of Principles*').

6.5 Article 10 of the *ICCPR* applies to 'anyone deprived of liberty under the laws and authority of the State who is held in prisons, hospitals – particularly psychiatric hospitals – detention camps or correctional institutions or elsewhere'.³⁵ It imposes a positive obligation on the State towards persons who are particularly vulnerable because of their status as persons deprived of liberty. In accordance with this article, persons deprived of their liberty may not be:

subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment.³⁶

6.6 Breaches of article 10(1) have been found, inter alia, in cases where the prisoner is denied adequate bedding, food, exercise or medical attention; is exposed to unsanitary food/water and/or living conditions; physical abuse; extended periods of isolation; overcrowding; lack of educational opportunities, work or reading materials; and physical, psychological and verbal abuse.³⁷

6.7 Article 10(1) also complements the ban on torture or other cruel, inhuman or degrading treatment or punishment contained in art 7 of the *ICCPR*. Thus, persons deprived of their liberty may not be subjected to treatment that is contrary to art 7, including medical and scientific experimentation, nor may they be subjected to any hardship or constraint other than

³⁴ See particularly Rules 22-26. In a series of determinations, the HRC has held that, in order to satisfy the requirements of art 10 of the *ICCPR*, conditions of detention should, at the very least, be consistent with the *UN Standard Minimum Rules*: see, eg, *Shaw v Jamaica*, HRC, Communication No 704/1996, UN Doc CCPR/C/62/D/704/1996 (1998); *Mukong v Cameroon*, HRC, Communication No 458/1991, UN Doc CCPR/C/51/D/458/1991 (1994)).

³⁵ HRC, *General Comment No 21 (replaces General Comment 9) on humane treatment of persons deprived of liberty* (1992), [2].

³⁶ *Ibid* [3].

that resulting from the deprivation of liberty.³⁸ Consistently with the jurisprudence of the HRC in respect of art 7, the HRC has recognised that mental distress and deterioration caused by detention may constitute a breach of art 10(1), particularly where there is inadequate health care available in the prison. Thus, for example:

- (a) in *Fabrikant v Canada*,³⁹ the HRC found that the State Party remains responsible for the life and well-being of its detainees and that it has a positive duty to maintain an adequate standard of health for the detainee;
- (b) in *Pinto v Trinidad and Tobago*,⁴⁰ the HRC reaffirmed that ‘the obligation to treat individuals deprived of their liberty with respect for the inherent dignity of the human person encompasses the provision of adequate medical care during detention’; and
- (c) in *Kelly v Jamaica*,⁴¹ the HRC stated that ‘the obligation to treat individuals with respect for the inherent dignity of the human person encompasses the provision of *inter alia*, adequate medical care during detention’.

6.8 Breaches of the Detainees’ Right to be Treated with Dignity and Respect in Detention

6.9 In our view, the following conditions, impacts and effects of the Detainees’ detention amount to a violation of art 10(1):

- (a) the Detainees are kept in their cell for between 18 and 23 hours a day;
- (b) the Detainees see only one other person during time outside their cell;
- (c) the Detainees have very limited access rights to their families and friends. In particular, the Detainees are not permitted contact visits with spouses, partners and friends. Visits from spouses, partners and friends occur in a visit box, with the Detainees separated from the visitor by thick glass. In the case of children, the Detainees are permitted one contact visit per month for a maximum of one hour. This visit occurs in a room measuring 2 metres by 2.5 metres and the Detainees remain shackled and manacled throughout. Spouses and partners are not permitted in the room with the children but are instead required to observe the visit from behind thick glass. In *Angel Estrella v Uruguay*⁴² and *Kulomin v Hungary*,⁴³ the HRC found that under art 10(1) a prisoner should be allowed to communicate with family and friends at regular intervals by correspondence as well as receiving visits;⁴⁴
- (d) the Detainees are placed in leg irons and in manacles attached to a leather band around the waist when they are moved, including when they are moved from their

³⁷ See, eg, *Robinson v Jamaica*, HRC, Communication No 731/1996, UN Doc CCPR/C/68/D/731/1996 (2000); *Sextus v Trinidad and Tobago*, HRC, Communication No 818/1998, UN Doc CCPR/C/72/D/818/1998 (2001); *Lantsova; Freemantle v Jamaica*, HRC, Communication No 625/1995, UN Doc CCPR/C/68/D/625/1995 (2000).

