



Australian
Human Rights
Commission

Mr AO v Commonwealth
of Australia (Department
of Home Affairs)

[2022] AusHRC 145

May 2022

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Mr AO v Commonwealth of Australia (Department of Home Affairs)

[2022] AusHRC 145

Report into the use of force

Australian Human Rights Commission 2022

Senator the Hon. Michaelia Cash
Attorney-General
Parliament House
Canberra ACT 2600

Dear Attorney

I have completed my report pursuant to s 11(1)(f) of the *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act) into the human rights complaint of Mr AO, alleging a breach of his human rights by the Department of Home Affairs (the Department).

Mr AO complains about an incident occurring in April 2018 while he was detained at the Christmas Island Immigration Detention Centre in which Serco officers used force against him, causing additional pain to a prior injury to his collar bone.

As a result of this inquiry, I have found that the use of force by the Department against Mr AO was inconsistent with or contrary to article 10(1) of the *International Covenant on Civil and Political Rights*, that is his right to be treated with humanity and with respect for his inherent dignity. Pursuant to s 29(2)(b) of the AHRC Act, I have included three recommendations to the Department in the report.

On 29 September 2021, I provided the Department with a notice issued under s 29(2) of the AHRC Act setting out my findings and recommendations in this matter. The Department provided its response to my findings and recommendations on 24 February 2022. That response can be found in Part 9 of this report.

I enclose a copy of my report.

Yours sincerely,



Australian Human Rights Commission
May 2022

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1 Introduction to this inquiry

1. This is a report setting out the findings of the Australian Human Rights Commission (Commission) following an inquiry into a complaint by Mr AO against the Commonwealth of Australia, Department of Home Affairs (Department) alleging a breach of his human rights.
2. Mr AO is detained at Yongah Hill Immigration Detention Centre (IDC), following transfer from Christmas Island IDC on 9 August 2018.
3. Mr AO complains about an incident in April 2018 at Christmas Island IDC in which Serco officers used force against him which allegedly caused additional pain to a prior injury to the collar bone.
4. This inquiry has been undertaken pursuant to s 11(1)(f) of the *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act) and this report is issued pursuant to s 29(2) of the AHRC Act.
5. Mr AO has requested that his name not be published in connection with this inquiry. I consider that the preservation of his anonymity is necessary to protect his human rights. Accordingly, I have given a direction under s 14(2) of the AHRC Act and refer to the complainant as 'Mr AO' in this document.

2 Summary of findings and recommendations

6. As a result of this inquiry, I find that the use of force by the Department against Mr AO was inconsistent with or contrary to article 10(1) of the *International Covenant on Civil and Political Rights* (ICCPR).¹
7. I find that the use of restraints on Mr AO, noting his medical history, was contrary to his rights under article 10 of the ICCPR to be treated with humanity and with respect for his inherent dignity.
8. I make the following recommendations:

Recommendation 1

The Commonwealth pay to Mr AO an appropriate amount of compensation to reflect the loss and damage he suffered as a result of the breach of his human rights identified by this inquiry, being the pain and suffering he experienced as a result of the use of force against him.

Recommendation 2

The Department and Serco ensure that officers who may be required to use force in their roles be appropriately and periodically trained on communication, negotiation and conflict de-escalation strategies as alternatives to the use of force.

Recommendation 3

The Department and Serco should, whenever practicable, consult with detention health services as to whether there are medical reasons restraints should not be used on a detainee prior to the use of force against the detainee.

3 Complaint

9. Mr AO arrived at Christmas Island on 19 June 2013 and was detained under s 189(3) of the *Migration Act 1958* (Cth) as an unauthorised maritime arrival. On 19 August 2013, he was released from immigration detention. On 15 December 2016, Mr AO was re-detained after his Bridging Visa E was cancelled, as a result of his being charged with criminal offences. On 23 March 2017, he was transferred to Christmas Island IDC. Mr AO is currently detained at Yongah Hill IDC.
10. Mr AO complains about an incident in April 2018 at Christmas Island IDC in which Serco officers used force against him which allegedly caused additional pain to a prior injury to his collar bone. Mr AO alleges that Serco used unreasonable force in reacting to his self-harm incidents.
11. On 8 October 2018, the Department provided a written response, Incident Detail Reports and video footage that recorded the events occurring during the incident.
12. The Department provided the following description of events up until restraints were applied to Mr AO:

At 2239 on 21 April 2018, Mr AO stated that he would, '*Fuck up the Compound,*' if he didn't get his Ibuprofen; he then banged his head against the metal support beam three times.

