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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 1962nd meeting
Held at the Palais Wilson, Geneva, on Wednesday, 16 November 2022, at 3 p.m.

Chair: Mr. Heller

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The meeting rose at 3 p.m.

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

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

1. **The Chair** invited the delegation to continue replying to the questions raised by Committee members at the 1959th meeting.

2. **Mr. Newnham** (Australia) said that the standing national mechanism for human rights had been established in 2016 and was the country's primary mechanism for giving effect to the recommendations of treaty bodies and for coordinating the work of the federal, state and territory governments in that regard. It consisted of an interdepartmental committee and a standing committee on treaties, a process for consultation with the Australian Human Rights Commission and non-governmental organizations, and publicly available information on Australian human rights reporting processes. The interdepartmental committee was responsible for reporting to the United Nations human rights bodies, while the standing committee on treaties met twice a year to brief the state and territory governments on current and upcoming action by the federal Government to fulfil human rights obligations.

3. The Parliamentary Joint Committee on Human Rights was made up of 10 members, with 5 members appointed by each house of parliament. The Committee, whose role complemented that of the standing national mechanism for human rights, had been established to minimize the risk that new legislation might give rise to breaches of human rights in practice. Between February 2019 and August 2022, the Committee had considered 12 legislative instruments that had implications for the Government's obligations under the Convention against Torture. The Government had considered the Committee's recommendations regarding those instruments in good faith and had submitted responses in respect of 10 of them; one of the instruments had been passed by parliament before a response could be provided.

4. If a piece of legislation raised human rights concerns that had not been adequately explained in the statement of compatibility accompanying it, the Parliamentary Joint Committee contacted the relevant minister in order to obtain further information; any response from that minister was then published together with the Committee's concluding report on the matter. As for timing, the Committee sought to report on its examination of bills while they were still before parliament, and it did so in the vast majority of cases: in 2021, only 20 out of 223 bills had been adopted before the Committee had completed its deliberations, and the initial comments by the Committee had been available to legislators for 12 of those 20 bills. A number of states and territories, namely Victoria, the Australian Capital Territory, New South Wales and Queensland, had bodies equivalent to the Parliamentary Joint Committee that scrutinized draft legislation from a human rights perspective.

5. Both juvenile and adult detainees had access to numerous mechanisms for raising complaints, and those mechanisms were promoted within places of detention during detainee induction and on an ongoing basis thereafter.

6. The prison population had been in decline since 2018; that trend was expected to continue, owing to the impact of the coronavirus disease (COVID-19) pandemic, but also as a result of state governments' investment in new fit-for-purpose prison, rehabilitation and reintegration programmes to reduce recidivism and the introduction of diversion programmes, non-custodial measures to reduce overcrowding and programmes to reduce the overrepresentation of First Nations people in prisons. Efforts were also being made at the local level to prevent crime, reduce victimization and reduce offending and reoffending by tackling the drivers of crime, including alcohol and drug abuse, poor educational outcomes and unemployment. State and territory governments had introduced programmes to divert people out of the criminal justice system and to provide alternatives to prison, by establishing specialized courts specifically aimed at Aboriginal and Torres Strait Islander people and introducing restorative justice programmes and diversionary approaches for drug offenders.

7. In most Australian jurisdictions, specific legislation prohibited the use of isolation or segregated confinement as punishment in juvenile justice settings, except in limited circumstances where it was reasonably necessary for the protection of the child in question or for the protection of other children or property. The next of kin of a minor who was arrested were notified of the minor's arrest; requirements varied in the jurisdictions as to whether parents and caregivers must be present when their child was charged or questioned. Safeguards for persons detained by the police were consistent across the federal, state and territory jurisdictions and included the right to remain silent except to provide a name and address, the right to be detained for only a reasonable period of time, the right to be informed of the reason for arrest, the right to legal assistance and, for minors, the right to have someone present during interviews.

8. The Australian Government was working closely with state and territory governments on the issue of the minimum age of criminal responsibility, taking into account current international standards and what was best for children, families and the safety of communities. Australia recognized that a disproportionate number of First Nations young people in contact with the youth justice system were under 14 years of age. There were many associated socioeconomic issues, such as child removal, child abuse, substance abuse, family violence, low educational attainment, mental and physical health problems, disability, homelessness, unemployment and intergenerational childhood trauma.