³⁸ HRC, *General Comment No 21 (replaces General Comment 9) on humane treatment of persons deprived of liberty* (1992), [3].

³⁹ HRC, Communication No 970/2001, UN Doc CCPR/C/79/D/970/2001 (2003) [9.3].

⁴⁰ HRC, Communication No 512/1992, UN Doc CCPR/C/39/D/512/1992 (1996) [12.7].

⁴¹ HRC, Communication No 253/1987, UN Doc CCPR/C/41/D/253/1987 (1991) [5.7].

⁴² HRC, Communication No 74/80, UN Doc CCPR/C/OP/2 at 93 (1983).

⁴³ HRC, Communication No 521/92, UN Doc CCPR/C/50/D/521/1992 (1996).

⁴⁴ See also HRC, *Concluding Observations of the HRC: Uzbekistan*, UN Doc CCPR/CO/71/UZB (26 April 2001) [7].

cells to the visit box which is itself within the maximum security area. This regime is applied to all of the Detainees, despite the fact that many of the Detainees have no previous criminal history of violence or of attempting to escape;

- (e) some of the Detainees have been held, or are being held, in solitary confinement for extended periods. The HRC has recognised solitary confinement as a punitive measure which should not be applied to unconvicted persons and as treatment capable of breaching art 10(1);⁴⁵
- (f) the Detainees have been held with convicted prisoners;⁴⁶
- (g) some of the Detainees allege that they have been subject to verbal and physical abuse by prison authorities, including being referred to as 'pieces of shit', being pushed and punched in the chest, and having their beards tugged heard in a way intended to cause affront to religious belief;
- (h) the Detainees are strip searched both before and after every contact visit and both before leaving and upon returning to prison to attend court;
- (i) some of the Detainees are experiencing a deterioration in mental health due to the conditions of incarceration and lack of access to adequate health care, particularly mental health care.

⁴⁵ HRC, *General Comment No 21 (replaces General Comment 9) on humane treatment of persons deprived of liberty* (1992) [6]. See also HRC, *Polay Campos v Peru*, Communication No 577/1994, UN Doc CCPR/C/61/D/577/1994 (1998) [8.4].

⁴⁶ Note, however, that Australia has entered a reservation to art 10(2) of the *ICCPR*.

7. Violation of the Right to a Fair Trial

7.1 Content of the Right to a Fair Trial

7.2 Article 14 of the *ICCPR* protects the right to a fair trial. Pursuant to art 14(3)(b), this includes, among other things, that a person have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing.

7.3 In General Comment 13, the HRC stated that what constitutes adequate time and facilities depends on the circumstances of the case, but necessarily includes adequate opportunity to engage and communicate with counsel in private and without interference.⁴⁷

7.4 The term 'facilities' in art 14(3)(b) has, among other things, been interpreted to mean that the accused and defence counsel must be granted access to appropriate information, files and documents necessary for the preparation of a defence and that the defendant must be provided with facilities enabling communication, in confidentiality, with defence counsel.⁴⁸

7.5 Breaches of the Detainees' Right to a Fair Trial

7.6 The Detainees have been charged with a range of offences which give rise to significant and complex legal and factual issues and disputes.

7.7 The voluminous prosecution evidence required to be considered and responded to by the Detainees and their legal representatives includes:

- (a) about 16,400 hours of listening device material; and
- (b) in the order of 66,000 pages of documents that need to be deciphered.⁴⁹

7.8 Despite this, the Detainees' access to adequate legal representation is curtailed in the following ways:

- (a) the Detainees' legal representatives are unable to telephone the Detainees but must instead send a facsimile to the prison requesting that the Detainees telephone them the following day;
- (b) each telephone call is limited to 10 minutes after which it is disconnected. The Detainees are permitted to call back following disconnection but this causes significant interruption and delay;
- (c) all professional visits must be concluded by 2.30pm;
- (d) there is no phone access after 2.30pm;
- (e) video conferences must be concluded by 2.30pm;

⁴⁷ HRC, *General Comment 13 (Article 14: Equality before the courts and the right to a fair and public hearing by an independent court established by law)* (1984) [9].

