



Convention on the Rights of the Child

Distr.: General
31 July 2013
English
Original: French

Committee on the Rights of the Child

Fortieth session

Summary record of the 1055th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 13 September 2005, at 3 p.m.

Chairperson: Mr. Doek

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

Consideration of reports of States parties (agenda item 4) (continued)

Second and third periodic reports of Australia (HRI/CORE/1/Add.44; CRC/C/129/Add.4; list of issues related to the consideration of the second and third periodic reports of Australia (CRC/C/129/Add.4); supplementary responses to part IA of the list of issues, document without a symbol distributed in English only)

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

2. **Ms. Hambling** (Australia) said that new measures had been implemented the previous year in the administration of indigenous affairs. In the first place, the Aboriginal and Torres Strait Islander Commission (ATSIC) had been abolished in the wake of an independent assessment conducted in November 2003, which had established that the Commission had lost sight of the concerns of indigenous communities and no longer enjoyed their trust. ATSIC had been an elected body, but it had transpired that the electoral mechanisms used had been causing internal strains, while conflicts of interest had undermined trust in its financial decision-making.

3. Following the abolition of ATSIC, the Australian Government had set up a network of 30 Indigenous Coordination Centres, with a remit to engage in more direct discussions with indigenous populations, as well as the Ministerial Taskforce on Indigenous Affairs and an indigenous consultative group. The Government had also created the National Indigenous Council, which had 14 indigenous members appointed by the Government for their expertise in important areas such as health, education and business.

4. No programmes had been cancelled in the wake of the indigenous reform, and State spending in that area had increased. The Government was in discussions with the new representative bodies, which had been set up in consultation with indigenous populations, and had been pursuing regional partnership agreements with them with a view to improving services.

5. Locally, the Government had taken the initiative of concluding shared responsibility agreements directly with indigenous populations. They set out how all the partners (communities, the Government and other stakeholders) would contribute to efforts to improve the situation of those communities over the long term. In taking that step, the Government was acknowledging that it could not remedy the disadvantages of indigenous populations on its own and that communities had to take their future into their own hands. The Government funded those agreements through special indigenous programmes. Shared responsibility agreements did not impose additional conditions on indigenous people's access to allowances and services such as social security. Under them, communities accepted commitments while the Government provided services or investment on the basis of the needs expressed.

6. From the outset, the Australian Government had concentrated on fairly simple agreements, many of them dealing with child welfare issues, particularly school attendance and health. Indigenous children were overrepresented in the Australian system of child protection because of the complex problems affecting their families in communities, including structural socioeconomic handicaps, geographical isolation, psychoactive substance abuse, resentment caused by the history of family displacement, and culture. In accordance with a principle accepted by all communities, Aboriginal children were to be placed, in order of preference, with their extended family, their indigenous community or, in the last place, with other indigenous people. Funding was also available for the services that implemented that principle, so that Aboriginal and Torres Strait Islander children and

young people could receive high-quality care in a safe and reassuring environment and retain ties to their families, their communities and their culture.

7. **The Chairperson** asked whether there were any data on the number of children placed in indigenous families, since the effectiveness of that policy seemed to be compromised by the difficulty of finding indigenous foster families and communities.

8. **Ms. Hambling** (Australia) said that the authorities of the states or territories had taken steps to recruit more foster families and improve the quality of placements, and that figures would be provided later.

9. A number of State-financed initiatives — a general intervention strategy, a mentoring system for young people who had left their communities to study and the Scaffolding Literacy Programme — were designed to encourage indigenous parents and communities to improve school attendance and literacy rates and to increase the number of children completing their twelfth year of school. In addition, a mobility programme enabled indigenous students from remote areas to access training and jobs in the major provincial centres.

10. Malnutrition existed, especially in rural and remote areas; it was largely attributable to infections and disease, limited access to fresh, healthy food, financial constraints and environmental and social conditions. The Government had adopted a strategy and a plan of action on nutrition for Aboriginal and Torres Strait Islander communities to tackle the causes of the problem, and had set up a national steering committee to deal with priority issues, including nutrition and the food supply. Food aid programmes had also been put in place for that group of children as part of a general approach to maternal and infant care whereby an extra 100 million Australian dollars had been allocated to prenatal and postnatal care in order to improve Aboriginal women's and children's access to health services. Lastly, different strategies were being applied to safeguard the quality of products sold in the stores available to communities in isolated areas and save such outlets from closure due to financial difficulties.