9. On 12 August 2022, all Australian jurisdictions had agreed that the Age of Criminal Responsibility Working Group should continue working on a proposal to increase the minimum age of criminal responsibility in Australia, paying particular attention to addressing the overrepresentation of First Nations children in the criminal justice system. The Working Group had reconvened on 2 November and would meet again in mid-December. It would provide an update to the Standing Council of Attorneys-General, which represented all jurisdictions, on 9 December, and its findings would help the Attorneys-General to work through the complex issues associated with raising the minimum age of criminal responsibility by ensuring that there were alternatives to imprisonment and mechanisms in place to adequately support children, as well as their families and communities. In all jurisdictions, apart from those where mandatory sentencing applied, detention of young people was imposed as a last resort and was considered only when alternatives such as youth justice conferences, diversion programmes or community orders had been deemed inappropriate. The sentencing of children and young offenders was a complex matter, requiring judges to take account of the maximum penalty set by parliament for the offence in question, the gravity of the offence and the offender's circumstances – including their age – and rehabilitation prospects. The Government was working with all jurisdictions to ensure that children and young people under government care received adequate protection.

10. In the lead-up to the May 2022 federal election, the Australian Government had announced landmark funding of $A 81.5 million for justice reinvestment initiatives and a dedicated national justice reinvestment unit. Some $A 12 million of that amount would support the delivery of early intervention programmes for young people and diversion programmes for First Nations young people; over $A 14 million would be dedicated to supporting positive and accessible activities, primarily sport and recreation; and $A 2.7 million would support through-care programmes for First Nations young people that helped bring about the release of individuals and their transition to life in a community.

11. In July 2022, the federal Government had informed all the jurisdictions of the dates of the visit of the Subcommittee on Prevention of Torture in October 2022, stressing that the visit was intended to be cooperative and that visits to places of detention were preventive rather than investigative. Only New South Wales had been unable to facilitate the Subcommittee's visit. The Government had worked cooperatively with the Subcommittee, which had successfully conducted visits to places of detention in six of the eight jurisdictions, as well as immigration detention facilities under the control of the Australian Border Force. The government of South Australia had expressed its disappointment that the Subcommittee had not had time before the suspension of its visit to visit any facilities in that state. The Queensland government had announced that legislation would be introduced shortly to address legislative barriers to the Subcommittee's access to all places of detention; it was also willing to offer the Subcommittee alternative means of access to mental health facilities,

including by telephone or online. The Government was committed to continuing to engage with the Subcommittee on all remaining issues of concern, including access to medical information and immigration facilities. Related concerns would be discussed by the Secretary of the Attorney-General's Department at a meeting with her state and territory counterparts later in the month and at the Standing Council of Attorneys-General. The Government was looking at all possible ways to ensure the implementation of the Optional Protocol to the Convention against Torture and have the Subcommittee resume its visit to Australia.

12. As part of the cooperative network of national preventive mechanisms, the federal Government, as well as the governments of the Australian Capital Territory, South Australia, the Northern Territory, Tasmania and Western Australia, had designated a preventive mechanism for their jurisdictions. The remaining jurisdictions had inspection bodies that had many of the powers, immunities and protections required by national preventive mechanisms. Of course, a comparison would nevertheless have to be made between the requirements of a national preventive mechanism under the Optional Protocol and the powers and safeguards of such inspection bodies. One-off funding had been offered to the states and territories to assist them in meeting compliance requirements, but such funding was not expected to cover all the costs involved in setting up a preventive mechanism. Upon ratifying the Optional Protocol, Australia had indicated that the initial focus for preventive mechanisms would be primary places of detention, which included all prisons, juvenile detention centres, police lockups, closed facilities, closed forensic disability facilities, immigration detention centres and military detention centres; such places were thought to present the highest risk of degrading and ill-treatment. He noted that the Subcommittee's own guidance emphasized that States were able to choose the best method suited to their circumstances to fulfil their obligations, that the Optional Protocol did not prescribe that national preventive mechanisms should take any particular form and that there was no one-size-fits-all legislative approach to the matter. For Australia, since states and territories already had bodies that inspected places of detention, it seemed most efficient to designate such bodies as preventive mechanisms, thus harnessing their expertise, resources and experience, rather than create a new body. It was expected that the remit of the preventive mechanisms would likely expand over time; indeed, international practice showed that there was often a progressive realization of obligations under the Optional Protocol.