⁴⁸ *Ibid* [9].

⁴⁹ *In the Matter of an Application for Bail of Amer Haddara*, Transcript of Proceedings, Supreme Court of Victoria, 17 January 2006, 20, 34-5.

- (f) professional visits, telephone contact and video conferences are not ordinarily permitted on Tuesdays or Thursdays;
- (g) all visits are videotaped and recorded; and
- (h) all materials provided to and received by the Detainees are scanned by prison officers.

7.9 As noted above, Justice Eames of the Supreme Court of Victoria accepted that, in such circumstances,

preparation of the case is difficult for the legal advisors. The fact that the prisoner is at a remote location only adds to the difficulties that the maximum security status of the unit already imposes.

In relation to Amer Haddara, Justice Eames further stated that:

there doesn't seem to be any doubt that he's being held in very strict circumstances and that, on one view, he is not being offered adequate access to his legal advisers, which seems to me to be a particularly oppressive circumstance given the nature of the novelty of the charge that he faces and the breadth of the circumstances involving other parties which the Crown wants to draw him into.⁵⁰

7.10 Despite this, His Honour did not consider it appropriate to intervene in the administration and management of the prison.

7.11 The Detainees' limited and restrictive access to legal representation constitutes a violation of art 14(3)(b) of the *ICCPR* and, by consequence, a violation of the art 14 guarantee to a fair trial.⁵¹

⁵⁰ Ibid 51-2.

⁵¹ HRC, *Concluding Comments on Japan* (1998) UN doc. CCPR/C/79/Add.102

8. Violation of the Right to Freedom of Religion

8.1 Content of the Right to Freedom of Religion

- 8.2 Art 18(1) of the *ICCPR* provides that all persons have the right to freedom of religion. This freedom includes the right to worship, observe, practice and teach religion, either individually or in community with others. The right is also protected by the *1981 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief*.
- 8.3 In General Comment 22, the HRC characterised the right to freedom of religion as ‘far reaching and profound’.⁵² Reflecting this, and pursuant to art 18(3), freedom to manifest one’s religion may only be limited as prescribed by law and so far as necessary to protect public safety, order, health, morals or the fundamental rights and freedoms of others. The HRC has observed that art 18(3) is to be strictly interpreted; restrictions are not permitted on grounds other than those specified. Accordingly, and in conjunction with art 4(2), the right is not otherwise capable of derogation, including in time of ‘public emergency’ or the interests of ‘national security’.⁵³ The HRC has also observed that limitations may be applied only for those purposes for which they were prescribed, that they must be directly related and proportionate to the specific need on which they are predicated, and that they must not be imposed for discriminatory purposes or applied in a discriminatory manner.⁵⁴
- 8.4 As discussed above, the freedom to manifest religion or belief may be exercised ‘either individually or in community with others and in public or private’. According to the HRC, the freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts, including ritual and ceremonial acts, the display of symbols, the observance of holidays and days of rest, the observance of dietary regulations, and the wearing of distinctive clothing or headcoverings.⁵⁵
- 8.5 The HRC specifically considered the interpretation and application of art 18(1) and permissible restrictions under art 18(3) in the context of prisoners in General Comment 22:

Persons already subject to certain legitimate constraints, such as prisoners, continue to enjoy their rights to manifest their religion or belief to the fullest extent compatible with the specific nature of the constraint.⁵⁶

This is confirmed in HRC jurisprudence, including *Boodoo v Trinidad and Tobago*, in which it was held that limitations on the capacity of an Islamic prisoner to manifest his religion in prison – including prohibitions on wearing a beard, worshipping with other Islamic prisoners, and reading prayer books – amounted to an unlawful violation of art 18(1).⁵⁷

⁵² HRC, *General Comment 22: The Right to Freedom of Thought, Conscience and Religion (Art 18)*, UN Doc CCPR/C/21/Rev.1/Add.4 (1993) [1].

