



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

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## Committee against Torture

### Concluding observations on the sixth periodic report of Australia\*

1. The Committee considered the sixth periodic report of Australia<sup>1</sup> at its 1959th and 1962nd meetings,<sup>2</sup> held on 15 and 16 November 2022, and adopted the present concluding observations at its 1970th and 1971st meetings, held on 22 and 23 November 2022.

#### A. Introduction

2. The Committee expresses its appreciation to the State party for accepting the simplified reporting procedure and submitting its periodic report thereunder, as this improves the cooperation between the State party and the Committee and focuses the examination of the report and the dialogue with the delegation.

3. The Committee appreciates having had the opportunity to engage in a constructive dialogue with the State party's delegation, and the responses provided to the questions and concerns raised during the consideration of the sixth periodic report.

#### B. Positive aspects

4. The Committee welcomes the ratification of or accession to the following international instruments by the State party:

(a) The Protocol of 2014 to the International Labour Organization Forced Labour Convention, 1930 (No. 29), on 31 March 2022;

(b) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 21 December 2017.

5. The Committee also welcomes the State party's initiatives to revise and introduce legislation in areas of relevance to the Convention, including the adoption of the following:

(a) The Australian Human Rights Commission Legislation Amendment (Selection and Appointment) Act, in 2022;

(b) The Modern Slavery Act, in 2018;

(c) The National Redress Scheme for Institutional Child Sexual Abuse Act, in 2018.

6. The Committee commends the State party's initiatives to amend its policies and procedures in order to afford greater protection of human rights and to apply the Convention, in particular the following:

\* Adopted by the Committee at its seventy-fifth session (31 October–25 November 2022).

<sup>1</sup> CAT/C/AUS/6.

<sup>2</sup> See CAT/C/SR.1959 and CAT/C/SR.1962.



- (a) The adoption of the National Plan to End Violence against Women and Children (2022–2032), in 2022;
- (b) The adoption of the National Framework for Protecting Australia’s Children (2021–2031), in 2021;
- (c) The establishment of the National Centre for Action on Child Sexual Abuse, in 2021, and the National Redress Scheme for People Who Experienced Institutional Child Sexual Abuse, in 2018;
- (d) The adoption of Australia’s Disability Strategy (2021–2031), in 2021;
- (e) The adoption of the National Action Plan to Combat Modern Slavery (2020–2025), in 2020;
- (f) The adoption of the National Agreement on Closing the Gap, in 2020, and the establishment of the Joint Council of Australian Governments and Aboriginal and Torres Strait Islander People on Closing the Gap, in 2019;
- (g) The adoption of the National Plan to Respond to the Abuse of Older Australians (2019–2023), in 2019;
- (h) The Prime Minister’s National Apology to Victims and Survivors of Institutional Child Sexual Abuse, in 2018;
- (i) The adoption of the report of the Royal Commission into Institutional Responses to Child Sexual Abuse, in 2017;
- (j) The establishment of a standing national human rights mechanism to improve coordination across federal, state and territory governments in reporting to and engaging with United Nations human rights bodies, in 2016;
- (k) The adoption of the National Legal Assistance Partnership (2020–2025), in 2020.

## C. Principal subjects of concern and recommendations

### Pending follow-up issues from the previous reporting cycle

7. In its previous concluding observations, the Committee requested the State party to provide information on the implementation of the Committee’s recommendations on: violence against women, indigenous people in the criminal justice system, non-refoulement and mandatory immigration detention, including of children.<sup>3</sup> While noting with appreciation the replies submitted by the State party on 26 November 2015<sup>4</sup> and referring to the letter dated 29 August 2016 from the Chair of the Committee and the Rapporteur for follow-up to concluding observations addressed to the Permanent Representative of Australia to the United Nations Office and other international organizations in Geneva,<sup>5</sup> the Committee considers that the recommendations in paragraphs 9 and 12 have been partially implemented and that the recommendations contained in paragraphs 15 and 16 have not yet been implemented. Those issues are covered in paragraphs 22, 26, 28 and 34 of the present concluding observations.

### Legal status of the Convention

8. While taking note of the complex structures in the State party and that a combination of legislation and policies has been put in place to give effect to the provisions of the Convention, the Committee notes that the federal Government is primarily responsible for ensuring the implementation of the Convention and providing leadership to the state and territory governments in that context. The Committee underlines the importance of ensuring

<sup>3</sup> CAT/C/AUS/CO/4-5, paras. 9, 12 and 15–16.

<sup>4</sup> CAT/C/AUS/CO/4-5/Add.1.

<sup>5</sup> See

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fFUL%2fAUS%2f25007&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fFUL%2fAUS%2f25007&Lang=en).

that the state and territory governments establish legal and policy measures that are fully compliant with the Convention (art. 2).

**9. The Committee, taking into account the legal responsibility of the federal Government in the implementation of the Convention, recommends that the State party effectively ensure coherent and consistent implementation of the Convention across all state and territory jurisdictions.**

#### **Harmonization of legislation and compliance with the Convention**

10. While noting the role of the Parliamentary Joint Committee on Human Rights in scrutinizing the compatibility of existing legislation and bills with international human rights treaties to which Australia is a party, including the Convention, the Committee is concerned that human rights-related bills are sometimes passed into law before the conclusion of a review by the Parliamentary Joint Committee and that the recommendations of the Parliamentary Joint Committee are not always given due consideration by legislators. The Committee is also concerned about the inconsistency of anti-torture legislation across states and territories (art. 2).