11. Regarding family reunion services, an oral history project and national programmes had been put in place to safeguard the welfare of the families concerned and preserve, revive and develop indigenous cultures and languages. Over 100 counsellor posts had also been created in the assistance services placed under indigenous community control.

12. Numerous consultations had taken place between indigenous communities, the Productivity Commission and the different state, federal and territorial governments with a view to developing the result indicators needed to monitor the outcome of efforts to reduce the disadvantages suffered by indigenous peoples.

13. **Mr. Davis** (Australia) said, on the subject of administrative detention of child immigrants and asylum seekers, that policy in that area had been eased considerably with a view to resolving the difficulties families encountered in obtaining a permanent visa. In particular, all families with children, whether seeking asylum or not, were placed in the community and not in detention centres, whatever the events that had led to their being in breach of the immigration law. They had freedom of movement and were simply required to notify their address and make regular contact — once a week as a rule — with immigration service staff. Non-governmental organizations (NGOs) had sustained the entirely State-funded actions taken in the areas of health, education and housing, thus helping to ensure a smooth transition. The aim of the new policy was to ensure that greater account was taken of people's individual needs: thus, children could attend local schools, day-care centres or nurseries, health care was provided by local public hospitals and doctors, and disabled children were assisted by NGOs, among others. No families with children and no unaccompanied children were currently in an administrative detention centre. When a family was in a centre of that type, the authorities, in cooperation with

NGOs, tried to find them housing in the community within three or four weeks. The Government had opted to provide assistance to people in difficulty rather than alter basic immigration procedures, but had set the legal deadline for consideration of asylum seekers' applications at three months, after which the local authorities had to be informed.

14. As a rule, asylum seekers were entitled to financial support from the State and legal aid. Cases of unaccompanied children were very rare; local social services took responsibility for such children so that their needs could be met and cooperated with the Red Cross to trace any parents or family members and provide for their longer-term care.

15. The Government intended to complete its review of the issue of temporary protection visa holders by October. Holders of permanent protection visas could apply for family reunion.

16. **Mr. Filali** asked whether families leaving detention centres to be placed in the community went to live in "ordinary" districts or if they were concentrated in specific areas or taken into transit centres pending a final decision on their case.

17. **Mr. Davis** (Australia) explained that the families concerned were transferred to ordinary districts. It was usually NGOs that rented houses or apartments and allocated them to those families, and they were also responsible for supervising them. The role of the authorities was to facilitate moves from one place of residence to another, in the light of the preferences expressed by families with ties to a particular community in one city or another, and to help with integration.

18. **Mr. Parfitt**, noting that agreements dealing with child asylum seekers had been concluded with the various local authorities, asked whether children were treated in the same way everywhere or whether, as in Canada for example, there were disparities between one place and another.

19. **Mr. Davis** (Australia) said that South Australia provided minors with the highest level of protection and care. That was why, in recent years, unaccompanied children, who could not be placed alone in apartments in the community, had increasingly been sent to that state.

20. **Mr. Siddiqui** asked, in relation to the agreements between the authorities and indigenous communities, what conditions the public authorities usually set and what happened if they did not work out.

21. **Ms. Hambling** (Australia) replied that the Government did not set any conditions, as the agreements were not binding. The authorities usually consulted the communities to ascertain their wishes and drew on their thinking. For example, to encourage children to go to school a programme called "No School, No Pool" had been implemented in a number of communities. The public authorities undertook to build the swimming pool and community leaders to apply the programme. No penalties were provided for, but the authorities did their best to see that all parties made good on their commitments.

22. **The Chairperson** asked for precise information about the initial assessment that families with children arriving clandestinely in Australia had to undergo in holding centres before being transferred to the community and what status such people had, including whether they were given a temporary or other visa and whether they were allowed to work.

23. **Mr. Davis** (Australia) said that the assessment process could take up to three months and that the status of such people remained undetermined until they had obtained a visa. They were not allowed to work but could take part in the activities of the community and participate in it with the help of NGOs.

