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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture
Seventy-fifth session

Summary record of the 1959th meeting
Held at the Palais Wilson, Geneva, on Tuesday, 15 November 2022, at 10 a.m.

Chair: Mr. Heller

Contents

The meeting was called to order at 10 a.m.

Consideration of reports submitted by States parties under article 19 of the Convention (*continued*)

Sixth periodic report of Australia (CAT/C/AUS/6; CAT/C/AUS/QPR/6)

1. *At the invitation of the Chair, the delegation of Australia joined the meeting.*

2. **Mr. Newnham** (Australia), introducing his country's sixth periodic report (CAT/C/AUS/6), said that, as a global leader on human rights, Australia remained committed to a human-rights based approach to public life, including by fulfilling its obligations under the Convention. Legislation had been adopted in 2022 to strengthen the Australian Human Rights Commission by requiring all appointments to be merit-based and publicly advertised. In addition, each federal entity within the governing system had its own anti-discrimination legislation and offices for promoting human rights and equal opportunities. In its response to the coronavirus disease (COVID-19) pandemic, Australia had also taken an approach based on respect for human rights, dignity and fundamental freedoms.

3. Australia had made significant progress in various areas identified by the Committee in its concluding observations on the combined fourth and fifth periodic reports of Australia (CAT/C/AUS/CO/4-5). To promote the rights of First Nations Australians, a public referendum on giving them a permanent voice in parliament had been announced, and steps had been taken to reduce rates of youth and adult incarceration among First Nations peoples, including the publication of the National Agreement on Closing the Gap and the establishment of the Justice Policy Partnership. The Government had committed more than 81 million Australian dollars ($A) to expanding justice reinvestment initiatives and creating a national justice reinvestment unit.

4. To end violence against women and children, the Government had launched a 10-year national plan with a focus on prevention, early intervention, response, and recovery and healing. Some $A 1.7 billion had been allocated to implementing the plan. A consultative process was also ongoing to draw up a national plan to address the increased risk of gender-based violence faced by First Nations women and children. In addition, parliament was currently considering the Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Bill, which would place a positive duty on employers to take reasonable and proportionate measures to eliminate sexual harassment, victimization and sex-based discrimination in the workplace.

5. To combat human trafficking and modern slavery, Australia had launched a five-year national action plan, which included actions to prevent, investigate and prosecute modern slavery and support and protect survivors. In 2018, the Modern Slavery Act had been enacted with a view to engaging the private sector in combating modern slavery. The Act was currently under review. Australia also served as co-chair of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime. In 2021, the Migration Act had been amended to prevent the refoulement of persons to a country where they faced a real risk of torture.

6. The Disability Strategy 2021–2031 set out a national framework for all levels of government with a view to promoting, upholding and protecting the rights of persons with disabilities, which included a recognition of the heightened risks faced by persons with disabilities in the criminal justice system. In 2019, the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability had been established as an independent body to promote protections for persons with disabilities, foster inclusivity and encourage best practices in reporting, investigating and responding to offences against them.

7. Since its previous periodic report, Australia had ratified the Optional Protocol to the Convention against Torture. It was regrettable, however, that the Subcommittee on Prevention of Torture had suspended its visit to Australia in 2022, owing to difficulties in gaining access to certain detention facilities. The Government was taking urgent action to address those difficulties with the regional governments concerned. Australia had developed a multi-body national preventive mechanism system, coordinated by the Commonwealth Ombudsman. The use of such a network suited the federal constitutional system in Australia,

in which states and territories had legal responsibility for places of detention. Australia remained committed to protecting the rights of all persons in detention and using the expertise of the Subcommittee to pre-emptively identify and address any issues.

