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Summary record of the 3418th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 18 October 2017, at 3 p.m.

Chair: Ms. Waterval

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Ms. Waterval (Rapporteur) took the Chair.

The meeting was called to order at 3 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant
(continued)

Sixth periodic report of Australia (CCPR/C/AUS/6; CCPR/C/AUS/Q/6)

1. *At the invitation of the Chair, the delegation of Australia took places at the Committee table.*

2. **Mr. Quinn** (Australia), noting that Australia had recently been elected to the Human Rights Council, said that the Government was committed to upholding the civil and political rights of all Australians and to leaving no one behind. He wished to thank Australian civil society and the Australian Human Rights Commission, whose representatives were in attendance, for their interest and participation in the meeting. While Australia had much to be proud of in terms of giving effect to the rights under the Covenant, improvements were needed in some areas; the Government was committed to working with relevant communities to identify and implement appropriate solutions.

3. Efforts to counter terrorism were informed by a commitment to human rights and the rule of law. Australia strived to strike the right balance between security on the one hand and individual rights and civil liberties on the other, and therefore maintained a comprehensive regime of safeguards to ensure that security considerations did not erode fundamental rights and freedoms. For example, the Independent National Security Legislation Monitor was tasked with the ongoing review of the country's counter-terrorism and national security legislation, including whether it contained appropriate safeguards to protect rights, whether it was proportionate to any threat of terrorism and whether it remained necessary. In addition, the Inspector General of Intelligence and Security reviewed the actions of the intelligence community to ensure that Government agencies acted legally, complied with ministerial guidelines and respected human rights. The Government was further strengthening its oversight, accountability and integrity structures by increasing the powers of the Attorney General in relation to the intelligence community and domestic security arrangements.

4. All Australian jurisdictions shared a responsibility with regard to equality for women, and the Government had three priorities in addressing remaining obstacles to substantive equality, namely strengthening women's economic security, supporting more women in leadership positions and ensuring that women and their children were safe from violence. Addressing the unacceptable level of violence experienced by women in Australia was a particular focus of all levels of government.

5. Aboriginal and Torres Strait Islander Australians continued to have poorer outcomes than non-indigenous Australians across a range of measures. The Closing the Gap Strategy contained measures to improve the education, health and employment outcomes of the indigenous population. The year 2018 would mark the Strategy's 10-year anniversary and, though there had been some success, much remained to be done. Accordingly, all levels of government were working together to refresh the Closing the Gap framework. Central to those efforts was consultation with Aboriginal and Torres Strait Islander people and their representative organizations. Furthermore, the Government was committed to meaningful recognition of indigenous Australians in the Constitution. However, the Constitution could only be amended following a referendum. On 30 June 2017, the Referendum Council had delivered its final report on the issue, and the Government was now considering the Council's advice and would work with Parliament to develop a proposal with the best chance of success in a referendum.

6. It was of particular concern that indigenous Australians were overrepresented in the criminal justice system. The Government had earmarked a record \$A 1.7 billion over five years to fund legal aid commissions, community legal centres and Aboriginal and Torres Strait Islander legal services. The Government was committed to working with indigenous communities to change the situation and had allocated \$A 264 million for the 2017-2018 period to the Indigenous Advancement Strategy with the aim of improving community

safety and addressing the drivers of violence, abuse and neglect in indigenous communities. In addition, the Government was prioritizing economic participation and empowerment as a means of tackling the root causes of disparities between the indigenous and non-indigenous populations. An example of a successful initiative in that domain was the Indigenous Procurement Policy, under which over half a billion dollars in government contracts had been awarded to indigenous-owned businesses in its first two years.

7. Australia was undertaking ground-breaking work on disability. The National Disability Strategy 2010-2020 provided a framework for improving the lives of persons with disabilities in collaboration with those persons, their families and carers. A specific plan to improve outcomes for Aboriginal and Torres Strait Islander persons with disabilities had been released that week with a view to providing better access to culturally appropriate and sustainable support and services. Moreover, the Government was committed to engaging persons with disabilities in its aid programme, as reflected in the strategy Development for All 2015-2020.