**11. The State party should strengthen its legislative scrutiny processes to ensure that no human rights-related bills are adopted before the conclusion of a meaningful and well-informed review of their compatibility with the State party's human rights obligations, including those under the Convention, and that the assessments and recommendations of the Parliamentary Joint Committee on Human Rights are systematically given due consideration by legislators. The State party should also take all the measures necessary to harmonize federal, state and territory anti-torture legislation.**

#### **Fundamental legal safeguards**

12. While taking into account the procedural safeguards set forth in domestic legislation, the Committee regrets the scant information provided on the measures and procedures in place to ensure that, in practice, detained persons enjoy all fundamental legal safeguards from the very outset of deprivation of liberty, in particular the rights of access to a lawyer and to an independent medical examination and to notify a relative or a person of their choice of their detention. The Committee also notes with concern reports about the use of spit hoods in police detention contexts (art. 2).

**13. The State party should ensure that all fundamental legal safeguards are guaranteed, both in law and in practice, for all detained persons from the outset of their deprivation of liberty, including the right to:**

- (a) **Be informed immediately in a language that they understand of the reasons for arrest, the nature of any charges against them and their rights;**
- (b) **Be assisted by a lawyer, including during the interrogation stages, and, if necessary, to free legal aid;**
- (c) **Request and receive a medical examination by an independent medical doctor free of charge, or by a doctor of choice, upon request, that is conducted out of hearing of police officers and prison staff, unless the doctor concerned explicitly requests otherwise;**
- (d) **Have their medical record immediately brought to the attention of a prosecutor whenever the findings or allegations may indicate torture or ill-treatment;**
- (e) **Inform a family member or another person of their choosing about their detention;**
- (f) **Challenge the legality of their detention at any stage of the proceedings.**

**14. The State party should also take all necessary measures to end the use of spit hoods in all circumstances across all jurisdictions and to provide adequate and regular training for those involved in detention activities on legal safeguards and monitor compliance and penalize any failure on the part of officials to comply.**

### Pretrial detention

15. While taking note of the information provided by the State party on the measures taken to address the question of pretrial detention, which has led to an increasing number of detainees, the Committee is concerned about the almost constant increase in the number of persons being held in pretrial detention during the period under review, with a reported increase of 16 per cent from June 2020 to December 2021, which has been largely driven by increases in the rate of pretrial detention of indigenous peoples (arts. 2, 11 and 16).

**16. The State party should ensure that the regulations governing pretrial detention are scrupulously respected and that such detention is resorted to only in exceptional circumstances and for limited periods, taking into account the principles of necessity and proportionality. It should also intensify efforts to significantly reduce the number of pretrial detainees by making more use of alternatives to detention, in particular with regard to Aboriginal and Torres Strait Islander adults and children, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).**

### Australian Human Rights Commission

17. While taking note of the adoption, on 27 October 2022, of the Australian Human Rights Commission Legislation Amendment (Selection and Appointment) Act to address the concerns raised by the Global Alliance of National Human Rights Institutions and ensure a clear, transparent, merit-based and participatory selection and appointment process for all members of the Commission, the Committee remains concerned that the Commission does not yet have explicit statutory powers to monitor the implementation of the State party's obligations under the Convention, as the definition of human rights provided for in the Australian Human Rights Commission Act 1986 still does not include any explicit reference to the Convention. The Committee is also concerned about the reductions in the financial resources allocated to the Commission in recent years (art. 2).

**18. The State party should consider amending its legislation to explicitly include a reference to the Convention in the definition of human rights enshrined in the Australian Human Rights Commission Act 1986 in order to provide the Commission with explicit statutory powers to monitor the implementation of the State party's obligations under the Convention. The State party should also allocate the human, technical and financial resources necessary to enable the Commission to discharge its mandate effectively and with full independence, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).**

### Counter-terrorism measures

19. While acknowledging the State party's need to adopt measures to respond to the risk of terrorism, and bearing in mind its previous concluding observations,<sup>6</sup> the Committee is concerned that the State party's counter-terrorism legislation, policies and practices still provide for excessive restrictions on the rights of persons suspected or accused of involvement in terrorist acts, including the right to due process and a fair trial and the right to liberty and security of person. In this regard, it remains concerned about the broad interpretation of terrorist act, as well as the reports concerning the need to further restrict the warrant powers provided to the Australian Security Intelligence Organisation to detain a person for the purpose of questioning with the possibility of restricting access to a lawyer of choice. It is further concerned that certain counter-terrorism powers, including control orders, stop, search and seizure powers, compulsory questioning warrants, preventive and post-sentence detention order regimes and "declared areas" offences are reportedly not in conformity with the provisions of the Convention. Moreover, the Committee is concerned that the State party has not acted upon a number of recommendations made by the Independent National Security Legislation Monitor and by the Council of Australian

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<sup>6</sup> CAT/C/AUS/CO/4-5, para. 14.