8. **Ms. Pūce** (Country Rapporteur) said that, while the Committee commended the inclusion of a definition of torture in the national legislation, she wished to know whether legislation adopted at the subnational level also contained a definition of torture and whether the definition included psychological torture. She also asked what legal provisions were applicable at the various levels of government in cases of cruel, inhuman and degrading treatment. It would be interesting to know whether the Parliamentary Joint Committee on Human Rights reviewed all parliamentary bills and, if not, what criteria were used in selecting the bills to review. She also wished to know to whom the Joint Committee's findings were submitted and what the impact of its findings was, especially in cases where the bill in question had already been approved. She would welcome further information about all cases assessed in the preceding five years, including the outcomes, the action taken and the timeline of the process. In addition, she wished to know what criteria were used to select the members of the Joint Committee, whether there were any requirements to ensure the representation of women and other marginalized groups on the Parliamentary Joint Committee and whether equivalent committees existed at other levels of government.

9. With regard to safeguards during police custody, she asked what steps were taken to ensure that persons with disabilities and persons who could not read were made aware of their rights in a manner which they could understand. It would also be useful to know whether all persons in custody were informed of their right to a lawyer and whether State legal aid was available to poor and socially disadvantaged persons during criminal procedures; if so, she wished to know how legal aid lawyers were selected, in what form the aid was offered and how detainees were informed about the option to request legal aid.

10. In view of a number of deaths that had occurred in police custody as a result of erroneous medical assessments, the Committee was anxious to learn whether, when a detainee asked to see a doctor, his or her need for access to medical care was evaluated by police officers or whether such care was routinely provided. In that context, it would be helpful to have precise data on deaths in police custody over the previous three years, disaggregated by demographic indicators such as gender, age and disability and whether the deceased was of First Nations origin. Furthermore, the Committee wished to know at what point during custody the detainee's next of kin were informed of their detention.

11. As the Committee had received reports that children in police custody were not always segregated from adults, it would be grateful for a description of the legal provisions and actual practice in that respect. It would also like to have additional information on the law and practice of the various states and territories with regard to the use of spit hoods on police premises; she would have thought that modern police gear would have rendered them obsolete. It would be useful to know more about the procedure for investigating allegations of excessive use of force by the police: for example, to whom could a complaint, or appeal against the outcome of a complaint, be submitted? In that connection, the State party should provide data on the number of complaints lodged and clarify whether they had led to convictions or disciplinary measures over the previous three years.

12. Given that the rate of violent crime had fallen in recent years, the Committee would appreciate an explanation of the main reasons for the sharp rise in the rate of incarceration over the same period. She was curious to know whether criminal justice policy made any provision for alternative penalties to detention. The Committee would like to know the exact numbers of remand and convicted prisoners, disaggregated by gender and, in particular, according to whether they were First Nations Australians or children. Were there any alternatives to pretrial detention in Australia? Similarly, the Committee wished to receive precise statistics on the number of persons sentenced to life imprisonment, disaggregated by gender and age and according to whether they were of First Nations origin. Since the prison population exceeded 40,000, an indication of the total capacity of prisons and how it was calculated would be useful in order to determine the extent of any overcrowding. It would also be helpful to have more information about the number of First Nations prisoners and their detention conditions, such as whether they were segregated from other prisoners or treated differently.