13. The Optional Protocol did not impose any new standards for places of detention. Since the Government's ratification of the Convention against Torture in 1989, all Australian jurisdictions were required to meet the standards necessary to prevent torture and ill-treatment, and each jurisdiction was responsible for providing the funding necessary to do so.

14. Guidelines for the training of staff at places of detention varied in the states and territories, but they all promoted the use of the minimum amount of force appropriate for the safe and effective performance of duties. Where the roles of the Australian Border Force staff involved exercising powers under the Migration Act, staff were provided with an overview of the provisions of the Convention as well as the indicators for people trafficking, torture and sexual servitude and were trained in the principles of communication and the use of force as a last resort. Predeployment training for the Australian police officers deployed to capacity development missions offshore included two training modules on human rights, including aspects relating to the Convention.

15. The Australian Government remained committed to reducing or eliminating the use of restrictive practices, including chemical restraints. In March 2022, the National Disability Insurance Scheme (NDIS) Quality and Safeguards Commission, the Aged Care Quality and Safety Commission and the Australian Commission on Safety and Quality in Health Care had released a joint statement on the inappropriate use of psychiatric medicines to manage the behaviour of people with disabilities and older people. People who lived in residential aged care facilities were of course entitled to the same rights and freedoms as other Australians in the general community, including not to have restrictions placed on their right to freedom of movement; there were, however, some instances where the risk to another person could not be minimized without some use of restrictive practices. In the Aged Care Act and Other Legislation Amendment adopted in July 2021, the quality of care principles had been updated to clarify and strengthen the requirements for providers in relation to the

use of restrictive practices, including chemical restraints. In mental health settings, across jurisdictions, the use of chemical restraints was subject to oversight and regulation; such restraints were rarely used in prisons and only under specific circumstances.

16. **A representative of Australia** said that Australia, as a nation with a long and successful history of migration, remained committed to a managed and equitable migration system that was consistent with its non-refoulement and other international obligations. Under his country's universal, non-discriminatory visa system, the focus was on individuals' potential contribution to Australia, not on their ethnicity, gender or religious beliefs. In the financial year 2018/19, prior to the disruption caused by the COVID-19 pandemic, some 9 million visas had been granted.

17. The purpose of the immigration detention regime, which was another essential component of the country's approach to border management, was the detention and removal of non-citizens who were in Australia without a valid visa. Unlawful non-citizens were detained until their status had been resolved, either through the granting of a visa or removal from the country. On the basis of a risk assessment, temporary bridging visas were issued extensively, enabling individuals to be released from immigration detention and to apply for the appropriate visa, appeal against a refused visa application or make arrangements for their departure from the country. Assistance to facilitate the timely resolution of immigration status was also provided through a Department of Home Affairs status resolution programme.

18. As at 30 June 2022, there had been approximately 67,000 unlawful non-citizens in Australia; of that number, around 570 had been placed in community settings, known as "residence determination arrangements", while some 1,400 individuals had been detained in immigration detention facilities, such as detention centres, transit accommodation and alternative places of detention. Of the unlawful non-citizens being held in immigration facilities, 90 per cent had a criminal history and 80 per cent had been assessed as posing a high or extreme risk to security. In recent years, the Government had made significant inroads in reducing the number of children held in such facilities. As at 31 July 2022, no minors had been held in any immigration detention facilities, and 167 had been living in residence determination arrangements.

19. As at 30 June 2022, the average length of stay in immigration detention was 742 days. As a result, the Department of Home Affairs had instituted monthly reviews of persons held in detention, with a view to speeding up the resolution of their status or facilitating alternatives to detention. Under the Migration Act, the minister responsible was required to report to the Commonwealth Ombudsman on any persons whose stay in immigration detention had exceeded two years. In turn, the Ombudsman issued an assessment, including any relevant recommendations on conditions, treatment and detention, which was presented in parliament, along with the Government's response to those recommendations.

20. The Australian Border Force had overall control of, and maintained a presence at, all immigration detention facilities. The day-to-day operations were the responsibility of a private company, which was required by the Government to provide detainees with high-quality services, humane living conditions and a safe and secure environment. The company's staff members were subject to background checks by the Australian Federal Police and underwent training, including a six-week induction course and annual refresher courses. In addition, health service providers were contracted to ensure that detainees received health-care services comparable to those available in the Australian public health system. External oversight of the treatment of detainees in immigration detention was provided by a number of bodies, including parliamentary committees, the Commonwealth Ombudsman and the Australian Human Rights Commission.