24. Minors could not lose their citizenship if one of their parents was an Australian citizen. As things currently stood, children lost their citizenship if both parents lost theirs or

if only one parent was Australian and lost his or her citizenship. That aspect of the legislation was under review and should be thoroughly amended in the near future to take account of different situations. If both parents lost their citizenship, it was up to the minister to decide whether the child should also be deprived of citizenship. The new citizenship law should also allow children deprived of their citizenship before the age of 18 because their parents had lost theirs to recover it once they came of age, and facilitate the steps they had to take to do so.

25. **Ms. Leon** (Australia) said that the country's family law had just been amended and that the best interests of the child were now the core principle. Shared parental responsibility was better applied, children could maintain their relationship with both parents, as was generally their expressed wish, and 65 Family Relationship Centres should enable families to settle their differences in a calmer setting and protect children from violence in divorce cases.

26. The authorities were empowered by anti-terrorism legislation to arrest and question for 24 hours anyone suspected of terrorist acts, but could only hold children for a few hours, with any extension having to be reviewed by the judge. The law provided that people likely to have information on terrorism-related offences could be questioned and indeed detained, but stipulated that children aged under 16 could not be questioned and those aged 16 to 18 were entitled to a special protection: the existence of the terrorist offence had to be proven, questioning could not exceed two hours without a break, and a parent, guardian or representative of the child's interests had to be present.

27. Anti-terrorism legislation was formulated and applied in such a way as to prevent any discrimination, particularly against the Arab-Muslim community, or any conflation of terrorism with any ethnic group or religion. To ensure that inter-community relations remained harmonious despite the anti-terrorism effort, the Prime Minister had invited the heads of the country's states and territories and the main Australian community leaders concerned by the issue to a summit to debate the difficulties encountered and invite them to participate in preparing the measures the Government was taking in that area. In addition to the Living in Harmony initiative, the Australian Human Rights Commission had put in place a programme whose aims were to reach out to the Arab-Muslim community, gather information about any discrimination it might be the victim of and convey that information to the federal Government so that it could take it into account in policymaking.

28. **The Chairperson** observed that the vagueness of certain provisions in the anti-terrorism legislation, particularly those concerning association with a terrorist organization, left judges a great deal of latitude and that the question therefore arose as to how children could be protected against their undesirable effects.

29. **Ms. Leon** (Australia) said that there were exceptions where close family members were concerned and that children in particular would benefit from them. Other provisions served to prevent undesirable effects. The Director of Public Prosecutions had to prove that the association was intentional, that the individual concerned realized he or she was dealing with a terrorist organization and that the person associated with was a member, and also that support had knowingly been given to that type of organization.

30. **Mr. Filali**, noting that the anti-terrorism legislation allowed minors suspected of an offence to be arrested and held for two hours for questioning, wished to know when the two-hour period began, whether it was renewable, how often, by whom, and whether the parents or guardians of such children were notified and could assist them.

31. **Ms. Leon** (Australia) replied that the law allowed a suspect to communicate with a lawyer, relative, friend or interpreter. An extension to the two-hour detention period could only be granted if it was necessary to enable an investigation to be completed or ensure that it was conducted properly and without delay.

32. **Mr. Zermatten** asked whether the legislation introduced in at least one Australian state prohibiting young people from gathering at weekends in certain districts was linked to anti-terrorism efforts or problems of juvenile delinquency.

33. **Ms. Leon** (Australia) explained that the law, which had been adopted in Western Australia, had no connection with anti-terrorism provisions but was part of child protection legislation and applied to unsupervised young children going out on the streets at night in an adult entertainment district. If the police believed those young people to be in danger, they were taken to a safe place with the assistance of a specialized organization. The provisions applied to primary school children from dusk and to young people aged 13 to 15 after 10 p.m.

34. Australia had very comprehensive legislation prohibiting any sex discrimination in numerous areas of public life and had also prepared a report, pursuant to the Beijing Platform for Action, dealing specifically with efforts to promote girls' rights.

35. A system of mediation and conciliation had been developed to ensure that children's views were heard and to protect them from the harmful consequences of proceedings affecting them. Thus, a child whose parents separated would see a family counsellor who would submit his or her conclusions to the court, presenting the child's point of view in a way that spared the latter a painful procedure. Family law also provided for separate representation for children, whose representative would be responsible for apprising the court of the child's best interests. In common law, the two parties to a case (the parents, in the present instance) were treated as adversaries.