8. Lastly, in the light of the ageing population, the Government was investigating measures to ensure that Australians continued to enjoy their rights as they aged. Under Australian law, age discrimination was prohibited; the Government had appointed a dedicated commissioner and had allocated \$A 15 million to protecting the rights of older Australians, including funding for research and an online knowledge hub. In addition, in response to reports of elder abuse, it had requested the Australian Law Reform Commission to consider the issue.

9. The delegation was honoured to engage in constructive dialogue with the Committee.

10. **Mr. Shany** said that, while he thanked the State party for opting for the simplified reporting procedure, he regretted the three-year delay in the submission of its report and requested the State party to comply with the time frame in future so that the questions raised in the list of issues prior to reporting remained topical when the time came for the interactive dialogue. The Committee was pleased to observe the State party's generally strong record in the field of human rights, its robust civil society and impressive Human Rights Commission. It welcomed the progress made in some areas, in particular the steps taken to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to confer constitutional recognition on indigenous peoples, and commended the State party on its election to the Human Rights Council. The ambassador's remarks on age discrimination were especially interesting; there might be scope for the Committee to learn from Australia in that domain.

11. He welcomed the adoption of the Human Rights (Parliamentary Scrutiny) Act, but shared the concern of the Human Rights Commission that the Act should not be considered as a substitute for the incorporation of the Covenant into domestic law. He wished to know whether any bills had been amended pursuant to the Act and whether the Covenant had ever been invoked during a scrutiny process. In reference to paragraph 10 of the report, it would be interesting to know whether the Government intended to follow up on the findings of the Australian Law Reform Commission's report, in particular recommendations regarding the allocation of time to the Parliamentary Joint Committee on Human Rights. He would appreciate the delegation's comments on the Human Rights Commission's concern that the quality of statements of compatibility varied across government departments. In the light of the former Prime Minister's scornful statement regarding the 2015 report on child detention and of the Attorney General's call for the resignation of the former president of the Commission, it would be useful to know what the Government's current relations with the Commission were and to what extent the Commission was independent. Were there plans to restore the Commission's budget to prior levels so that it could fully carry out its mandate?

12. Noting that training in the Covenant was provided on a needs basis or where ordered by the courts, he wished to know whether there had been any need or request for training in international human rights law generally and the Covenant specifically. He would appreciate the delegation's comments on the concern that the combination of the failure to incorporate the Covenant into domestic law and limited knowledge of its provisions could create inhospitable conditions for the effective implementation of civil and political rights.

He would also appreciate an update on the Human Rights Framework adopted in April 2010 and on steps taken to implement the recommendation made under the universal periodic review to initiate consultations regarding an action plan on business and human rights. Could the delegation comment on concerns about discrepancies between the ambitious objectives of the National Framework for Protecting Australia's Children 2009-2020 and the amount of funds allocated to its implementation?

13. While he welcomed the creation of a database of treaty body recommendations, he regretted the lack of information it contained on the status of implementation. Given that a number of the issues to be raised during the dialogue were repeat concerns, it would be interesting to know whether the State party had a mechanism in place to regularly review recommendations and whether it was still considering the establishment of a permanent national entity to oversee reporting to the treaty bodies.

14. Based on paragraph 49 of the report, there appeared to be a misunderstanding regarding the nature of the Committee's Views. Views were not an invitation to respond to the Committee; they were the articulation of a legal duty to take specific action to implement Covenant obligations. It was troubling that after conducting what was essentially an adversarial process, in which the State party had ample opportunity to present its position, the State party used the follow-up procedure to reargue its case. As explained in general comment No. 33, specifically paragraphs 11 and 13, the Committee's long-standing position was that Views were more than mere recommendations to be adopted or rejected at whim. The implementation of Views was part of the responsibility of States parties to discharge their obligations under the Covenant in good faith. Therefore, while the Committee could, in some cases, accept some delay in the implementation of Views for legislative reasons or because a State party required more guidance, it was unacceptable for a State party to routinely fail to implement them and to take a position that in essence challenged multilateral, expertise-based treaty monitoring by declaring the power to self-assess its own record of compliance and to pick and choose which obligations to implement. It was also worth noting that Australia had the lowest compliance grade, even compared to countries with much weaker human rights credentials. He would appreciate an explanation of the State party's dismal compliance record, which was perplexing in the light of its claim to playing a lead role in the field of human rights.