21. As at 30 June 2022, there had been 203 individuals – all of them adult males – at the immigration centre on Christmas Island, which was part of the Government's immigration detention network. Decisions on which places of detention were the most appropriate for individual detainees were made on the basis of risk assessments and were aimed at ensuring detainees' safety and welfare, complying with international obligations and reducing operating costs.

22. Under Operation Sovereign Borders, which had proven to be a significant deterrent to people smugglers, persons intercepted at sea were subject to an administrative assessment, in

accordance with Australia's non-refoulement obligations, to ensure that they were not returned to a country where they would face a real risk of significant harm, including torture. When persons could not be returned, they were transferred to a regional processing country to have their protection claims assessed. Australia was one of the world's most generous contributors to humanitarian resettlement efforts; under its own programme, it had resettled almost 14,000 persons in 2022, in addition to 4,000 Afghan nationals.

23. He noted that, in the period since the submission of his country's periodic report, a bill amending the Migration Act to clarify Australia's international obligations in relation to the removal of non-citizens had been adopted. He wished to highlight that the information contained in paragraph 68 of the State party's report remained current. Lastly, measures were in place to enable the early identification of victims of torture and human trafficking. For example, upon entry to immigration detention, detainees underwent a comprehensive health screening to identify mental health issues and signs of torture, with referrals being made for specialist assessment as necessary. At state and territory level, human trafficking contact officers of the Australian Border Force also played a key role in identifying victims, conducting awareness-raising and training, and providing support to border staff.

24. **A representative of Australia** said that updated disaggregated data on the number of deaths in police custody and the number of adults and juveniles in custody or detention in the states and territories of Australia would be provided in writing to the Committee. In response to the recommendations of the Royal Commission into Aboriginal Deaths in Custody, custody notification services had been established, with the support of the Australian Government, in almost every state and territory. As a result, the police were required to call those services when Aboriginal or Torres Strait Islander persons were taken into police custody, thus triggering a health and well-being check. The services could refer individuals to other services, including for legal representation, mental health care, addiction support or short-term housing, as well as contact their next of kin.

25. Efforts were being made to reduce First Nations Australians' contact with the criminal justice system. Governments at the federal, state and territory levels had signed up to the National Agreement on Closing the Gap, which was aimed at improving the life outcomes of First Nations people. The Agreement included a number of socioeconomic and justice-related targets, including one to reduce the incarceration rate of Aboriginal and Torres Strait Islander people by 15 per cent. Alice Springs in the Northern Territory was among the priority communities for justice reinvestment initiatives. There had already been promising early results in reducing youth crime. In addition, the Government had funded a number of providers to deliver adult and youth through-care programmes aimed at facilitating the transition from prison or detention back into the community and avoiding reoffending.

26. Regarding redress for ill-treatment, under the Territories Stolen Generations Redress Scheme administered by the National Indigenous Australians Agency, stolen generations survivors of Aboriginal or Torres Strait Islander descent who had been removed from their families or communities in the Northern Territory, the Australian Capital Territory or the Jervis Bay Territory could apply for redress. The scheme formed part of the Australian Government's ongoing commitment to truth-telling, addressing the needs of the stolen generations and healing the trauma of removal. Applicants had access to free, independent legal advice, financial counselling and support throughout the process. As at 6 November 2021, of the 583 applications received, 283 had been assessed as eligible for financial payments and 3 had been considered ineligible, as they had involved removals from non-Commonwealth jurisdictions.

27. **A representative of Australia** said that, regarding the accessibility of the criminal justice system to people with disabilities or cognitive impairments, governments at all levels in Australia had adopted the Disability Strategy 2021–2031, which was aimed at improving the lives of persons with disabilities and creating an inclusive Australian society in which they could fulfil their potential. One of the priority areas established under the strategy was to ensure that the criminal justice system responded effectively to the complex needs and vulnerabilities of persons with disabilities. In recognition of persons with disabilities' overrepresentation in the criminal justice system, where they were at heightened risk of violence, abuse and neglect, states and territories offered a number of diversionary programmes and alternatives to incarceration. Relevant education and training was provided

for front-line staff, including police officers and correctional facility staff, and support was offered to persons with disabilities who had been charged with an offence. In the Australian Capital Territory, for example, disability liaison officers assisted persons with disabilities in navigating the justice system, including by making reasonable adjustments and providing access to support services. Underscoring its commitment to the rights of people with disabilities, the Government had set up the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. The Commission had already investigated the experience of persons with cognitive disabilities in the justice system and conditions of detention, among other issues, and was expected to make formal recommendations in September 2023.