36. **Ms. Smith** asked whether all children were entitled to express their views in custody cases or whether there was a lower age limit.

37. **Mr. Parfitt** stressed that it was necessary to draw a distinction between the best interests of the child and the child's right to a hearing and to consider how the two might be reconciled.

38. **Ms. Leon** (Australia) agreed that two different aspects were involved. The separate representative was there to uphold the child's interests, and it was true to say that his or her opinion did not always match the child's own views and preferences. The child's viewpoint was represented to the court in the first place by the family counsellor, with whom the child communicated directly, in private, without any pressure. The age from which a child's opinion had to be taken note of depended on the child's level of maturity and capacities. Family counsellors and judges were very experienced and well placed to take that decision; generally speaking, children aged over 10 were given a hearing.

39. **Mr. Zermatten** wished to know whether Australian children could avail themselves of the procedural right to a hearing that article 12 established for children or whether it was up to the courts to decide if this was appropriate, and whether children were entitled to be heard in person by the court and not only through the intermediary of a counsellor, a social worker or a psychologist. Lastly, it would be good to know what follow-up there had been to the "Seen and Heard" report devoted to the issue in 1997.

40. **Ms. Leon** (Australia) replied that the courts and the different levels of the administration had done a great deal to implement the "Seen and Heard" report. Numerous recommendations dealt with improvements to coordination, and the Law Reform Commission had noted in its annual report that many of those recommendations had been implemented.

41. On the subject of certain specific provisions of family law, it was difficult to generalize the circumstances of individual families, but the federal Government and local governments had mobilized substantial resources to provide families with parental

assistance. Documents dealing with discipline, nutrition and schooling that were very helpful to parents were also available on the Internet.

42. The Youth Round Table had involved participants aged 15 to 24 and dealt with issues affecting them. The participants had been chosen in a selection process based on demographic and other criteria, the aim being to represent a variety of experiences and family situations so that different viewpoints could be heard. Round Table participants had debated projects designed to promote their interests and the Government had consulted them about matters on which it wished to have young people's views. The recommendations of the Round Table had been set out in a report distributed to all the government agencies concerned.

43. The children's commissions set up in most of the states and territories also gave children a chance to make their views known. On that topic, mention should be made of the New South Wales parliamentary Committee on Children and Young People, which had conducted a survey among a very large number of young people on all matters concerning them; the findings had been published in a series entitled "Ask the Children" and were available on the web.

44. Support for families and young children was a national priority. The State assisted families and strove to ensure that parents could take care of their children, reconcile their family and work responsibilities and provide children with a secure environment. Another aspect of that policy was the National Agenda for Early Childhood, which aimed to help parents bring up their children.

45. To help parents reconcile their family and working lives, they were entitled to 52 weeks' unpaid leave upon the birth or adoption of a child. That provision applied to both fathers and mothers who had been in full-time or part-time employment for a certain length of time. Since 2004, all women giving birth to or adopting a child were also entitled to a maternity allowance worth just over 3,000 Australian dollars. Industry agreements included a great many other family-friendly provisions, particularly on flexible working hours. According to a recent survey, some 89 per cent of employees covered by federal agreements had benefited from at least one family assistance measure and 71 per cent from three measures or more.

46. The federal Government attached great importance to efforts to combat domestic violence, and funding for awareness-raising and assistance measures had been provided under the National Partnerships Against Domestic Violence Strategy launched some years previously. The new Women's Safety Agenda (2005–2008), which was part of this strategy, had been allocated 75.7 million Australian dollars over four years to combat domestic violence and sexual assaults.

47. The different legal provisions concerning children had now been grouped into a single family law regime, and parents who were not legally married had access to the family courts and Family Relationship Centres.

48. The Family Relationship Centres had been set up to provide a secure environment in which separated parents could see their children. They were neutral ground where children did not have to be exposed to conflicts between their parents. There were currently 35 of them in the country and the number should be rising to 65 in the next few years.

49. A report by the Australian Institute of Health and Welfare indicated that just 4 per cent of children requiring alternative care were institutionalized. Such care was provided to children with complex needs that could not be met in the context of a family placement, and to siblings from large families whom it was impossible to place in a single foster family.