13. Supplementary information about the organization of medical treatment and psychiatric care in prisons would likewise be welcome, as visiting specialists' visits to a prison might be made only once a year. The Committee regarded meaningful activities, education and employment opportunities for prisoners as extremely important ways of ensuring that a person who had been deprived of liberty could reintegrate in society on release. She would be grateful for details of the legislative provisions governing the organization of such measures, including in maximum security units. The Committee wished to know whether prisons employed social workers and teachers and how many inmates were allowed to work or attend educational institutions outside prison. It would appear that, as far as solitary confinement, body searches and the use of restraints were concerned, the updated Standard Guidelines for Corrections in Australia were still not fully aligned with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and were goals rather than standards. It was therefore unclear to what extent the guidelines formed the basis of laws in states and territories. Since prisoners in high- and maximum-security units were sometimes kept for over 22 hours in single occupancy cells, that treatment should be classed as solitary confinement under the Nelson Mandela Rules and should therefore be subject to appeal. However, in Australia, a person placed in such units after a risk assessment had no possibility to lodge an appeal or request a review of their treatment unless, after a new risk assessment, it was found that the person no longer needed to be held in such a unit. She would therefore like the delegation to elaborate on detention rules in high- and maximum-security prisons. She also wished to know what legislative initiatives would be taken to eliminate the common practice of strip searches and replace them with less intrusive and less humiliating search methods. Similarly, the Committee would be grateful for information about steps to eliminate the use of restraints on prisoners in need of medical care, including women in labour and the dying, who were sometimes shackled or attached by an arm or a leg to their hospital bed.

14. Turning to the question of juvenile justice and the age of criminal responsibility in Australia, she wished to point out that a child of 10 could not be expected to understand what behaviour constituted a criminal act. As the imprisonment of children was very harmful, the Committee would like to know what alternatives existed for children in conflict with the law, whether they could be placed in the care of social services rather than being incarcerated and what education was provided for them. It would appreciate statistics showing the number of children in prison disaggregated by age and whether they were of First Nations origin.

15. **Mr. Iscan** (Country Rapporteur) said that, despite the progress made by the State party in enhancing human rights standards, some significant issues still needed to be addressed. For example, further clarification was required in respect of the incorporation of international obligations into Australian law. In that context, he drew attention to article 27 of the 1969 Vienna Convention on the Law of Treaties, which made it plain that, in a federal State, it was not the constituent entities, but the Federal Government which was responsible for complying with and upholding international law. The Australian Constitution empowered the Federal Government to incorporate international obligations into domestic law. The State party was therefore invited to explain its position in that regard. He would like to know if it might consider the adoption of a constitutional provision that ensured the direct implementation of international treaties to which it was a party throughout the territory of Australia, since that issue had a bearing on the reason why the Subcommittee on Prevention of Torture had suspended its country visit to Australia earlier in October 2022.

16. He would like to know what specific steps the State party planned to take to address the suspension of the visit of the Subcommittee on Prevention of Torture and to establish an independent and adequately funded national preventive mechanism. Noting that the Optional Protocol to the Convention was legally binding in all parts of the federal territory, he would be interested to hear the delegation's views on possible solutions for incorporating international obligations into domestic law, taking into account the complexities arising from the federal system in the State party.

17. Given that three years had passed since the submission of the State party's report, he would appreciate an update on the mechanisms in place for meeting Australia's obligations regarding the principle of non-refoulement and on the processes involved in determining the refugee status of asylum-seekers on board maritime vessels. He was also curious to know

how the State party reconciled its tough immigration and border protection policies with the maintenance of its generous humanitarian system while complying with the Convention and international law. He would also like to know whether a mechanism had been established to determine whether asylum-seekers had been victims of torture or trafficking in persons, and whether asylum-seekers and undocumented migrants received medical and psychological examinations when signs of torture were detected. If so, were those examinations in line with the procedures set out in the revised version of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol)?

18. He would like the delegation to clarify the status within domestic law of the various conventions related to refugees and stateless persons to which Australia was a party. Concerns had been raised regarding the detention of unlawful non-citizens, which was often imposed for an indefinite period of time and in the absence of transparency and procedural safeguards. He would welcome statistical data pertaining to such detention practices, and details of any investigations carried out in that connection. He also wished to know if the State party intended to put an end to the mandatory detention of asylum-seeking, refugee and stateless children and to detain adult asylum-seekers, refugees and stateless persons only as a last resort. He wondered if the Government had any plans to prevent arbitrary and indefinite detention and to exempt those in need of international protection from the legal requirement to undergo the character test provided for in the Migration Act. He would also like to know if there were plans to transfer any asylum-seekers, refugees and stateless persons detained on Christmas Island to mainland Australia in order to reduce the risk of persons in need of international protection being returned to countries where they might face persecution or torture, and if there were any plans to amend domestic laws in order to uphold Australia's international obligations regarding the principle of non-refoulement.