Governments to ensure compliance of counter-terrorism legislation with international standards (arts. 2, 11–12 and 16).

20. **The State party should review its interpretation of the definition of terrorism contained in its domestic legislation and further restrict the warrant powers provided to the Australian Security Intelligence Organisation to detain a person for the purpose of questioning with the possibility of restricting access to a lawyer of choice. It should also take the necessary measures to ensure that all counter-terrorism and national security legislation, policies and practices are in full compliance with the Convention, and that adequate and effective legal safeguards are in place. Furthermore, the State party should carry out prompt, impartial and effective investigations into allegations of human rights violations, including acts of torture and ill-treatment, committed in the context of counter-terrorism operations, prosecute and punish those responsible and ensure that victims have access to effective remedies and full reparation.**

#### **Gender-based violence, including violence against indigenous women and girls**

21. While noting the various measures taken to address gender-based violence, including the establishment by the Council of Attorneys-General of a family violence working group of senior justice officials, in 2017, the Committee remains seriously concerned about:

(a) Continued and consistent reports of high levels of violence against women and girls, including domestic violence, which disproportionately affects indigenous women and women with disabilities and has significantly increased during the coronavirus disease (COVID-19) pandemic;

(b) High levels of underreporting by victims in cases of domestic and sexual violence;

(c) The insufficient and uneven geographic repartition of shelters for survivors of gender-based violence throughout the territory of the State party (arts. 2 and 16).

22. **The State party should:**

(a) **Ensure that all cases of gender-based violence – in particular against indigenous women and girls and women and girls with disabilities, and especially those involving actions or omissions by State authorities or other entities that engage the international responsibility of the State party under the Convention – are thoroughly investigated, that the alleged perpetrators are prosecuted and, if convicted, punished appropriately and that the victims receive redress, including adequate compensation;**

(b) **Strengthen capacity-building for law enforcement officers on gender-sensitive responses to family violence;**

(c) **Reinforce efforts to change behaviours and attitudes that lead to violence against women and encourage reporting by launching awareness-raising campaigns on reporting mechanisms and remedies;**

(d) **Ensure that survivors of gender-based violence, including domestic violence, are able to safely report such cases, have access to safe and adequately funded shelters and receive the necessary medical care, psychosocial support and legal assistance that they require;**

(e) **Allocate adequate resources for the implementation of the National Plan to End Violence against Women and Children (2022–2032) and enhance efforts to ensure the availability of support services for victims of gender-based violence;**

(f) **Compile statistical data throughout all jurisdictions, disaggregated by the age and ethnic or national origin or nationality of the victim, on the number of complaints, investigations, prosecutions, convictions and sentences recorded in cases of gender-based violence.**

#### **Trafficking**

23. While noting with appreciation the adoption of the Modern Slavery Act, in 2018, the National Action Plan to Combat Modern Slavery (2020–2025), in 2020, and the National

Action Plan to Combat Human Trafficking and Slavery (2015–2019), in 2014, as well as the State party's leadership in the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, the Committee is concerned that trafficking in persons remains a significant matter of concern, as the State party reportedly continues to be a destination country. It is further concerned about:

- (a) The low rates of prosecutions and convictions in trafficking cases;
- (b) The high vulnerability threshold, which prevents victims of trafficking from gaining access to status resolution support services and puts them at risk of re-trafficking;
- (c) Access to visas and compensation schemes still being based on the condition that the victim cooperates with the prosecution authorities;
- (d) The insufficient compensation schemes for victims of trafficking and the lack of harmonization among jurisdictions in that regard;
- (e) Prevailing attitudes among members of the judiciary, law enforcement officials, and immigration and border control officers regarding victims of trafficking as offenders and migrants with irregular migration status, rather than as victims, which constitutes an obstacle to reporting and to the early identification and referral of victims of trafficking to the appropriate social and legal services (arts. 2, 12–14 and 16).

**24. The State party should continue and strengthen its efforts to combat trafficking in persons. In that respect, it should:**

- (a) Enforce the existing legislative framework and promptly, thoroughly and effectively investigate, prosecute and punish with appropriate penalties trafficking in persons and related practices, ensuring the allocation of all means required for such purpose;**
- (b) Lower the vulnerability threshold for victims of trafficking to gain access to status resolution support services;**
- (c) Ensure that all victims of trafficking, irrespective of their willingness or unwillingness to cooperate with the prosecution authorities, have access to sustained, equal and effective assistance, taking into consideration that, in numerous circumstances, victims are in a psychological or a family situation that prevents them from participating in criminal proceedings;**
- (d) Establish a federal compensation scheme that grants appropriate reparations to all survivors of trafficking;**
- (e) Encourage reporting by raising awareness of the risks of trafficking among vulnerable communities and train judges, law enforcement officials and immigration and border control officers in the early identification of victims of trafficking and their referral to appropriate social and legal services.**

#### **Asylum and non-refoulement**

25. While noting the information provided by the State party on the applicable standards and the safeguards in place, the Committee remains concerned at policies and practices currently applied in relation to persons who, irregularly, attempt to arrive or arrive in the State party, in particular the policy of intercepting and turning back boats, without affording full protection against refoulement. It is particularly concerned that:

- (a) Regulations on extradition do not comply fully with the non-refoulement standards under article 3 of the Convention or provide for independent judicial review of non-refoulement assessments;
- (b) Section 197C of the Migration Act 1958 provides that, for the purposes of removal of an unlawful non-citizen, it is irrelevant whether the State party has non-refoulement obligations in respect of such an individual, and that the individual may be removed without an assessment of non-refoulement concerns, unless the person has had non-refoulement obligations identified in a protection finding made in the course of considering a valid protection visa application;

(c) Persons intercepted at sea through the so-called Operation Sovereign Borders, which was launched in 2013, are subject to “on water” assessments of their international protection needs at sea through a reportedly speedy process, in which they are deprived of the right to fair and efficient asylum procedures, legal representation and the right to appeal the first-instance decision;

(d) The Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014 introduced a new “fast track” assessment process for illegal maritime arrivals that removes key procedural safeguards at merits review, including a limited paper appeal process and restrictions on consideration of new evidence, and narrower access to free government-funded legal assistance for most asylum-seekers. It also excludes certain categories of asylum-seekers even from the limited form of merits review (art. 3).

**26. The State party should:**

(a) **Ensure that no one may be expelled, returned or extradited to another State where there are substantial grounds for believing that the individual concerned would run a personal and foreseeable risk of being subjected to torture;**

(b) **Ensure that all asylum-seekers and other persons in need of international protection who attempt to arrive or arrive in the State party, regardless of their mode of arrival, have access to fair and efficient refugee status determination procedures and non-refoulement determinations;**

(c) **Consider repealing section 197C (1) and (2) of the Migration Act 1958 and introduce a legal obligation to ensure that the removal of an individual must always be consistent with the State party’s non-refoulement obligations;**

(d) **Review its policy and practices during interceptions at sea, including “on water” assessments, to ensure that all persons under the State party’s jurisdiction who are in need of international protection have access to fair and efficient asylum procedures within the territory of the State party, including access to independent, qualified and free-of-charge legal assistance during the entire asylum procedure and a real opportunity to effectively challenge any adverse decisions adopted concerning their claims. The State party should also allow independent monitoring of the processing of intercepted persons by international observers, including the Office of the United Nations High Commissioner for Refugees;**

(e) **Ensure that effective measures are in place to identify, as early as possible, all victims of torture among asylum-seekers and among other persons in need of international protection, and provide them with priority access to the refugee determination procedure and access to treatment for urgent conditions;**

(f) **Consider amending the Maritime Powers Act 2013 to remove powers inserted by the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014 to detain asylum-seekers and refugees on the high seas and transfer them to any country or a vessel of another country.**

**Mandatory immigration detention, including of children**

27. While noting the information concerning available safeguards against arbitrary detention, the Committee remains concerned that detention continues to be mandatory under the Migration Act 1958 for all “unlawful non-citizens” until the person concerned is granted a visa or is removed from the State party. It is also concerned that the law does not establish a maximum length for a person to be held in immigration detention, reportedly resulting in protracted periods of deprivation of liberty. The Committee is further concerned at reports that refugees and asylum-seekers with an adverse character finding, or with an adverse security assessment from the Australian Security Intelligence Organisation, and stateless persons whose asylum claims have not been accepted can be detained indefinitely, without adequate procedural safeguards to meaningfully challenge their detention. The Committee is particularly concerned about what appears to be the use of detention powers as a general deterrent against unlawful entry rather than in response to an individual risk, and the continued application of mandatory detention in respect of children and unaccompanied

minors, despite the reduction in the number of children in immigration detention. It is also concerned about poor material conditions of detention in some facilities, the detention of asylum-seekers together with migrants who have been refused a visa due to their criminal records, restrictions on access to social, education and health services, the high reported rates of mental health problems among migrants, refugees and asylum-seekers in detention, which allegedly correlate with the length and conditions of detention, and the reported excessive use of force and physical restraint perpetrated with impunity by security guards, private service providers and members of the local community against migrants, refugees and asylum-seekers (arts. 2, 11 and 16).

28. **The State party should take the necessary measures to:**

(a) **Repeal the legal provisions establishing the mandatory detention of persons entering its territory irregularly;**

(b) **Ensure that detention is only applied as a last resort, when determined to be strictly necessary and proportionate in the light of the individual's circumstances, and for as short a period as possible;**

(c) **Establish statutory time limits for immigration detention and ensure access to an effective judicial remedy to review the necessity of the detention;**

(d) **Ensure that children and families with children are not detained solely because of their immigration status;**

(e) **Intensify its efforts to expand the use of alternatives to closed immigration detention;**

(f) **Guarantee that refugees with adverse security or character assessments and stateless persons whose asylum claims were refused are not held in detention indefinitely, including by resorting to non-custodial measures and alternatives to closed immigration detention and by providing for a meaningful right to appeal against such indefinite detention;**

(g) **Improve the conditions of detention in immigration facilities, including by guaranteeing access to adequate social, education, mental and physical health services, refraining from applying force or physical restraint against migrants, refugees and asylum-seekers and ensuring that all allegations of excessive use of force against them are promptly investigated, that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and that victims are offered reparation;**