15. Regarding forced sterilization, the Committee — and indeed other treaty bodies and special mandate holders — remained concerned about how the practice of sterilizing persons with disabilities without their consent was compatible with the Covenant. The argument that a ban on sterilization of persons with disabilities could deny their right to access all available medical support on an equal basis with others did not stand, since persons without disabilities were not subjected to forced sterilization in the first place. It would be useful to know more about the safeguards in place and how many sterilizations had been approved or denied. It would also be useful to know what the role of the family courts was with regard to voluntary sex reassignment for minors, considering that court proceedings could be quite costly and lengthy. The Committee was concerned at reports that very young intersex children were assigned a sex without being asked their preference and often based on stereotyped gender roles and interests in colours and toys. Given the serious consequences of those decisions, such as infertility, it would be important to understand the State party's position.

16. **Ms. Jelić** said that, notwithstanding the exhaustive list of sources of law and bodies responsible for protecting civil and political rights provided in the report, there was no information on how the State party implemented international human rights standards as enshrined in the Covenant and derived from the Committee's jurisprudence. Accordingly, she wished to know whether the courts invoked the Covenant or the Committee's jurisprudence in decisions on human rights violations, whether bodies such as the Australian Human Rights Commission and the Office of the Commonwealth Ombudsman had sufficient resources and independence to address violations of civil and political rights and whether victims of violations had access to an effective remedy. It was clear from the report that the State party had no intention of withdrawing its reservations to the Covenant. Yet its reasoning was not in line with the spirit of international human rights standards or

with the object and purpose of the Covenant. Therefore, she hoped that it would reconsider its position.

17. Pointing out that Aboriginal and Torres Strait Islander women were more likely to be victims of violence, she wished to know how the National Plan to Reduce Violence against Women and their Children 2010-2022 was implemented and evaluated and what the results of the Advisory Panel on Reducing Violence Against Women had been thus far. She also wished to know what specific measures were included in the \$A 21 million package referred to in paragraph 79 of the report, whether the groups concerned were involved in the design and implementation of measures and what the content and duration of the programme Stronger Futures in the Northern Territory were. Regarding women with disabilities, it would be helpful to know the outcomes of Stop the Violence, whether the National Plan and the National Disability Strategy 2010-2020 had been linked and, if so, how. Could the delegation provide further details on the significant legislative amendments made to the Commonwealth Family Law Act in 2011, specifically on how family violence and child abuse were taken into account, and on plans to adopt a new family act.

18. **Ms. Cleveland** said that, while she welcomed the broad range of counter-terrorism measures that had been adopted in Australia, it was of concern that certain measures could entail potential arbitrary detention, a lack of fair trial processes and the suppression of freedom of expression. She requested information on how often counter-terrorism measures had been applied in practice, as it seemed that many were rarely used.

19. The Government had not acted on recommendations made by the Independent National Security Legislation Monitor, the Council of Australian Governments, the United Nations Committee against Torture and civil society organizations to ensure that counter-terrorism legislation complied with the Covenant, and that any limitations of human rights for national security purposes were reasonable and proportionate. She requested information on the mechanism used to review and implement such recommendations, how recommendations were incorporated into existing legislation, and whether the Government planned to review counter-terrorism legislation to ensure compliance with the Covenant.

20. The amendments to the 1984 Sex Discrimination Act and the establishment of an Age Discrimination Commissioner were positive developments. However, she wished to know whether the Government planned to ensure that federal laws protected individuals from discrimination based on age and religion, and to address legislative exemptions that allowed religious organizations to treat lesbian, gay, bisexual, transgender and intersex (LGBTI) people unfavourably in employment and education. She also asked whether the Government was taking measures to protect women with autism from discrimination in access to education, employment and justice.