⁵³ *Ibid* [8].

⁵⁴ *Ibid*

⁵⁵ *Ibid* [4].

⁵⁶ *Ibid* [8].

⁵⁷ HRC, *Boodoo v Trinidad and Tobago*, Communication No 721/96, U.N. Doc. CCPR/C/74/D/721/1996 (2002) [6.6].

8.6 Breaches of the Detainees' Right to Freedom of Religion

8.7 The Detainees allege a range of actions and prohibitions which, in our view, amount to a violation or an unlawful limitation of the right to freedom of religion. These allegations include that:

- (a) the Detainees have been served meals with pork, which is deeply offensive to their religious beliefs;
- (b) the Detainees are not permitted to pray, worship or observe their religious beliefs in community. It is a policy of the Acacia Unit that the Detainees do not have any contact with any more than one other prisoner in the Acacia Unit;⁵⁸
- (c) one of the Detainees instructs that prison authorities have pulled hard at his beard in a manner intended to denigrate his religious beliefs; and
- (d) the Detainees assert that their religious beliefs require that they pray on Fridays for an hour and a half and they have not been permitted such observances.⁵⁹

⁵⁸ See, eg, *In the Matter of a Bail Application for Amer Haddara and Izyeedeen Atik*, Transcript of Proceedings, Supreme Court of Victoria, 26 May 2006, 39.

⁵⁹ *Ibid*

9. Violation of the Right to Health

9.1 Content of the Right to Health

9.2 The right to the highest attainable standard of physical and mental health is codified and recognised as a fundamental human right in art 12 of the *ICESCR*, which provides that:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.⁶⁰

9.3 According to the Committee on Economic, Social and Cultural Rights ('CESCR'), realisation of the right to health is central to living a dignified life.⁶¹

Health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity.⁶²

9.4 The right to health imposes a range of important substantive obligations across all levels and arms of Australian governments to establish conditions designed to ensure that people have the best possible chance of being healthy, including through the adoption of legislative measures.⁶³ According to CESCR, these conditions should mean that people are able to access the full variety of facilities, goods, services and conditions necessary to ensure an individual's health.⁶⁴ This includes access to appropriate health care and also access to safe water, adequate sanitation, an adequate supply of safe food, adequate nutrition, adequate housing, occupational health, a healthy environment and access to health-related information.⁶⁵ Services must be provided in a culturally appropriate⁶⁶ and non-discriminatory manner.⁶⁷ At a minimum, health care must be 'available, accessible, acceptable and of good quality'.⁶⁸

9.5 Right to Health of Persons in Detention

9.6 The right to health is of especial importance to prisoners and other individuals held in detention. On this point, the CESCR has noted:

In particular, States are under the obligation to respect the right to health, by inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees.⁶⁹

⁶⁰ The right to health is also enshrined in: *CROC* arts 6, 24; *CEDAW* arts 10(h), 11(f), 12(1), 14(b); and *CERD* art 5(e)(iv).

⁶¹ CESCR, *General Comment 14: The Right to the Highest Attainable Standard of Health*, UN Doc E/C.12/2000/4 (2000).

⁶² *Ibid* [1].

⁶³ *Ibid* [9].

⁶⁴ *Ibid* [4], [9].

⁶⁵ CESCR, *General Comment 14: The Right to the Highest Attainable Standard of Health*, UN Doc E/C.12/2000/4 (2000) [11].

⁶⁶ *Ibid* [12(c)], [27], [37].

⁶⁷ *Ibid* [43(a)].

⁶⁸ UN OHCHR, *Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies* (2002) 23.

⁶⁹ CESCR, *General Comment 14: The Right to the Highest Attainable Standard of Health*, UN Doc E/C.12/2000/4 (2000) [34].

9.7 Similarly, the *UN Basic Principles for the Treatment of Prisoners* provide at [9] that ‘prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation’.