(h) **Ensure that individuals held in immigration detention can bring complaints to an effective, independent, confidential and accessible oversight mechanism.**

#### **Christmas Island and offshore processing of asylum claims**

29. While noting the State party's position that it does not exercise effective control over unauthorized maritime arrivals taken to regional processing centres in Nauru, the Committee is alarmed at the State party's continuing policy of transferring migrants and asylum-seekers arriving by boat and without visas to the regional processing centres located in Nauru for the processing of their claims despite the high number of corroborated reports on the harsh and dangerous conditions prevailing in those centres, in which persons, including children, experience severe human rights violations and in which many of those violations are treated with impunity. The Committee is particularly concerned about reports of mandatory detention, including of children, overcrowding, inadequate health care, including mental health care, and assault, sexual abuse, self-harm, ill-treatment and suspicious deaths. The combination of the harsh conditions, the protracted periods of closed detention and the uncertainty about the future reportedly creates serious physical and mental pain and suffering and has allegedly compelled some asylum-seekers to return to their country of origin, despite the risks that they face there. The Committee is also concerned about severe restrictions on access to and information regarding the offshore immigration processing facilities, including a lack of monitoring by independent inspection bodies. It is further concerned that, following the closure of the Manus Island (Papua New Guinea) regional processing centre on 31



October 2017, refugees and asylum-seekers who were transferred there by the State party were left without services, protection measures or adequate arrangements for long-term viable relocation solutions. Moreover, it is deeply concerned about information that years after having been recognized as refugees, children and adults are still not resettled and some remain detained, with no certainty about their future. Furthermore, the Committee is seriously concerned about the continued operation of the Christmas Island detention centre, notwithstanding the difficulties in ensuring the full protection of the rights of persons held there owing to its remoteness. The Committee reiterates its view that all persons who are under the effective control of the State party, because, inter alia, they were transferred by the State party to centres run with its financial aid and with the involvement of private contractors of its choice, enjoy the same protection from torture and ill-treatment under the Convention<sup>7</sup> (arts. 2–3, 11 and 16).

30. **Recalling the Committee’s previous concluding observations,<sup>8</sup> the State party should:**

(a) **End its policy of offshore processing of asylum claims, transfer all migrants, asylum-seekers and refugees to mainland Australia and process any remaining asylum claims while guaranteeing all procedural safeguards;**

(b) **Adopt the necessary measures to guarantee that all asylum-seekers or persons in need of international protection who are under its effective control are afforded the same standards of protection against violations of the Convention regardless of their mode and/or date of arrival;**

(c) **Take all the measures necessary to protect the rights of refugees and asylum-seekers affected by the closure of regional processing centres, including against non-refoulement, ensure their transfer to mainland Australia or their relocation to other appropriate safe countries and closely monitor their situation after the closure of the centres;**

(d) **Ensure that all international standards are complied with by private companies running immigration detention centres and provide them with appropriate training;**

(e) **Investigate human rights violations in the regional processing centres, prosecute the alleged perpetrators, punish them appropriately if convicted and provide full reparation to the victims;**

(f) **Consider closing down the Christmas Island detention centre.**

#### **Conditions of detention**

31. While appreciating the measures taken by the State party to improve conditions of detention in general, the Committee remains concerned about reports that, despite remedial measures taken by authorities, the number of detainees remains high while the number of personnel remains relatively low in many places of deprivation of liberty. It is also concerned at reports that, in a number of places of deprivation of liberty, health-care services, in particular mental health services, remain inadequate, and that recreational and educational activities to foster rehabilitation of detainees remain extremely limited. It is further concerned at reported arbitrary practices, in particular the continued use of prolonged and indefinite solitary confinement, which disproportionately affects indigenous peoples and inmates with intellectual or psychosocial disabilities, abusive strip-searches, as well as excessive use of various means of physical or chemical restraint. Finally, it remains concerned at reports indicating a high rate of incarceration of inmates with disabilities, in particular intellectual or psychosocial disabilities, and that correctional institutions lack the appropriate capacity, resources and infrastructure to manage serious mental health conditions (arts. 2, 11 and 16).

<sup>7</sup> CAT/C/AUS/CO/4-5, para. 17.

<sup>8</sup> Ibid.

32. **The State party should:**

(a) **Continue its efforts to improve conditions of detention in all places of deprivation of liberty and alleviate the overcrowding of penitentiary institutions and other detention facilities, including through the application of non-custodial measures. In this regard, the Committee draws the State party's attention to the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), the Tokyo Rules and the Bangkok Rules;**

(b) **Urgently adopt practical measures to remedy the lack of recreational and educational activities to foster rehabilitation of detainees;**

(c) **Improve the provision of gender- and age-specific medical services to all persons deprived of their liberty, particularly those with intellectual or psychosocial disabilities;**

(d) **Increase the number of trained and qualified prison staff, including medical staff, and strengthen the monitoring and management of inter-prisoner violence;**

(e) **Ensure that means of restraint are used only as a last resort to prevent the risk of harm to the individual or others and only when all other reasonable options would fail to satisfactorily contain the risk;**