21. NGOs had expressed concern about the cost of anti-discrimination lawsuits, the six-month time limit for making complaints, and the fact that complainants were required to take leave from work to attend court. She asked whether the Government planned to address the situation. She also wished to know whether there were plans to consolidate existing non-discrimination provisions in a comprehensive federal law in order to facilitate claims of intersectional discrimination.

22. With regard to the cases of *G. v. Australia* (CCPR/C/119/D/2172/2012) and *C. v. Australia* (CCPR/C/76/D/900/1999), she asked how the Government planned to implement the Committee's recommendations, and whether there were plans to eliminate requirements for transgender people to undergo surgery and be married in order to change their identity on their cardinal documents. She also wished to know whether the Government planned to allow transgender people access to stage two hormone treatment without an order from the Family Court and whether it would ensure that same-sex couples had full access to surrogacy services.

23. Legislative amendments prohibiting the recognition of same-sex marriages entered into in Australia or other jurisdictions could lead to discrimination on the basis of sexual orientation and gender identity, and created legal issues for same-sex couples who wished to divorce as well as for married transgender persons who were only able to change their identities legally if they were unmarried. It was unclear whether such legislation was consistent with the principle of equality as defined in Australian law.

24. As a voluntary, non-binding postal survey was under way in Australia on whether to legalize same-sex marriage, it should be recalled that human rights, particularly the rights of vulnerable minority groups, could not be governed by public opinion polls, which could lead to further marginalization and stigmatization of those groups. She wished to know what efforts were being made to ensure that the survey itself did not negatively impact the LGBTI community in Australia, and what actions would be taken following the results of the survey.

25. **Mr. Heyns** said that the Evidence Act had a number of safeguards to prevent the use of evidence obtained in Australia through torture or cruel, inhuman or degrading treatment or punishment. However, that Act was weakened by provisions in the Australian Security Intelligence Organization Act 1979, which provided immunity from civil and criminal responsibility for persons involved in special intelligence operations and did not explicitly prohibit the use of cruel, inhuman or degrading treatment or punishment. As a result, evidence obtained in such situations could be used. Moreover, it was not clear that the Foreign Evidence Act provided sufficient protection against the use of evidence obtained in foreign jurisdictions.

26. Regarding the use of force by the police, it was of concern that lethal weapons, such as tasers, seemed to be used disproportionately against Aboriginal Australians and Torres Strait Islanders, and that crimes in those communities were often not sufficiently investigated. The absence of independent oversight of police actions was also of concern and he asked who was responsible for investigating allegations of excessive use of force. He further wished to know whether there were plans to give the Office of the Commonwealth Ombudsman a direct role in such cases instead of its present supervisory role.

27. **Ms. Seibert-Fohr** said that Australia had not always engaged thoroughly with individual communications, despite the significant legal expertise available in the country. In the case of *Hovarth v. Australia* (CCPR/C/110/D/1885/2009), for instance, the Government had denied responsibility under the Covenant despite the fact that an Australian court had found a police officer involved liable on charges of police brutality. In addition, it was imperative to ensure that persons whose rights under the Covenant had been violated had effective access to remedies; she wished to know what mechanisms were in place to ensure such access in all circumstances.

The meeting was suspended at 4.10 p.m. and resumed at 4.25 p.m.

28. **Mr. Reddel** (Australia) said that the forced sterilization was not required under any circumstances and, in cases where a person was unable to give consent, such consent could only be given by a court or guardianship tribunal. The Family Court could authorize the sterilization of children if it was considered in the child's best interests. The Government had provided funding to the Australian Guardianship and Administration Council in 2015 for the development of indicators to standardize the collection of data on sterilization. The data collected included the age, gender and primary disability of the applicant, as well as the reason for the application for sterilization and the outcome. The Council published national data on adult sterilization annually, and 10 adults had been sterilized between June 2016 and June 2017.