50. The federal Government and the governments of the states and territories had developed a network of day-care centres and nurseries to enable mothers to pursue an

occupational activity. Furthermore, financial assistance of up to 30 per cent of the total cost of childcare was provided to families whose incomes were too low for them to afford it.

51. Corporal punishment was forbidden in all the country's public educational establishments and in many private and Catholic institutions. The Independent Schools Council of Australia did not tolerate that method of punishment except as a last resort. The committee charged with considering the legality of corporal punishment by parents had recommended that a legal standard of reasonable behaviour should be established and that the use of objects causing or liable to cause injury should be prohibited.

52. **The Chairperson** pointed out that the Committee considered corporal punishment to be purely and simply unacceptable and asked whether the State party had held campaigns to raise awareness of the negative effects of that method of discipline.

53. **Ms. Vuckovic-Sahovic** wished to know whether the State party had any plans to enact a law banning corporal punishment.

54. **Mr. Zermatten** asked what the Partnerships against Domestic Violence Strategy consisted in and to what extent children could be heard as witnesses.

55. **Ms. Leon** (Australia) said that parents had access to a great deal of information about settling family disputes and bringing up their children without resorting to violence, in the form of pamphlets, websites and telephone helplines, among other things. The federal Government and the governments of the states and territories were well aware of the need to ban corporal punishment, but public opinion first had to be prepared, something that would require a very large-scale national debate, for example. Passing new legislation without the support of public opinion would not be enough to change mindsets.

56. Given the large proportion of adolescents and young adults contracting sexually transmitted diseases, in June 2005 the Government had adopted a national strategy to inform young people about modes of transmission and make it easier for them to obtain a diagnosis, treatment and care. Different campaigns had also been launched to combat obesity and other dietary issues and encourage the adoption of healthy lifestyles based on a balanced diet and physical activity. In addition, 53 hospitals had been approved under the Baby Friendly Hospital Initiative and, according to a survey carried out by the Australian Bureau of Statistics in 2001, 87 per cent of children aged 0 to 3 at that time had been breastfed.

57. The mental health of adolescents was another issue of concern, and the Government had engaged in a number of initiatives to ensure that young people suffering from depression received care at an early stage in their local area. Emphasis was also being placed on prevention. The policy implemented to prevent suicides among young people had yielded excellent results, thanks to the cumulative effects of the National Youth Suicide Prevention Strategy and numerous community-level initiatives undertaken in all the country's states and territories in the light of the priorities identified in each and of the higher risk factors in remote areas and within the Aboriginal population. A suicide prevention website had also been set up. If the number of deaths from suicide was greater among men than women, it was because men were more likely to resort to radical methods while women tended to overdose on medications, something that was neither fatal nor irreversible, particularly when the emergency medical services intervened.

58. Different strategies had been put in place to combat smoking and alcohol and drug abuse among young people, the main focus being on encouraging them to resist peer pressure and to adopt healthy lifestyles. Among other measures, the Government was sponsoring cultural events for primary and secondary school pupils, particularly in rural and remote areas of the country, at which prevention messages were got across.

59. The national telephone helpline service, originally set up by an NGO, was now a real partnership between the Government, civil society, charities and private-sector firms that contributed to its funding.

60. The Government was paying the greatest attention to the issue of sterilization of the disabled. A national working group had been set up to consider how the matter might be legislated for, and a whole range of actors had been consulted, including the relevant officials at ministries, the Human Rights and Equal Opportunity Commission and federal court magistrates.

61. Standards had been adopted in August 2005 to facilitate disabled access to education at every level. Disabled people were thus able to develop their capabilities in the same way as the able-bodied and could ask for teaching programmes to be adapted to accommodate their disability.

62. Different initiatives had been adopted to facilitate the entry of young people into working life and reduce the unemployment rate, including in particular the strengthening of training activities and the creation of local partnerships. One example that could be cited was the programme to help young people aged 13 to 19 who were underachieving at school or having difficulty embarking upon working life to make the most of their capabilities and acquire the necessary qualifications. That programme relied on individual monitoring of young people and took account of each individual's problems and disabilities. There were currently 95 projects of that type, with priority having been given to areas where school dropout and youth unemployment rates were highest.