The Acting DSM asked Mr AO to return inside the green one Compound while he made a call to the HAS Line and spoke with the HAS Duty Nurse. HAS was notified of the actual self-harm, and asked for detainee Mr AO, to be placed on Keepsafe Constant.

The Acting DSM again spoke to Mr AO in the sterile area of Green Compound. Mr AO was informed that 'he could not be given any medication except Panadol'. Mr AO then stated that he would, *'Kill himself if he didn't get the Ibuprofen now,'* the Acting DSM informed Mr AO that, for his own safety he would be relocated to White One Compound.

Mr AO was abusive and aggressive, and did not respond to verbal instruction. Emergency Response Team (ERT) officers were instructed by the Acting DSM to transport Mr AO to the transport van at the rear of the Green Compound.

Mr AO was abusive and aggressive, and attempted to head-butt an ERT officer when being moved. The Acting DSM instructed ERT to use mechanical restraints. Restraints were applied by the ERT to the rear of Mr AO at 2300hrs.

13. Once restraints were applied, Mr AO was taken by van to White One Compound where he was placed in a room. Serco removed the handcuffs and the Department states that Mr AO immediately began banging his head against the table and the wall. As a result, Serco re-applied the handcuffs. The Department described the events that followed below:

Mr AO continued to make threats towards ERT officers and the Acting DSM. Mr AO stated that he would, 'Fuck your Mother,' and, 'Fuck your sister,' and that he would, 'Get you when you come into the Compound'. The HAS Line was contacted again by the Acting DSM at 2330hrs due to having to reapply the mechanical restraints to prevent further attempts at self-harm. The HAS Line Nurse and IHMS Doctor were consulted, and a decision was made for the IHMS Doctor to attend the Christmas Island IDC to see Mr AO. Mr AO continued his abuse towards officers and spitting for approximately 15 minutes. Mr AO appeared to have what was described by an ERT officer as a 'Spasm'. Mr AO remained unresponsive, so a mattress was placed on the floor to prevent further injury.

Mechanical Restraints were removed by ERT Officers at 2333hrs. Mr AO was placed into the recovery position and monitored by ERT officers. Mr AO was taken by stretcher to the Christmas Island IDC Medical Centre, secured by straps. The on-call IHMS GP was contacted and Mr AO was assessed shortly after in the IHMS medical clinic. The GP noted that Mr AO had a lump to his forehead, red marks to forearms, chest and upper arms with no evidence of fracture. The IHMS GP reported that Mr AO was catatonic (affecting the motor skills in the human body).

4 Conciliation

14. The Department indicated that it did not want to participate in conciliation of the matter.

5 Procedural history of this inquiry

15. On 4 January 2021, I issued a preliminary view in this matter and gave Mr AO, the Department, and the Minister the opportunity to respond to my preliminary findings.
16. On 19 March 2021, the Department responded to my preliminary view. I considered this response in reaching my final views.
17. On 29 September 2021, I provided the Department with a notice of my findings pursuant to s 29(2) of the AHRC Act.
18. On 24 February 2022, the Department responded to the notice, as set out in Part 9.

6 Legislative framework

6.1 Functions of the Commission

19. Section 11(1)(f) of the AHRC Act provides that the Commission has the function to inquire into any act or practice that may be inconsistent with, or contrary to, any human right.
20. Section 20(1)(b) of the AHRC Act requires the Commission to perform this function when a complaint is made to it in writing alleging that an act is inconsistent with, or contrary to, any human right.
21. Section 8(6) of the AHRC Act requires that the functions of the Commission under s 11(1)(f) be performed by the President.