29. **Ms. O'Keeffe** (Australia) said that, under Australian law, parents were generally able to consent to treatment on behalf of their children, although authorization from the Family Court was required for procedures considered to be non-therapeutic, invasive and irreversible or where there was a risk of making an incorrect decision. The Government shared the Committee's concerns about the *Re: Carla* case, in which a single judge had ruled that the parents were able to consent to a gonadectomy on their child's behalf. In the *Re: Lesley* case, it had been decided that authorization was required from the Family Court for that procedure.

30. Regarding children with gender dysphoria, treatment was available to support a child's ability to identify with a gender other than the one they were assigned at birth. Stage one treatment involved the administration of hormones to suppress the approach of puberty and stage two involved the use of hormones to promote changes to reflect the child's

affirmed gender. The third stage was surgery and was not normally considered for children under 18 years of age.

31. Authorization from the Family Court was required for stage two treatment, which could delay access to treatment. Referring to the *Re: Kelvin* case, the Attorney-General had suggested that common law be amended so that stage two treatment could proceed without the authorization of the Family Court in cases where there was no disagreement between the child or its parents and the relevant medical practitioner. As gender dysphoria was a diagnosed medical condition and stage two treatment was non-invasive, the treatment fell within the normal boundaries of parental responsibility and the doctor involved would determine whether the child involved was able to consent. The number of children seeking stage two treatment had risen steadily since 2013 and, in practice, treatment was authorized in almost all cases.

32. **Mr. Reddel** (Australia) said that the National Framework for Protecting Australia's Children 2009-2020 covered issues relating to the safety and well-being of children and was implemented through a series of three-year action plans. The 2015-2018 action plan focused on early intervention in children's lives, helping young people in out-of-home care into adulthood and facilitating contact between families and the child protection system, with particular emphasis on reducing the number of Aboriginal and Torres Strait Islander children in contact with the system. In addition to existing funding to support vulnerable children and families, the Government had spent approximately \$A 14 million on the present action plan since December 2015. A number of indicators had been developed to improve data collection in order to allocate resources more effectively.

33. The National Plan to Reduce Violence against Women and their Children 2010-2022 was also implemented through three-year action plans, which involved significant consultation between the Government, civil society, state and territorial authorities and women and children to identify areas for improvement. The Government allocated \$A 25 million per year to support the Plan, with investment in public and private research centres focusing on women's safety and well-being. A 24-hour counselling service had also been established and was available online and by phone.

34. The process of evaluating the National Plan involved monitoring, data collection and research. The Personal Safety Survey and the National Community Attitudes towards Violence against Women Survey were conducted every four years to track the progress made in its implementation. According to the Department of Social Services, the rate of partner violence against women had been 1.5 per cent in 2015 and 2012, and the overall prevalence of violence against women was falling. The Government had made a commitment to evaluating the National Plan and its various implementing action plans. The progress made in the implementation of the National Plan was captured in annual reports, and a final report would be prepared on its completion. In addition, an evaluation framework for the National Plan had been developed, and states and territories collected data on violence against women and children, including from the police, courts and corrective services.

35. The Government funded the Australian Institute of Health and Welfare to work in partnership with the Australian Bureau of Statistics to strengthen family and domestic violence indicators across relevant data sets. Under the National Partnership Agreement on Legal Assistance Services, legal aid commissions and community legal centres provided data on the proportion of their clients who were at risk of family violence. The Government was funding the Australian Bureau of Statistics to conduct an analysis of the data collected on family, domestic and sexual violence with a view to identifying any gaps.

36. **Ms. Saastamoinen** (Australia) said that the Government had taken various measures to reduce the high prevalence of violence against indigenous women. For example, funding had been set aside to increase police response rates, deploy community engagement officers and improve access to isolated communities. The cross-border domestic violence intelligence desk allowed police officers across the Northern Territory, Western Australia and South Australia to share information on perpetrators, and a training programme had been developed to equip nurses with the necessary skills to support victims of domestic violence.