19. He would be grateful to receive updated information on the training programmes available for law enforcement personnel on the provisions of the Convention against Torture; he would like to know if they were mandatory and whether they were delivered online or in person. How frequently were such programmes held? He would also like to know whether the programmes contained specific training on the Istanbul Protocol; guidance on the treatment of vulnerable persons; guidance on using a trauma-informed and victim-based approach during trials; training on the legislation and procedures guaranteeing the principle of non-refoulement; and training on how to identify the victims of torture, trafficking in persons and gender-based violence. He would also like to know what proportion of law enforcement personnel had completed the training programmes. Information on the methods used to assess the effectiveness of the programmes and their impact on reducing cases of torture and ill-treatment would also be welcome.

20. The Committee would appreciate receiving updated information on the State party's fulfilment of its obligations under article 11 of the Convention, as well as information on the steps taken to improve the use of non-custodial measures as an alternative to imprisonment and to improve non-custodial accommodation for migrant children and families with children. It would welcome information on the separation of prisoners on remand and convicted prisoners and on any measures taken to ensure that children in detention were not subject to solitary confinement and were held separately from adults. He would appreciate information regarding the use of restraints for children in detention, the minimum age of criminal responsibility and the handing down of sentences of life imprisonment without the possibility of parole for children in conflict with the law. He wished to know how solitary confinement was used in detention centres and whether steps were being taken to ensure that legislation on solitary confinement complied with international standards, including the Nelson Mandela Rules. He would like to receive further information on the review and reform of treatment of persons with cognitive and psychiatric impairments in the context of health care and the criminal justice system. He would also welcome details of any interrogation-related rules, instructions, methods and practices introduced since the submission of the State party's report to ensure compliance with article 11 of the Convention.

21. In its report, the State party stated that the authorities did not record data that specifically identified cases of torture or cases of torture in which compensation was requested and granted. He would like the delegation to clarify and expand on that statement.

He would like to know what redress had been provided for victims of torture and their families, including details of the number of requests submitted and granted and the amount of compensation ordered and actually paid.

22. **Mr. Liu** said that he would like to have some statistics on victims of trafficking who were not Australian citizens. He wished to know whether they had access to legal assistance and other forms of aid and redress. He also wondered whether the planned legal reforms to increase the age of criminal responsibility in the Northern Territory from 10 to 12 years of age would be implemented in the rest of the country.

23. **Mr. Tuzmukhamedov** said that it would be useful to know whether responsibility for managing detention facilities and immigration detention centres, including the facility on Christmas Island, was ever outsourced to private companies. If so, he wished to understand the extent to which the activities of those companies were regulated by the Government. For example, he would like to know whether the Government supervised staff training and whether, more generally, all personnel in places of deprivation of liberty were required to be aware of the guidelines in the Istanbul Protocol.

24. He would like to understand how the use of preventive detention was regulated and whether its imposition could be challenged administratively or judicially. He also wished to know the maximum amount of time that a person could be held in preventive detention, both by law and in practice. With regard to chemical restraints, he would like to know how their use was regulated and whether such measures were limited to institutions where people with intellectual and cognitive disabilities were accommodated. The Committee wished to know about any cases where the application of chemical restraints had led to severe consequences for the health of detained persons.

25. **Ms. Pūce** said that it would be important for the State party to ensure that all the preventive mechanisms established in the different jurisdictions in the State party were able to implement the mandate of a national preventive mechanism under the Optional Protocol. Therefore, all preventive mechanisms would have to be financially and operationally independent and their mandate must be laid down in legislation. That mandate should be the same for all the bodies appointed as preventive mechanisms, since the same high standards of detention conditions must be guaranteed all over the country. Furthermore, the work of the preventive mechanisms should not be of a reactive nature. It would be important to bear that last point in mind when it came to appointing existing inspectorates or other bodies as preventive mechanisms. Some of those bodies might also have the power to receive complaints, for example, and it would therefore be important to distinguish clearly between their preventive and reactive activities.