9.8 The right to health of prisoners, which includes the right of prisoners to adequate health care, is also recognised in Rules 22-26 of the *UN Standard Minimum Rules for the Treatment of Prisoners* and as a necessary corollary of arts 6, 7 and 10 of the *ICCPR*.

9.9 Breaches of the Detainees’ Right to Health

9.10 We have serious concerns regarding the impact of the Detainees’ conditions of detention on their health, particularly mental health, and similar significant concerns in relation to the inadequacy of health care available to the Detainees in prison.

9.11 The conditions of detention having a significant deleterious impact on the Detainees’ health include:

- (a) extended solitary confinement;
- (b) extremely limited and restrictive visitation rights, including no right to contact visits other than with their children;
- (c) the imposition of arbitrary limits set on the time they are allowed out of their cells;
- (d) the very limited contact with other prisoners;
- (e) the Detainees are strip searched both before and after every contact visit and both before leaving and upon returning to prison to attend court; and
- (f) the very limited periods for which the Detainees are allowed outside of their cells.

9.12 The violations of the right to health consequent to the Detainees’ conditions of detention are exacerbated by the lack of access to adequate health care, particularly mental health care in Victorian prisons. In a recent report, the Senate Select Committee on Mental Health accepted evidence that:

- (a) the provision of health care for forensic patients is inadequate in all Australian jurisdictions, including Victoria;⁷⁰
- (b) mental health care services in prisons themselves are inadequate in all jurisdictions;⁷¹ and
- (c) prison conditions themselves may worsen mental health and significantly complicate the effective treatment of mental illness.⁷²

9.13 The impact of oppressive conditions of detention on mental health has been recognised in a number of recent cases in the Supreme Court of Victoria⁷³ and the inadequacy of mental

⁷⁰ Senate Select Committee on Mental Health, *A National Approach to Mental Health: From Crisis to Community* (March 2006) [13.72].

⁷¹ *Ibid* [13.98].

⁷² *Ibid* [13.102].

⁷³ See, eg, *R v Rollo* [2006] VSCA 154 (31 July 2006); *R v SH* [2006] VSCA 83; *R v Wooden* [2006] VSCA 97.

health care in prison has been the subject of recent adverse findings by the Ombudsman Victoria⁷⁴ and the New South Wales Coroner's Court.⁷⁵

⁷⁴ Ombudsman Victoria and Office of Police Integrity, *Conditions for Persons in Custody: Report of Ombudsman Victoria and Office of Police Integrity* (July 2006).

⁷⁵ [http://www.lawlink.nsw.gov.au/lawlink/Coroners_Court/ll_coroners.nsf/vwFiles/SimpsonInquest.doc/\\$file/SimpsonInquest.doc](http://www.lawlink.nsw.gov.au/lawlink/Coroners_Court/ll_coroners.nsf/vwFiles/SimpsonInquest.doc/$file/SimpsonInquest.doc). See also Human Rights and Equal Opportunity Commission, *Written Submissions of the Human Rights and Equal Opportunity Commission in the Coroner's Court of New South Wales Inquest into the Death of Scott Simpson*, available at <<http://www.humanrights.gov.au/legal/intervention/simpson.html>>.

10. Request for Action

We are gravely concerned that the type, length, conditions and effects of the Detainees' detention, described above, amount to serious ongoing human rights violations, including in relation to:

- (a) the right to be free from cruel, inhuman or degrading treatment or punishment under art 7 of the *ICCPR*;
- (b) the right to freedom from arbitrary detention under art 9 of the *ICCPR*;
- (c) the right of prisoners to be treated with dignity and respect under art 10(1) of the *ICCPR*;
- (d) the right to a fair trial, including the right to adequate time and facilities to prepare a defence, under art 14(3) of the *ICCPR*;
- (e) the right to freedom of religion under art 18(1) of the *ICCPR*; and
- (f) the right to the highest attainable standard of physical and mental health under art 12 of the *ICESCR*.

We would very much appreciate if you could consider and investigate this complaint.

Please contact us on +61 3 9225 6695 or hrirc@vicbar.com.au with any questions.

Yours sincerely

Philip Lynch
Director and Principal Solicitor
Human Rights Law Resource Centre Ltd