6.2 What is an 'act' or 'practice'?

22. The terms 'act' and 'practice' are defined in s 3(1) of the AHRC Act to include an act done or a practice engaged in by or on behalf of the Commonwealth or an authority of the Commonwealth or under an enactment.
23. Section 3(3) provides that the reference to, or to the doing of, an act includes a reference to a refusal or failure to do an act.

24. The functions of the Commission identified in s 11(1)(f) of the AHRC Act are only engaged where the act complained of is not one required by law to be taken, that is, where the relevant act or practice is within the discretion of the Commonwealth.²

6.3 What is a human right?

25. The phrase ‘human rights’ is defined by s 3(1) of the AHRC Act to include the rights and freedoms recognised in the ICCPR.
26. Article 10(1) of the ICCPR provides:

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

6.4 Right of detainees to be treated with humanity and dignity

27. General Comment 21 on article 10(1) of the ICCPR by the United Nations Human Rights Committee (UN HR Committee) states:

Article 10, paragraph 1, imposes on States parties a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of their liberty, and complements for them the ban on torture or other cruel, inhuman or degrading treatment or punishment contained in article 7 of the Covenant. Thus, not only may persons deprived of their liberty not be subjected to treatment which is contrary to article 7 ... but neither may they 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 that of free persons.³

28. The above General Comment supports the conclusions that:

- article 10(1) imposes a positive obligation on States Parties to take actions to prevent inhumane treatment of detained persons
- the threshold for establishing a breach of article 10(1) is lower than the threshold for establishing ‘cruel, inhuman or degrading treatment’ within the meaning of article 7 of the ICCPR
- the article may be breached if the detainees’ rights, protected by one of the other articles in the ICCPR, are breached—unless that breach is necessitated by the deprivation of liberty.

29. The above conclusions about the application of article 10(1) are also supported by the jurisprudence of the UN HR Committee,⁴ which emphasises that there is a difference between the obligation imposed by article 7(1) not to engage in 'inhuman' treatment and the obligation imposed by article 10(1) to treat detainees with humanity and respect for their dignity. In *Christopher Hapimana Ben Mark Taunoa v Attorney General*,⁵ the Supreme Court of New Zealand explained the difference between these two concepts as follows:

A requirement to treat people with humanity and respect for the inherent dignity of the person imposes a requirement of humane treatment ... the words 'with humanity' are I think properly to be contrasted with the concept of 'inhuman treatment' ... The concepts are not the same, although they overlap because inhuman treatment will always be inhumane. Inhuman treatment is however different in quality. It amounts to denial of humanity. That is I think consistent with modern usage which contrasts 'inhuman' with 'inhumane'.⁶

30. The decision considered provisions of the *New Zealand Bill of Rights Act 1990* which are worded in identical terms to articles 10(1) and 7(1) of the ICCPR.

31. The content of article 10(1) has been developed with the assistance of a number of United Nations instruments that articulate minimum international standards in relation to people deprived of their liberty, including:

- the *Standard Minimum Rules for the Treatment of Prisoners* (Standard Minimum Rules);⁷ and
- the *Body of Principles for the Protection of all Persons under Any Form of Detention* (Body of Principles).⁸

32. The UN HR Committee has invited States Parties to indicate in their reports the extent to which they are applying the Standard Minimum Rules and the Body of Principles.⁹ At least some of these principles have been determined to be minimum standards regarding the conditions of detention that must be observed regardless of a State Party's level of development.¹⁰

33. Rule 54(1) of the Standard Minimum Rules provides:

Officers of the institutions shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Officers who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the director of the institution.

34. This rule provides limits on the circumstances in which force may be used; and limits the use of force in those circumstances to what is necessary.
35. Standard Minimum Rule 94 requires that civil prisoners 'shall not be subjected to any greater restriction or severity than is necessary to ensure safe custody and good order'.
36. The prohibition in article 7 of the ICCPR is absolute and non-derogable. A person's treatment in detention must not involve torture or cruel, inhuman or degrading treatment or punishment.
37. In the case of *Wilson v Philippines*,¹¹ the UN HR Committee found a breach of article 7 of the ICCPR where a prisoner was treated violently in detention:

The Committee considers that the conditions of detention described, as well as the violent and abusive behaviour both of certain prison guards and of other inmates, as apparently acquiesced in by the prison authorities, are seriously in violation of the author's right, as a prisoner, to be treated with humanity and with respect for his inherent dignity, in violation of article 10, paragraph 1. As at least some of the acts of violence against the author were committed either by the prison guards, upon their instigation or with their acquiescence, there was also a violation of article 7.¹²

38. States have a responsibility to ensure that the rights guaranteed in articles 7 and 10 of the ICCPR are accorded to detainees in privately run detention facilities.¹³

7 Findings

39. There is no dispute that force was used to restrain Mr AO during the incident on 21 April 2018. Mr AO alleges that the use of force was excessive, while the Department alleges that the use of force was appropriate in the circumstances, in light of Mr AO's incidents of self-harm.
40. The Department states that Serco staff were aware of an injury to Mr AO's SC joint (the joint where the collarbone meets the breastbone/sternum), caused by landing on his right shoulder while playing sport on 31 January 2018. It is also of relevance that Mr AO has complex mental health issues, including post-traumatic stress disorder, borderline personality disorder, a history of self-harm and is a survivor of torture and trauma.

41. Mr AO presented to the evening medication round requesting ibuprofen for his shoulder injury. The Department said that Mr AO became hostile and verbally abusive to International Health and Medical Services (IHMS) staff after he was informed that he could only have Panadol and required a GP review before receiving Ibuprofen. It is IHMS policy that a nurse can only dispense medication for 3 consecutive doses, after which a doctor needs to review the detainee to assess the problem.
42. Mr AO then banged his head on the metal support beam, after which the Detention Services Manager (DSM) contacted the HAS Duty nurse who advised that Mr AO be placed on Keepsafe Constant, referring to the level of monitoring required by Serco's policies that accompany the Department's psychological support program.¹⁴ Mr AO was informed that he would be taken to White One Compound. When he did not comply, Serco officers used force to escort him to the White One Compound.
43. In my preliminary view, I stated that it was unclear why Mr AO had to be transported to the White One Compound in order to be kept on Keepsafe Constant and why he could not be monitored in the Green One Compound. In response, the Department says that the 'White One Compound provides for the ability to create a safer and secure environment and offers greater observation capabilities. Mr AO was moved to this compound for his own safety and the safety and security of others.'
44. Although Serco staff were aware of Mr AO's shoulder injury, it does not appear from the medical records provided by the Department or the incident reports that IHMS was asked for, or gave advice, about whether Mr AO should be handcuffed.
45. In response to my preliminary view, the Department says that the 'duty nurse and the on-call General Practitioner were aware of the use of restraints on Mr AO and at no time did they object on any ground to their use'. However, it is unclear if the duty nurse or the GP were aware of the pain Mr AO was experiencing as a result of application of the handcuffs.
46. I note that the Commission has previously made recommendations regarding the role of healthcare professionals in decision making about the use of restraints. This included the recommendation that the Department's Detention Services Manual and the manual for detention service providers engaged by the Department make clear that, amongst other things, healthcare professionals may direct the removal of restraints in certain circumstances, for example, if the detainee is in pain or discomfort.¹⁵ This recommendation was not accepted by the Department. In response, the Department said that 'any concerns a health provider

may have in relation to the use of force/application of restraints should be referred to the relevant ABF Detention Superintendent for consideration and decision'.¹⁶

47. It is also unclear if Serco staff specifically sought advice from IHMS in relation to Mr AO's mental health issues before the use of force. Following this incident, on 23 April 2018, Mr AO was followed-up by an IHMS GP and an IHMS mental health Nurse. The IHMS GP noted that the 'majority of his medical problems/behaviour stems from complex post-traumatic stress disorder (PTSD)' and made a referral to specialist torture and trauma counselling.
48. Given Mr AO's injury and pre-existing mental health issues, in my view, Serco should specifically have sought advice from the Duty Nurse or contacted the on-duty GP to ask whether restraints were appropriate in light of his medical condition.
49. It is my view that the decision to use force was not a measure of last resort in response to his self-harm attempts. I accept that attempts were made to de-escalate the situation using communication. I note that at no point in the camera footage I viewed did Serco officers appear to be aggressive. The officers appeared to be calm in their messaging to Mr AO. However, in my view, further communication, negotiation and conflict de-escalation strategies could and should have been attempted.
50. Serco advised that during the incident, use of force was only applied as a last resort due to behaviour displayed by Mr AO and the risk to the safety of himself and staff, and that it was proportionate to the risk posed at the time of the incident. The Department states that restraints were used for the minimum time necessary:

Mr AO was restrained for the minimum time necessary. The restraints were removed after 15 minutes when Mr AO arrived into his room in White One Compound. However, after approximately one minute, Mr AO began head-butting the wall several times. For Mr AO's own safety, the restraints were re-applied. The restraints were then removed 17 minutes later and Mr AO was taken by stretcher to the International Health and Medical Services (IHMS) building to be assessed by the doctor.
51. In response to my preliminary view, the Department explained that the ERT officers initially attempted to escort Mr AO using the Enhanced Escort Position, which involves three officers escorting a detainee: one officer on each side of the detainee and one walking behind them to mitigate any risk of self-harm and harm to others. They say that the Acting DSM and

officers tried to de-escalate the situation through communication, but the use of restraints was required to keep Mr AO from harming himself and the officers.

52. The body camera footage provided by the Department captures Mr AO being escorted and then being placed in handcuffs. First, two officers physically move him across the lobby in the Green One Compound. Two officers are seen holding onto his arms and pushing him to walk. One officer is seen to hold Mr AO's right shoulder tightly. Mr AO can be heard repeatedly calling out, 'my shoulder, leave my arm'.
53. While the officers are forcefully pushing Mr AO, he calls out in pain at least four times about his arm. When the officers continue to use force to move him, he can be seen to attempt to head-butt one of them. Four officers then take him to the ground head-first and apply handcuffs. While the officers are applying the handcuffs to Mr AO, he can be heard calling out in pain and yelling at least seven times, 'my shoulder'. The officers continue to handcuff him.
54. Mr AO can then be seen handcuffed behind his back and being escorted down a hallway to a van waiting outside. The entire time Mr AO continues to call out, swear and is visibly distressed. He also appears to be whimpering. While in the van Mr AO continues to yell at the officers to 'leave my arm' and is crying, calling out and saying, 'I am in pain'. The officers tell him to 'calm down'.
55. He is then taken out of the van and to a room in the White One Compound. Again, Mr AO is calling out in pain the entire time. Several times he tells the officers that he is in pain.
56. In the footage, Mr AO can be heard crying out in apparent distress for over 13.5 minutes.
57. I accept that Mr AO became aggressive towards officers and used offensive language repeatedly. However, in my view, this was most likely a result of the pain in his shoulder being exacerbated by the force used to transfer him to the White One Compound.
58. Further to the subsequent assessment of the IHMS GP, Mr AO's behaviour may also stem from his mental health issues and past history of torture and trauma. These issues should have been appropriately considered through consultation with IHMS before force was used on him.
59. Serco states that the use of force process was followed correctly and that every effort was made to accommodate Mr AO's medical condition during the application of force.

60. Serco's contract with the Commonwealth provides that Serco must 'ensure that restraints are not used in a manner which is likely to cause injury, serious discomfort or potential danger to a Detainee'.¹⁷
61. Serco was aware that the use of force against Mr AO was causing him pain and distress. The body camera footage captures Mr AO distressed, repeatedly requesting that the officers let go of his arm and stating he is in pain. Despite Mr AO making it very clear that he was in pain, Serco officers continued to keep him in handcuffs and forcefully relocated him to the White One Compound.
62. It is my view that this may be contrary to Serco's contractual requirement not to apply restraints in a manner likely to cause injury or serious discomfort to a detainee. I find that the use of handcuffs in these circumstances contributed to his pain and discomfort contrary to Mr AO's rights to be treated with humanity and with respect for his inherent dignity pursuant to article 10(1) of the ICCPR.