The meeting was suspended at noon and resumed at 12.30 p.m.

26. **Mr. Newnham** (Australia) said that Australia was committed to giving effect to the international treaties and conventions to which it was a party. The Joint Standing Committee on Treaties regularly reported to state and territory governments on all treaty actions proposed by the Australian Government and on the country's compliance with its human rights obligations. With regard to the latter, the Government was resolved to strengthen the Australian Human Rights Commission, which was a fundamental component of the country's human rights infrastructure. An increase in the Commission's budget had recently been agreed.

27. Complaints concerning the actions of State agencies could be lodged with the Commonwealth Ombudsman. Furthermore, the Professional Standards team of the Australian Federal Police and the Australian Commission for Law Enforcement Integrity both had the power to review and investigate complaints about the conduct of federal police officers. Records on all complaints made against the Australian Federal Police were made available to the public.

28. All governments in Australia recognized the important role played by legal aid provision in ensuring access to justice. Under the National Legal Assistance Partnership, the Government had pledged to provide state and territory governments with $A 2.3 billion to invest in legal aid commissions, community legal centres and Aboriginal and Torres Strait Islander legal services. Those providers were free to set their own priorities and eligibility

criteria for their services. However, one of the aims of the scheme was to provide legal aid services to specific groups, such as Aboriginal and Torres Strait Islander persons, people experiencing or at risk of domestic violence, people in custody and prisoners, people in rural areas, and persons with disabilities or mental illnesses.

29. With regard to access to medical care in detention, persons deprived of their liberty in Australia received the same level of health care as the general public received under the public health system. All detainees underwent an initial physical and mental health assessment within 24 hours of admission to a correctional facility. The services of in-house doctors, nurses and mental health and addiction specialists, and visiting psychiatrists, dentists and allied health specialists, were provided to meet all the health needs of detainees.

30. Extensive research had been carried out into deaths in custody, including inquiries by the Royal Commission into Aboriginal Deaths in Custody. Unfortunately, there was no simple solution to the problem surrounding the disproportionate number of Indigenous persons who lost their lives while in custody. However, it was clear that too many Indigenous persons were in custody too often. Since the Government believed that reducing incarceration rates was the best way to reduce deaths in custody, a coordinated effort involving all governments would be required to address the drivers behind the disproportionate contact of Indigenous persons with the criminal justice system. According to the National Agreement on Closing the Gap, those drivers included the intergenerational trauma and disempowerment experienced by members of those communities, as well as their disadvantaged socioeconomic situation.

31. **A representative of Australia** said that, following a recommendation made by the Royal Commission into Aboriginal Deaths in Custody, the Australian Government had set up a custody notification service in all states and territories apart from Queensland and Tasmania. Police stations were required to inform the service whenever an Indigenous person was brought into their custody. The detained person would then receive a number of services, including a culturally appropriate health check and basic legal advice.

32. **Mr. Newnham** (Australia) said that, in the vast majority of places of deprivation of liberty, child detainees were kept separate from adults and people in remand were kept separate from convicted prisoners. Where possible, children in remand were accommodated in youth detention centres. However, when that was not possible, every effort was made to ensure that they were held in a separate part of the facility, away from adult detainees. State and territory governments were responsible for adopting legislation and policy regarding the use of restraints on children in detention. In most jurisdictions, legislation had been passed providing for their use only in limited circumstances, such as where there was a risk that the child might try to escape from detention, harm himself, herself or others, or disrupt the order of the facility. In accordance with international law, spit hoods were only used in exceptional circumstances, where all other measures had been exhausted and where children presented a serious risk to themselves or others. Legislative measures and safeguards had been introduced in most states and territories in order to ensure that the use of spit hoods was proportional and that the measure was only taken by specially trained officers.