28. **A representative of Australia** said that her Government's commitment to reducing and eliminating the use of restrictive practices, such as chemical restraints, on persons with disabilities was evident in the National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector and in the work of the NDIS Quality and Safeguards Commission. All support providers had to follow the NDIS Restrictive Practices and Behaviour Support Rules, which required that restrictive practices be used as a last resort, in proportion to the risk of harm and for the shortest possible time. Any unregulated use had to be included in a behaviour support plan and required authorization. Any use outside the behaviour support plan had to be reported to the NDIS Quality and Safeguards Commission.

29. The National Plan to End Violence against Women and Children 2022–2032 aimed to end gender-based violence within a generation. It acknowledged the critical role played by law enforcement officials in ending gender-based violence and stressed that more needed to be done to encourage victims to report gender-based violence. In that connection, $A 1.7 billion would be invested to implement the plan, with $A 4.1 million dollars allocated over four years to the Attorney-General's Department for the development and delivery of a national training package for federal, state and territory law enforcement officials. The training would focus on coercive control, sexual assault, child safety and technology-facilitated abuse and would incorporate culturally safe policing responses and trauma-informed response models. Consultations would be held with key government and non-governmental stakeholders, including state and territory law enforcement personnel, representatives of First Nations Peoples, culturally and linguistically diverse people and people with disabilities, to ensure the training took their needs into account.

30. There were various reparation mechanisms for victims of torture and cruel, inhuman or degrading treatment, and each state and territory had a victims' compensation scheme to provide counselling and financial assistance. No specific data were available on cases of torture or cruel, inhuman or degrading treatment or punishment. However, she could provide data from the National Redress Scheme for people who had experienced institutional child sexual abuse. As at 11 November 2022, 20,453 applications for redress under the scheme had been received; 11,206 outcomes had been issued, 10,371 applications had been finalized, and 9,961 payments totalling $A 875 million had been made. All state and territory institutions and 604 non-governmental institutions were covered by the scheme, and the Government was working to onboard new institutions.

31. In terms of support for victims of trafficking in persons, the Support for Trafficked People Programme provided all victims referred to it by the Australian Federal Police with support, including safe and secure accommodation, access to medical treatment and counselling, referral to legal and migration services, and social support services, including English language classes. Since 2004, the programme had assisted 653 people, of whom 550 had been non-nationals.

32. **A representative of Australia** said that members of the Australian Defence Force were provided with training on the prohibition of torture, in line with his Government's international obligations. There was compulsory ab initio training for all new navy, army and air force personnel, which was delivered both online and in person. Moreover, job-specific training was provided for legal officers, those involved in the custody, questioning or treatment of persons deprived of their liberty and those involved in intelligence-gathering, who received more detailed training on the prohibition of torture and the need to treat people humanely and with dignity. Legal officers also delivered training on the prohibition of torture

to defence force personnel in operational theatres. The custody, questioning and treatment of persons deprived of their liberty were primarily the responsibility of military police officers, who were trained in the prevention and recognition of torture, and in how to respond to allegations of torture, at various points in their careers.

33. Australia had a framework for detainee management that balanced military imperatives with the humane treatment of detainees. Within that framework, the Australian Government worked with the Red Cross to develop operation-specific policies and provide access to detention facilities. Key aspects of the framework included medical checks for detainees upon their arrival at screening areas; a process whereby detainees could raise concerns about their treatment; post-transfer monitoring of detainees via an interdepartmental detainee monitoring team; and liaison with the relevant authorities to resolve any concerns relating to the treatment of detainees. The detainee management practices and the detainee transfer monitoring framework were audited to ensure their effective implementation and identify potential improvements. He wished to stress that the Australian Defence Force remained prepared to facilitate visits by the Subcommittee on Prevention of Torture.

34. **Ms. Pūce** (Country Rapporteur) said that she welcomed the detailed responses supplied by the delegation, particularly on the overrepresentation of First Nations people in places of detention, which was a long-standing issue that could only be resolved by addressing the root causes of the problem.