63. To bring an end to school bullying, Australia had put a National Safe Schools Framework in place, while an anti-bullying website provided information to students, parents and teachers.

64. **Ms. Al-Thani** wanted to know whether adolescents were informed about the various methods of contraception.

65. **Ms. Leon** (Australia) said that the numerous family planning centres in operation offered advice on sexuality and reproduction to everyone, including adolescents, and provided access to contraceptives. On the subject of early pregnancies, figures for 1999 showed that 4 per cent of pregnancies were among girls aged 15 to 19 and that 50 per cent of such pregnancies were terminated.

66. **The Chairperson** wished to be apprised of Australian Government policy on the prevention of female genital mutilation when this took place outside the country.

67. **Ms. Leon** (Australia) said that carrying out female genital mutilation or taking girls abroad for them to undergo such mutilation was a criminal offence in all the country's states, punishable by 7 to 21 years in prison. In addition, huge awareness-raising campaigns and other information activities were being carried out regularly by the Government.

68. Where justice for minors was concerned, it was important to stress that the special juvenile courts strove to apply sanctions other than prison, such as fines or community work.

69. **The Chairperson** asked for details of the age of criminal responsibility. According to paragraph 72 of the report, the presumption that children aged between 10 and 14 were incapable of or could not be held accountable for committing a crime was rebuttable. Children under 14 could thus be held criminally responsible.

70. **Mr. Filali** wanted further details on statutory penalties and their impact on indigenous children.

71. **Mr. Kotrane** was astonished that children aged between 10 and 14 could be held capable of committing a crime and reminded the delegation that under article 40 of the Convention, the presumption that children below a certain minimum age did not have the capacity to infringe the criminal law was irrebuttable.

72. **Ms. Leon** (Australia) confirmed that children aged under 10 were presumed incapable of committing a crime but that when children were aged between 10 and 14, account was taken of their maturity and personal situation in determining whether they were criminally responsible.

73. **The Chairperson** wished to know who made that assessment and what criteria and conditions were considered. He also wished to know how many children under 14 had been arrested, and how many convicted. Lastly, he asked for details about indigenous juvenile offenders.

74. **Ms. Hambling** (Australia) said that the number of indigenous minors detained was disproportionately high but that different programmes had been put in place to remedy the situation. Some jurisdictions had started to integrate aspects of common law and to take a variety of measures, including the use of indigenous police oversight or community justice, in order to keep indigenous juvenile offenders out of the traditional justice system. Those efforts were beginning to bear fruit, with the number of indigenous minors placed in detention dropping by 31 per cent between 1994 and 2003.

75. **Mr. Filali** asked for clarification about the minimum age for pretrial detention and post-adjudication detention.

76. **Ms. Leon** (Australia) said that children's special vulnerability was taken into account when the decision was taken as to whether or not to place them in detention and that there were a great many options other than custodial sentences.

77. The reservation entered by Australia in relation to article 37 of the Convention was connected to the physical, demographic and geographical characteristics of the country. It was simply not possible to separate children deprived of their liberty from adults, as that would mean transferring them to other establishments, sometimes a great distance away, which would isolate them from their families and communities. It was thus in children's interests to be held in an establishment near their home, even if that meant not being separated from adult prisoners.

78. **The Chairperson**, supported by **Mr. Kotrane**, observed that separating children from adults did not necessarily mean providing separate establishments; there could be a wing set aside for minors, for example. He invited the State party to review its reservation to article 37 by limiting it to cases where it was genuinely necessary.

79. **Mr. Zermatten** congratulated the State party on the legislative changes it had adopted, including its review of family law, amendment of the legislation on family and community services, amendment of immigration regulations and amendments to the Penal Code in the areas of pornography and human trafficking. He also hailed the creation of new bodies such as the national network of Family Relationship Centres, the Ministerial Taskforce on Indigenous Affairs and the National Indigenous Council. He invited the State party to withdraw or review its reservation, ratify the optional protocols to the Convention, ratify International Labour Organization (ILO) Conventions Nos. 138 and 182 and subscribe to ILO Recommendation No. 190. Lastly, he urged the State party to pay attention to the continuing discrimination suffered by Aboriginals and Torres Strait Islanders and to the precarious status of child refugees and asylum seekers.

The meeting rose at 6.05 p.m.