33. Specific measures were being taken to achieve the goals established under the National Agreement on Closing the Gap to reduce the numbers of Indigenous adults and children in prison by the year 2031. All governments were focused on investing in activities at the local level aimed at tackling drivers of crime such as alcohol and drug use, poor education outcomes and unemployment. State and territory governments had also developed various initiatives to divert people away from the criminal justice system and provide alternatives to prison. Those included restorative justice programmes and the adoption of special approaches for convicted Indigenous persons and drug offenders.

34. In all states and territories of Australia, legislation had been passed providing for the use of solitary confinement only as a measure of last resort. As a result, that punishment was only used when it was considered to be absolutely necessary, either for the safety and welfare of the detained person or for the security of the establishment. All cases of solitary confinement were reported and recorded. Its use was subject to time limitations, specific review procedures and careful oversight by senior officers, and regular checks were carried out on the physical and mental state of all persons held in solitary confinement.

35. Thanks to the increased availability of body scanners, personal searches were becoming less and less common in places of deprivation of liberty. Any personal searches that were carried out had to comply with strict regulations. A series of measures had been put in place in all states and territories to safeguard the dignity and privacy of the person being searched, including provisions concerning the gender and number of officers present and the avoidance of force. A number of different search techniques were available to officers and the most intrusive searches were only authorized where absolutely necessary. Even stricter rules applied to personal searches carried out in juvenile detention centres. Prior approval was required and would only be granted in cases where there were sufficient grounds to justify the search. Authorized searches were carried out by a minimum of two specially trained officers of the same sex as the minor being searched.

36. With respect to his country's implementation of the Optional Protocol, only three states – New South Wales, Victoria and Queensland – had not yet appointed a preventive mechanism. There were ongoing discussions between the Australian Government and all state and territory governments on how the new mechanisms would be funded. Many jurisdictions already had existing mechanisms for inspecting and visiting places of detention and confinement, and state and territory governments were therefore in the process of calculating the costs involved in strengthening those mechanisms so that they met the requirements set out in the Optional Protocol. The main focus of the Australian Government was to ensure that there were fully operational preventive mechanisms with access to detention facilities in all parts of the country. That was why it had decided that establishing a cooperative national network of preventive mechanisms would be the most appropriate way to proceed. Significant progress had already been made; commonwealth funding had been made available and many states and territories had passed relevant legislation. The Australian Government regretted the decision of the Subcommittee on Prevention of Torture to suspend its visit to the country. All states and territories had agreed to the visit and it was hoped that the Subcommittee's mission would be able to resume its activities soon.

37. **A representative of Australia** said that, under the Migration Act, a non-citizen who did not hold a valid visa and who had exhausted all domestic review options could be subject to removal from the country as an unlawful non-citizen. However, several mechanisms had been put in place to ensure that Australia did not act in contravention of its non-refoulement obligations. For example, if a person's claims for protection in relation to a specific country had been accepted in the context of a protection visa application, his or her removal to that country was neither authorized nor required under the Migration Act. A pre-removal clearance process had also been established as a final check to ensure that non-refoulement obligations had been fully considered prior to the removal of a non-citizen. In accordance with that process, checks were carried out to ensure that all visa applications and ministerial intervention processes had been finalized and to identify any risk factors that might require further assessment. If any credible risks were identified, either the non-citizen would be permitted to make a new application for a protection visa or the case would be referred for assessment in accordance with the relevant ministerial guidelines. Under the Migration Act, the Minister for Immigration, Citizenship and Multicultural Affairs had the power to intervene until the last moment and to grant a protection visa if he or she believed that it was in the public interest.

The meeting rose at 1 p.m.