37. The funding announced for the Third Action Plan, 2016-2019 of the National Plan to Reduce Violence against Women and their Children had included a package of \$A 25 million specifically targeting indigenous communities. As part of that package, \$A 19 million had been set aside for the development of new models for treating indigenous victims of domestic violence. Indigenous organizations would be closely involved in the development of the new treatment models.

38. The National Partnership Agreement on Stronger Futures in the Northern Territory had been replaced by the National Partnership on Northern Territory Remote Aboriginal Investment. It would run until 30 June 2022, by which time it would have received a total of \$A 986 million in funding. The National Partnership provided for a range of measures to address aboriginal investment issues and had a focus on safety and well-being. Over the following 12 months, the Aboriginal and Torres Strait Islander Social Justice Commissioner would be leading a national conversation with a view to identifying what was needed to make indigenous girls and women feel safe, and the outcomes of that process would inform Government policy.

39. The Government was making efforts to improve the situation of indigenous victims of crime. Measures had been taken to increase the police presence in isolated communities, including in the Northern Territory and the Torres Strait Islands, and strategies were being developed to encourage indigenous victims of violence to come forward. There were state- and territory-level strategies to review deaths in police custody, and allegations of misconduct could also be referred to dedicated integrity commissions. The Department of the Prime Minister and Cabinet had an extensive regional network, which facilitated the collection of data on the situation on the ground. The newly established ministerial council on indigenous affairs would hold its first meeting on 23 October 2017. It would play a key role in aligning strategic priorities on indigenous affairs across the country and would strengthen relationships, collaborations and accountability across and within jurisdictions.

40. **Mr. Reddel** (Australia) said that the Government was taking action to reduce the high prevalence of violence against women with disabilities, primarily through the National Disability Strategy, 2010-2020, and the National Plan to Reduce Violence against Women and their Children. The Third Action Plan of the National Plan provided for measures specifically targeting women with disabilities, including measures to support the development of accessible services, improve the national sexual assault and counselling service, provide relevant training and explore opportunities for collaboration in the disability sector.

41. **Ms. O'Keefe** (Australia) said that the Parliamentary Joint Committee on Human Rights assessed the compatibility of existing legislation with human rights and had the power to initiate inquiries into human rights issues in certain circumstances. Following its intervention, plans put forward in 2016 to publish the names of employees of the Australian Public Service who had been dismissed for breaching its internal code of conduct had been shelved. Several other parliamentary committees also had the power to initiate inquiries into human rights issues. The Senate Standing Committee on Community Affairs, for example, had conducted inquiries into violence, abuse and neglect against persons with disabilities in institutional and residential settings and the involuntary or coerced sterilization of persons with disabilities in Australia.

42. Since the submission of the report under consideration, a new president and four new commissioners had been appointed to the Australian Human Rights Commission, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) and the merit and transparency guidelines of the Australian Public Service Commission. In the 2017/18 financial year, the total projected income of the Australian Human Rights Commission was over \$A 20 million, including \$A 14.39 million in Government funding, and the Government provided additional funding for specific projects. It should be borne in mind that many agencies had seen reductions in their funding in the current economic climate, but the Government was committed to ensuring that the Australian Human Rights Commission had sufficient resources to perform its statutory functions. The Office of the Commonwealth Ombudsman was also sufficiently resourced.

43. The Australian judiciary was fully independent, and the Government provided funding for the training and education of judicial personnel, including judges and magistrates. The National Judicial College of Australia and the Australasian Institute of Judicial Administration held regular workshops, conferences and seminars on a range of topical issues, including access to justice. In the 2017/18 financial year, the Government had set aside \$A 348,000 for the operational expenses of the National Judicial College. Human rights education was also provided for judicial personnel at the state and territorial levels. The Judicial College of Victoria, for example, maintained a Charter of Human Rights Bench Book, which provided guidance to enable judicial officials to ensure the full and equitable participation of nine specific groups, including persons with disabilities.

44. **Mr. Mansfield** (Australia) said that the Australian Federal Police, the Victorian Public Service and the Australian Capital Territory Public Service organized training on human rights and cultural awareness for public officials. Immigration and border protection officers were required to comply with the obligations of Australia under international law and underwent mandatory induction training on human rights and cultural awareness.