(f) **Ensure that strip-searches of persons deprived of their liberty are not performed routinely and are conducted in private and in a manner that respects the inmate's dignity by appropriately trained staff members of the same sex as the inmate. Search and admission procedures for visitors should not be degrading and should be subject, at a minimum, to the same rules as those applied to inmates;**

(g) **Ensure that solitary confinement, in both federal and state and territory correctional facilities, is used only in exceptional cases as a last resort, for as short a time as possible (but no more than 15 consecutive days) and subject to independent review, and only pursuant to authorization by a competent authority. The Committee wishes to draw the State party's attention to the fact that solitary confinement should be prohibited in the case of prisoners with intellectual or psychosocial or physical disabilities when their conditions would be exacerbated by such measures.**

**Indigenous peoples in the criminal justice system**

33. While noting the measures taken by the State party to address the situation of indigenous peoples in custody, in particular the adoption, in 2021, of the Justice Policy Partnership, which seeks to address the overrepresentation of First Nations Australians in places of detention and the crisis regarding the deaths of Aboriginals and Torres Strait Islanders in custody, the Committee is concerned that indigenous men, women and children continue to be disproportionately affected by incarceration, reportedly representing approximately 30 per cent of the total prisoner population, while constituting 3.8 per cent of the total population. The Committee echoes the concerns raised by the State party that recent inmate population growth has been largely driven by increases in the rate of incarceration of members of indigenous peoples, leading to their overrepresentation in the prison population. In this respect, the Committee notes that the delegation acknowledged that a transformational change is required to reverse this trend and that, in order to achieve that change, the State party needs to implement comprehensive measures that include, inter alia, legislative and policy reforms. The Committee remains, however, concerned at reports that mandatory sentencing and imprisonment for petty crimes, such as fine defaults, still in force in several jurisdictions continue to contribute to such disproportionately high rates of incarceration of indigenous peoples. It is also concerned that access to culturally sensitive legal assistance services, including interpretation and translation services, for marginalized and disadvantaged peoples, such as Aboriginal and Torres Strait Islander peoples, remains insufficient (arts. 2, 11 and 16).

34. **The State party should increase its efforts to address the overrepresentation of indigenous peoples in prisons, including by identifying its underlying causes, by revising regulations and policies leading to their high rates of incarceration, such as the**

**mandatory sentencing laws and imprisonment for fine defaults, and by enhancing the use of non-custodial measures and diverting programmes. It should take all necessary measures to give judges the necessary discretion to determine relevant individual circumstances. It should also give due consideration to the recommendations, made in 2018, of the Australian Law Reform Commission's inquiry into the incarceration of Aboriginal and Torres Strait Islander peoples and of the Royal Commission into the Protection and Detention of Children in the Northern Territory. Finally, the State party should ensure that adequate, culturally sensitive, qualified and accessible legal services are available to Aboriginals and Torres Strait Islanders.**

#### **Deaths in custody**

35. While taking note of the information provided by the State party's delegation, the Committee regrets the lack of comprehensive information and statistical data on the total number of deaths in custody for the period under review, disaggregated by place of detention, the sex, age and ethnic or national origin or nationality of the deceased and the cause of death. It is also concerned about the allegations that causes of death in custody include excessive use of force, lack of health care and suicide, and regrets the insufficient information on investigations carried out in that regard. The Committee is also concerned that, during the period under consideration, the reported number of deaths in custody seems to have risen due, inter alia, to increased rates of incarceration, in particular of indigenous peoples (arts. 2, 11 and 16).

36. **The State party should:**

(a) **Ensure that all deaths in custody are promptly, effectively and impartially investigated by an independent entity, including by means of independent forensic examinations and, where appropriate, apply the corresponding sanctions, in line with the Minnesota Protocol on the Investigation of Potentially Unlawful Death;**

(b) **Assess and evaluate the existing programmes for the prevention, detection and treatment of chronic, degenerative and infectious diseases in prisons, and review the effectiveness of strategies for the prevention of suicide and self-harm;**

(c) **Compile detailed information on the cases of death in all places of detention in all jurisdictions and their causes and the outcome of the investigations into the deaths.**

#### **Juvenile justice**

37. The Committee is seriously concerned about:

(a) The very low age of criminal responsibility, as it is set at 10 years;

(b) The persistent overrepresentation of indigenous children and children with disabilities in the juvenile justice system;

(c) Reports that children in detention are frequently subjected to verbal abuse and racist remarks and restrained in ways that are potentially dangerous;

(d) The practice of keeping children in solitary confinement, in particular at the Banksia Hill youth detention centre in Western Australia, the Don Dale youth detention centre in the Northern Territory and the Ashley youth detention centre in Tasmania, which contravenes the Convention and the Nelson Mandela Rules;

(e) The high number of children in detention, both on remand and after sentencing;

(f) Children in detention not always being separated from adults;

(g) Children's lack of awareness about their rights and how to report abuses.