8 Recommendations

63. As a result of this inquiry, I find that the decision of the Department to use force on Mr AO was inconsistent with or contrary to his rights under article 10 of the ICCPR to be treated with humanity and with respect for his inherent dignity.
64. Where, after conducting an inquiry, the Commission finds that an act or practice engaged in by a respondent is inconsistent with, or contrary to, any human right, the Commission is required to serve notice on the respondent setting out its findings and reasons for those findings.¹⁸ The Commission may include in the notice any recommendation for preventing a repetition of the act or a continuation of the practice.¹⁹ The Commission may also recommend other action to remedy or reduce the loss or damage suffered by a person.²⁰
65. I make the following recommendations:

Recommendation 1

The Commonwealth pay to Mr AO an appropriate amount of compensation to reflect the loss and damage he suffered as a result of the breach of his human rights identified by this inquiry, being the pain and suffering he experienced as a result of the use of force against him.

Recommendation 2

The Department and Serco ensure that officers who may be required to use force in their roles be appropriately and periodically trained on communication, negotiation and conflict de-escalation strategies as alternatives to the use of force.

Recommendation 3

The Department and Serco should, whenever practicable, consult with detention health services as to whether there are medical reasons restraints should not be used on a detainee prior to the use of force against the detainee.

9 The Department's response to my findings and recommendations

66. On 29 September 2021, I provided the Department with a notice of my findings and recommendations.
67. On 24 February 2022, the Department provided the following response to my findings and recommendations:

The Department of Home Affairs (the Department) values the role of the Australian Human Rights Commission (the Commission) to inquire into human rights complaints and acknowledges the findings and recommendations made.

The Department does not agree with the findings of the President of the Commission (the President) that the use of force by the Department against Mr AO was inconsistent with or contrary to article 10(1) of the *International Covenant on Civil and Political Rights* (ICCPR).

The Department disagrees with recommendation one. The Commonwealth can only pay compensation to settle a monetary claim against the Department if there is a meaningful prospect of legal liability within the meaning of the *Legal Services Directions 2017* and it would be within legal principle and practice to resolve this matter on those terms. Based on the current evidence, the Department's position is that it is not appropriate to pay compensation in this instance.

The Department notes recommendation two and confirms that its Service Provider Serco provides nationally recognised use of force training to all officers during their Initial Training Course (ITC) and during the required yearly refresher courses.

At the ITC and during refresher courses all officers receive training and are assessed to the required competency level in the Operational Safety Techniques that may be needed within an Immigration Detention Facility or during an external escort. This includes training officers to respond to an incident in the first instance with communication and conflict de-escalation strategies as alternatives to the use of force. Specifically, Serco officers receive an entire unit (both theoretical and practical) on communication, negotiation and conflict de-escalation where use of force is always only applied as the last resort. In order to complete this unit satisfactorily they are assessed against the industry standards.

The Department notes recommendation three and maintains that where practicable, the Facilities and Detainee Services Provider (FDSP) is expected to consult with the detention health service provider (DHSP) to ensure that no medical reasons preclude the use of force, including restraints, against a detainee, as prescribed by contractual and detention operational policy requirements. Where force is used in an immediate or emergency situation (unplanned use of force), such consultation is generally not practicable.

Table 1 - Summary of Department's response to recommendations

Recommendation number	Department's response
1	Disagree
2	Notes
3	Notes

Emeritus Professor Rosalind Croucher AM
President
Australian Human Rights Commission