45. **Ms. O’Keeffe** (Australia) said that the restrictions previously imposed on access to surrogacy for same-sex couples in Western Australia had expired and were no longer applicable. The Australian Marriage Law Postal Survey had been launched on 12 September 2017 to gauge support for same-sex marriage. The final result would be declared on 15 November 2017. If the majority of respondents was in favour of legalizing same-sex marriage, the necessary private member’s bill would be introduced. The Government would support the inclusion of appropriate protections for religious freedom in any such bill. The Marriage Law Survey (Additional Safeguards) Act 2017 prohibited any person from vilifying, intimidating or threatening to cause harm to another person or persons on grounds of religious conviction, sexual orientation, gender identity or intersex status during the survey period. As of 17 October 2017, the authorities had received 15 complaints regarding the Postal Survey, most of which had concerned interference with postal services and the dissemination of misleading information. Under Australian law, a marriage was validated at the moment of solemnization and was not invalidated if one of the parties underwent sex reassignment surgery. With regard to the rights of transgender persons, she was not currently in a position to comment on the specific cases mentioned earlier in the meeting, as they remained under active consideration.

46. The Government supported the rights of persons with disabilities to enjoy legal capacity on an equal basis with others and acknowledged the importance of supportive decision-making for persons with disabilities. However, it considered that, as a last resort, and subject to the appropriate safeguards, substituted decision-making was necessary in certain circumstances. Substitute decision makers were appointed by a tribunal and were subject to the requirements of relevant state and territory guardianship laws. In November 2014, the Australian Law Reform Commission had tabled a report on equality, capacity and disability, and the resulting recommendations were under consideration. The Commission was currently conducting a review of the Family Law Act 1975. The Age Discrimination Act 2004 provided comprehensive protection from age discrimination.

47. **Mr. Walter** (Australia) said that, like many other countries, Australia faced a heightened risk of terrorist activity. Since the national terrorism public alert level had been raised to “high” on 12 September 2014, there had been 5 terrorist attacks and 13 major counter-terrorism operations. Between 2001 and September 2017, 40 individuals had been convicted of terrorism-related offences, and a further 45 individuals charged with terrorism-related offences were currently before the courts. Australia had a strong and comprehensive legislative framework in place to counter terrorism, and it was constantly reviewed to ensure that it safeguarded the rights of individuals, protected public safety and was necessary and proportionate.

48. Prosecution for terrorist offences involved the same safeguard mechanisms as other criminal offences. The corresponding legislative framework was continuously reviewed by the Independent National Security Legislation Monitor and Parliamentary Joint Committee on Intelligence and Security. The more intrusive powers applicable within that framework, such as those relating to control orders and preventive detention, were used as a last resort and were subject to sunset and annual reporting requirements. To combat violent

extremism, the Government focused on prevention measures, including outreach to communities to stop radicalization before it started. All law enforcement and intelligence agencies had comprehensive oversight and complaints regimes.

49. National security counter-terrorism laws were subject to review by the Independent National Security Legislation Monitor, whose role was to assess their effectiveness and to ensure that they included appropriate safeguards for human rights. In a recent report, the monitor had noted that, although police stop, search and seizure powers had never been used, they remained an important and appropriate response to terrorist acts. The Government actively considered and implemented the monitor's recommendations.

50. The various recommendations issued by bodies such as the Australian Human Rights Commission and the Independent National Security Legislation Monitor were taken into account in different ways, depending on their exigency. However, there were currently no plans for a comprehensive review of national security laws.

51. The Criminal Code defined "terrorist act" as an action or threat of action where the action was done or the threat was made with the intention of advancing a political, religious or ideological cause, and the action was done or the threat was made with the intention of coercing, or influencing by intimidation, the Government or intimidating the public or a section of the public. The action also had to cause serious physical harm to a person or serious damage to property, or cause a person's death, or endanger a person's life, or create a serious risk to the health or safety of the public, or seriously disrupt or destroy critical electronic systems. The definition was consistent with internationally established definitions of the term, and there were currently no plans to change it.