38. **The State party should bring its child justice system fully into line with the Convention and:**

(a) **Raise the minimum age of criminal responsibility, in accordance with international standards;**

(b) **Take all necessary measures to reduce the incarceration rate of indigenous children and ensure that children with disabilities are not detained indefinitely without conviction and that their detention undergoes regular judicial review;**

(c) **Explicitly prohibit force, including physical restraints, as a means of coercion or disciplining children under supervision, promptly investigate all cases of abuse and ill-treatment of children in detention and adequately sanction the perpetrators;**

(d) **Immediately end the practice of solitary confinement for children across all jurisdictions;**

(e) **Actively promote non-judicial measures, such as diversion, mediation and counselling, for children accused of criminal offences and, wherever possible, the use of non-custodial sentences such as probation or community service;**

(f) **Ensure, in cases in which detention is unavoidable, that children are detained in separate facilities and, for pretrial detention, to ensure that detention is regularly and judicially reviewed;**

(g) **Provide children in conflict with the law with information about their rights, ensure that they have access to effective, independent, confidential and accessible complaint mechanisms and protect complainants from any risk of reprisals.**

#### **Psychiatric institutions and forensic disability closed centres**

39. While noting with appreciation the establishment, in 2019, of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, the Committee is seriously concerned about:

(a) **Laws, policies and practices that result in the arbitrary and indefinite detention and forced treatment of persons with disabilities, and that such laws, policies and practices disproportionately affect Aboriginal and Torres Strait Islander persons with disabilities and persons with intellectual or psychosocial disabilities;**

(b) **The fact that persons with intellectual or psychosocial disabilities who are considered unfit to stand trial or not guilty due to “cognitive or mental health impairment” can be detained indefinitely or for terms longer than those imposed in criminal convictions;**

(c) **The use of chemical and physical restraints and seclusion under the guise of “behaviour modification” and restrictive practices against persons with disabilities, including children;**

(d) **The reported abuse of young Aboriginal and Torres Strait Islander persons with disabilities by fellow patients and staff, the use of prolonged solitary confinement, particularly of persons with intellectual or psychosocial disabilities, and the lack of effective, independent, confidential and accessible channels for lodging complaints (arts. 2, 11 and 16).**

#### **40. The State party should:**

(a) **Repeal any law or policy and cease any practice that enables the deprivation of liberty on the basis of impairment and that enables forced medical interventions on persons with disabilities, particularly Aboriginal and Torres Strait Islander persons with disabilities and persons with intellectual or psychosocial disabilities;**

(b) **Stop committing persons with intellectual or psychosocial disabilities who are considered unfit to stand trial or not guilty due to “cognitive or mental health impairment” to custody and for indefinite terms or for terms longer than those imposed in criminal convictions;**

(c) **Establish a nationally consistent legislative and policy framework for the protection of all persons with disabilities, including children, from the use of psychotropic medications, physical restraints and seclusion under the guise of “behaviour modification” and the elimination of restrictive practices against persons with disabilities, including children;**

(d) **Take all necessary measures to protect persons with disabilities, including young Aboriginal and Torres Strait Islander persons with disabilities and persons with intellectual or psychosocial disabilities, from abuse by fellow prisoners and prison staff and ensure that persons with disabilities cannot be held in solitary confinement;**

(e) **Establish an effective, independent, confidential and accessible national oversight, complaint and redress mechanism for persons with disabilities who have experienced violence, abuse, exploitation and neglect in all settings, including all those not eligible for the National Disability Insurance Scheme.**

#### **Monitoring of detention facilities**

41. While welcoming the State party's ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 21 December 2017, the Committee regrets that the State party has not yet established its network of national preventive mechanisms throughout the country, in accordance with the conditions set out in article 18 of the Optional Protocol. While noting that the deadline for the State party to establish its network of national preventive mechanisms has been extended to 20 January 2023, following the request for postponement made by the Government of Australia on 20 December 2021,<sup>9</sup> the Committee is seriously concerned that the establishment of an independent, effective and well-resourced network of national preventive mechanisms across all the jurisdictions of the State party has still not been achieved. The Committee is also concerned by the general lack of funding for those visiting bodies already set up across the country and the challenge this poses for the Government of Australia to ensure full compliance with its obligations under the Optional Protocol by the agreed deadline, especially with regard to their functional and operational independence. It notes with concern that the State party has adopted a "primary versus secondary" approach to places of deprivation of liberty, which leaves several places in which persons are deprived of their liberty outside the scope and the mandate of the network of national preventive mechanisms, which runs counter to the provisions of article 4 of the Optional Protocol (arts. 2, 11 and 16).

#### **42. The State party should:**

(a) **Take all necessary measures to promptly establish its network of national preventive mechanisms across all states and territories and ensure that each of its member bodies has the necessary resources and functional and operational independence to fulfil its preventive mandate in accordance with the Optional Protocol, including access to all places of deprivation of liberty as prioritized by the bodies themselves;**

(b) **Intensify its efforts to build the capacities of the Commonwealth Ombudsman in coordinating the network of national preventive mechanisms with a view to ensuring effective and independent monitoring of all places of deprivation of liberty across all states and territories.**

#### **Visit in 2022 of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

43. The Committee deeply regrets that, due to the State party's insufficient cooperation with the Subcommittee, the Subcommittee was compelled to suspend its visit to Australia on 23 October 2022, as it had been prevented from visiting several places of detention, had experienced difficulties in carrying out a full visit at other locations and had not been given all the relevant information and documentation that it had requested.<sup>10</sup> The Committee reminds the State party that obligations deriving from international treaties apply to all parts of federal states, without any limitations or exceptions (arts. 2, 11 and 16).