May 2022

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- ¹ International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171, (entered into force 23 March 1976), [1980] ATS 23 (entered into force for Australia 13 November 1980).
- ² See *Secretary, Department of Defence v HREOC, Burgess & Ors* (1997) 78 FCR 208, where Branson J found that the Commission could not, in conducting its inquiry, disregard the legal obligations of the Secretary in exercising a statutory power. Note in particular 212-3 and 214-5.
- ³ Human Rights Committee, *General Comment No 21: Article 10 (Humane treatment of persons deprived of their liberty)* 44th sess, UN Doc HRI/GEN/1/Rev.1 (10 April 1992) [3].
- ⁴ Human Rights Committee, *Views: Communication No 639/1995*, 60th sess, UN Doc CCPR/C/60/D/639/1995 (28 July 1997) (*Walker and Richards v Jamaica*); Human Rights Committee, *Views: Communication No 845/1998*, 74th sess, UN Doc CCPR/C/74/D/845/1998 (26 March 2002) (*Kennedy v Trinidad and Tobago*); Human Rights Committee, *Views: Communication No 684/1996*, 74th sess, UN Doc CCPR/C/74/D/684/1996 (2 April 2002) (*R.S. v Trinidad and Tobago*).
- ⁵ [2007] NZSC 70.
- ⁶ [2007] NZSC 70 [79].
- ⁷ The Standard Minimum Rules were approved by the UN Economic and Social Council by its resolutions ESC Res 663C (XXIV) 24 UN ESCOR Supp 1 UN Doc E/3048 (31 July 1957) and ESC Res 2076 (LXII) 62 UN ESCPR Supp 1 UN Doc E/5988 (13 May 1977). They were adopted by the UN General Assembly in resolutions *Human Rights in the Administration of Justice*, GA Res 2858 (XXVI), UN GAOR, 3rd Comm, 26th sess, 2027th plen mtg, Agenda Item 12, UN Doc A/8588 (20 December 1971) and UN Doc A/CONF/611, Annex 1. At <http://www.ohchr.org/EN/ProfessionalInterest/Pages/TreatmentOfPrisoners.aspx>.
- ⁸ The Body of Principles were adopted by the UN General Assembly in *Body of Principles for the Protection of all Persons Under Any Form of Detention or Imprisonment*, GA Res 43/173, UN GAOR, 6th Comm, 43rd sess, 76th plen mtg, Agenda Item 138, UN Doc A/43/49 (9 December 1988) Annex. At <http://www.un.org/documents/ga/res/43/a43r173.htm>.
- ⁹ UN Human Rights Committee, *General Comment No 21: Article 10 (Humane treatment of persons deprived of their liberty)* 44th sess, UN Doc HRI/GEN/1/Rev.1 (10 April 1992) [5].
- ¹⁰ Human Rights Committee, *Views: Communication No 458/1991*, 51st sess, UN Doc CCPR/C/51/458/1991 (21 July 1994) 11 [9.3] (*Mukong v Cameroon*); Human Rights Committee, *Views: Communication No 632/1995*, 60th sess, UN Doc CCPR/C/60/D/632/1995 (18 August 1997) 6 [6.3] (*Potter v New Zealand*). See also, Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: United States of America*, UN GAOR, 50th sess, Supp No 40, UN Doc A/50/40 (3 October 1995) 55 [285], 57 [299].
- ¹¹ Human Rights Committee, *Views: Communication No 868/1999*, 79th sess, UN Doc CCPR/C/79/D/868/1999 (11 November 2003) [7.3] (*Wilson v Philippines*).
- ¹² *Wilson v Philippines*, UN Doc CCPR/C/79/D/868/1999 [7.3].

- ¹³ Human Rights Committee, *Views: Communication No 1020/2001*, 78th sess, UN Doc CCPR/C/78/D/1020/2001 (7 August 2003) 15 [7.2] ('*Cabal and Bertran v Australia*').
- ¹⁴ Commonwealth Ombudsman, *Suicide and Self-harm in the Immigration Detention Network* (2013), at 91–92, 137–138 and 142, https://www.ombudsman.gov.au/_data/assets/pdf_file/0022/30298/December-2013-Suicide-and-self-harm-in-the-Immigration-Detention-Network.pdf.
- ¹⁵ Australian Human Rights Commission, *The Use of Force in Immigration Detention* [2019] AusHRC 130 (May 2019) [577].
- ¹⁶ Australian Human Rights Commission, *The Use of Force in Immigration Detention* [2019] AusHRC 130 (May 2019) [151].
- ¹⁷ Immigration Detention Facilities and Detainee Services Contract between the Commonwealth and Serco, 9 April 2015, Sch 2 (Statement of Work), Section 4 (Security Services), clause 3.9(a)(i).
- ¹⁸ *Australian Human Rights Commission Act 1986 (Cth)* s 29(2)(a).
- ¹⁹ *Australian Human Rights Commission Act 1986 (Cth)* s 29(2)(b).
- ²⁰ *Australian Human Rights Commission Act 1986 (Cth)* s 29(2)(c).