52. Evidence obtained through torture was inadmissible in court. The Evidence Act and the Foreign Evidence Act provided solid safeguards against the use of evidence collected by means of torture or other cruel, inhuman or degrading treatment.

53. Section 35K of the National Security Legislation Amendment Act provided for immunity from liability for special intelligence conduct during special intelligence operations. Torture and sexual offences were examples of conduct which was excluded from that immunity. Although the section did not expressly refer to cruel, inhuman or degrading treatment as conduct excluded from immunity, the courts were implicitly assumed to consider it as such. Under all circumstances, the regular evidentiary requirements would apply, regardless of the provisions of 35K.

54. The use of force by the police was limited in all jurisdictions and was regulated by the Australian Federal Police Commissioner's Order on Operational Safety. On principle, force should be a last resort and when applied, it should be proportionate to the level of risk involved. Individuals concerned about the practices of the police could submit complaints to the Australian Federal Police (AFP); between 2013 and 2017, there had been five complaints regarding the use of force. The Commonwealth Ombudsman investigated complaints lodged against Government agencies, including the police force. All states and territories had independent complaints bodies whose findings could result in criminal prosecution, depending on the allegations made. In a 2016 report, the Australian National Audit Office had issued a number of recommendations to the AFP, which were all currently being implemented. Coroners, which were independent, had the power to issue recommendations whenever a death occurred involving the police.

55. To combat discrimination, Australia had a comprehensive legislative framework, which included protection against discrimination on grounds such as race, sex and gender identification. Although religion was not explicitly covered by federal anti-discrimination laws, it was protected under the Fair Work Act; moreover, some religious groups were granted protection under the Racial Discrimination Act. The Australian Law Reform Commission's report on traditional rights and freedoms found that federal anti-discrimination laws did not significantly encroach on freedom of religion.

56. **Mr. Playford** (Australia) said that, although the Government saw the Views of the Committee and other treaty bodies as important, it did not regard them as legally binding. Nevertheless, it did, in good faith, give them careful consideration, implementing them where appropriate. At the most recent universal periodic review, Australia had undertaken

to conduct consultations on the issue of business and human rights. The consultations had taken place in 2017.

57. **Ms. O’Keeffe** (Australia) said that, under Western Australia law, eligibility for in vitro fertilization or surrogacy was restricted to single women and heterosexual or female same-sex couples. Single men and male same-sex couples were not afforded access to either procedure. However, there were no such restrictions regarding artificial insemination, which was available to persons of any sexual orientation.

58. **Mr. Shany** said that the Committee did not maintain that its Views were formally binding. However, it was crucial that good-faith consideration of those Views acknowledged the special status of the Committee as a body entrusted to provide authoritative interpretation of the application of the Covenant. Otherwise, the implementation of its provisions would be open to as many interpretations as there were States parties, effectively nullifying the Covenant as a multilateral human rights instrument.

59. The delegation should explain the legal rationale behind compelling a person to undergo non-therapeutic sterilization. It would be helpful to hear how the practice was deemed compatible with the Covenant. In connection with the Telecommunications (Interception and Access) Act, he would welcome information on access to data in police and intelligence operations.

60. **Mr. Muhumuza** said that perhaps the attitude of the State party towards indigenous and other populations was reflected in the delegation’s statement that the remoteness of some tribal areas affected the authorities’ ability to adequately address the issue of violence against women and persons with disabilities among those communities. He would like to see a mainstreaming of such areas so that their inhabitants could receive the services they needed.

61. **Ms. Cleveland** said that she would appreciate clarification on the validity of a marriage vis-à-vis the date of its solemnization; it would be useful to hear how the recognition of such validity affected identity documents. On the subject of extraordinary powers associated with counter-terrorism measures, she wished to know whether there had been any changes to the scope of the Independent National Security Legislation Monitor’s oversight authorities. She was concerned that as an external oversight body, the independent monitor might not be serving the State party as effectively as it had in the past.

The meeting rose at 6 p.m.