<sup>9</sup> CAT/C/73/3.

<sup>10</sup> Office of the United Nations High Commissioner for Human Rights, "UN torture prevention body suspends visit to Australia citing lack of co-operation", 23 October 2022.

44. **The State party is invited to provide all necessary assurances to the Subcommittee in order for it to be able to resume its visit as soon as possible. It reminds the State party of its commitment to ensure that unfettered access to all places of deprivation of liberty in all jurisdictions is granted to the Subcommittee so that it can carry out its mandate in line with the provisions of the Optional Protocol.**

#### **Redress**

45. The Committee regrets not having received sufficient information on the redress and compensation measures ordered by the courts and other State bodies and actually provided to the victims of torture and ill-treatment, including excessive use of force, or their families since the consideration of the previous periodic report (art. 14).

46. **The State party should ensure, in law and in practice, that all victims of torture and ill-treatment obtain redress, including an enforceable right to fair and adequate compensation and the means for as full rehabilitation as possible. It should also ensure that victims may, inter alia, seek and obtain prompt, fair and adequate compensation, including in cases in which the civil liability of the State party is involved, in accordance with the Committee's general comment No. 3 (2012). Finally, the State party should compile and disseminate up-to-date statistics on the number of victims of torture and ill-treatment who have obtained redress, including medical or psychosocial rehabilitation and compensation, as well as on the forms of such redress and the results achieved.**

#### **Corporal punishment**

47. The Committee is concerned that corporal punishment remains lawful under the label of so-called reasonable chastisement in the home throughout the State party, as well as in day care and alternative care settings, public and private schools and detention centres in some states and territories.

48. **The Committee urges the State party to explicitly prohibit corporal punishment in law in all settings, including in homes, public and private schools, detention centres and day-care and alternative care settings in all states and territories, and repeal the legal defence of "reasonable chastisement". It should also strengthen and expand awareness-raising and education campaigns to promote positive and alternative forms of discipline.**

#### **Use of electrical discharge weapons (tasers)**

49. While appreciating the information provided by the State party on the regulations governing the use of electrical discharge weapons (tasers) and related specific training for law enforcement officials, the Committee is concerned at reports of cases of inappropriate or excessive use, including on children and young persons, and their disproportionate use against indigenous peoples and members of minority groups (arts. 2 and 16).

50. **The State party should adopt the necessary measures to effectively ensure that, in all jurisdictions, the use of electrical discharge weapons (tasers) is strictly compliant with the principles of necessity, subsidiarity, proportionality, advance warning (where feasible) and precaution and that they are used exclusively in extreme and limited situations – in which there is a real and immediate threat to life or risk of serious injury – as a substitute for lethal weapons and by trained law enforcement personnel only. In that respect, the State party should expressly prohibit their use on children and pregnant women. In addition, the State party should ensure that all allegations of excessive or inappropriate use of these weapons are promptly, impartially and thoroughly investigated.**

#### **Training**

51. The Committee acknowledges the efforts made by the State party to develop and implement education and training programmes on human rights, including modules on the Convention, covering the absolute prohibition of torture, for law enforcement officers, prison staff, judges, prosecutors and members of the armed forces. However, it regrets the lack of

training on the contents of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). The Committee also regrets the lack of information on mechanisms for evaluating the effectiveness of training programmes, as well as the absence of regular and specific training for the intelligence agencies, forensic doctors and relevant medical personnel (art. 10).

**52. The State party should:**

(a) **Further develop mandatory initial and in-service training programmes to ensure that all public officials, in particular law enforcement officials, military personnel, prison staff and medical personnel employed in prisons, are well acquainted with the provisions of the Convention, especially the absolute prohibition of torture, and that they are fully aware that violations will not be tolerated and will be investigated and that those responsible will be prosecuted and, on conviction, appropriately punished;**

(b) **Ensure that all relevant staff, including medical personnel, are specifically trained to identify cases of torture and ill-treatment, in accordance with the Istanbul Protocol (as revised);**

(c) **Develop and apply a methodology for assessing the effectiveness of educational and training programmes in reducing the number of cases of torture and ill-treatment and in ensuring the identification, documentation and investigation of such acts, as well as the prosecution of those responsible.**

**Follow-up procedure**

53. **The Committee requests the State party to provide, by 25 November 2023, information on follow-up to the Committee's recommendations on mandatory immigration detention, including of children; conditions of detention; and juvenile justice (see paras. 28, 32 and 38 above). In that context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations in the present concluding observations.**

**Other issues**

54. **The State party is requested to widely disseminate the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations, and to inform the Committee about its disseminating activities.**

55. **The Committee requests the State party to submit its next periodic report, which will be its seventh, by 25 November 2026. For that purpose, and in view of the fact that the State party has agreed to report to the Committee under the simplified reporting procedure, the Committee will, in due course, transmit to the State party a list of issues prior to reporting. The State party's replies to that list of issues will constitute its seventh periodic report under article 19 of the Convention.**