35. There had been reports of children being kept in solitary confinement, including the case of one child who had been held in solitary confinement on more than 25 occasions for up to 20 hours a day. That practice, which was prohibited under international law, likely occurred as a result of staff shortages and a lack of training. She therefore wished to know what measures were envisaged to increase staff numbers and improve training and, in general, to eliminate the practice of placing children in solitary confinement. The solution was not to transfer children to adult prisons, as the State party was reported to have done, but to ensure their social rehabilitation. In that connection, while she welcomed the measures taken to provide social assistance, she wondered whether the numbers of social workers were sufficient for the sustained effort that was required. She would appreciate more information on the State party's intentions with regard to the abolition of corporal punishment.

36. Regarding the National Plan to End Violence against Women and Children 2022–2032, she wondered whether there had been an evaluation of the results achieved under the previous plan, whether any statistics on domestic violence were available – especially in light of the rise in such violence during the COVID-19 pandemic – and what lessons had been learned.

37. Concerning the Optional Protocol to the Convention against Torture, she wondered whether the State party could provide details on the next budgetary cycle for the federal-level national preventive mechanism and whether funding had already been allocated to the local national preventive mechanisms.

38. **Mr. Iscan** (Country Rapporteur) said that he would be grateful if the delegation could confirm that the Australian Government had enacted all the necessary legislation to implement its international obligations, and not just "to the extent necessary".

39. While he understood that the specific issues that arose regarding the use of tasers, the sterilization of adults with disabilities and corporal punishment were primarily issues to be dealt with at the state and territory level, he would welcome further information on the measures taken at the national level to ensure uniformity in dealing with those issues in compliance with international standards and the Convention.

40. He would be grateful if the State party could provide information on the steps taken to combat racially motivated violence and other hate crimes, including online hate speech, and supply data on reported and investigated instances of hate crimes based on racism, xenophobia or discrimination on grounds of ethnicity, sexual orientation or gender identity.

41. He would appreciate it if the State party could comment on several problematic aspects of the counter-terrorism legal framework, namely: preventive detention orders enabling a person to be held in secret for up to 48 hours without being arrested or charged; continuing detention orders enabling the detention of high-risk offenders for up to three

years; questioning warrants under which an individual could be sentenced to five years in prison for refusing to answer a question; and broad police powers to stop, question, search, enter and seize without a warrant in areas declared to be security zones. In that regard, he would be interested to know what role the United Nations Global Counter-Terrorism Strategy played in the formulation of government policies and training programmes.

42. **Mr. Liu** said that, while the plans to raise the minimum age of criminal responsibility were encouraging, reform had been on the agenda for several years but had not yet been carried out. He recognized that it was a sensitive issue; however, he hoped that the present dialogue with the Committee would provide the final push to get the State party to introduce reform in that area, especially since the low age of criminal responsibility disproportionately affected aboriginal children.

43. He was concerned that support programmes for victims of trafficking in persons were only available to Australian citizens and those with a valid visa and that not all victims had access to victims' compensation schemes. While those convicted of trafficking in persons or slavery could be ordered to make reparations to victims under the Crimes Act 1914, if they were unable to pay, the victims received nothing. He therefore urged the State party to implement the recommendations of the Committee on the Elimination of Discrimination against Women to ensure that all victims had access to the Human Trafficking Visa Framework and to establish a federal compensation scheme for survivors of trafficking (CEDAW/C/AUS/CO/8).

44. **Mr. Rouwane** said that he wished to know whether the State party planned to accede to either the International Convention for the Protection of All Persons from Enforced Disappearance or the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

45. **Mr. Newnham** (Australia) said that the Australian Attorney-General found the reports of inappropriate conduct and conditions at youth detention facilities extremely concerning and had discussed them with his counterparts at the state and territory level. The use of segregation measures varied among the states and territories. Such measures could be ordered in the Australian Capital Territory only to ensure the safety of the individual placed in segregation or the safety of others. The individual's health would be assessed daily and a mental health referral would be provided if a risk of self-harm was detected. Segregation was also used for purposes of ensuring safety in New South Wales, where periods of segregation had to be as short as practicable and could not exceed 12 hours, in the case of persons under 16 years of age, or 24 hours, in the case of persons 16 years of age and older. While in segregation, the detainee must be visible to and able to communicate with a staff member. The New South Wales Ombudsman was automatically notified if the period of segregation or separation exceeded 24 hours.

46. A young person could request separation in the Northern Territory for the purposes of self-regulation. All separations were recorded and were reported to the Children's Commissioner of the Northern Territory and the Chief Executive Officer of the Department of Territory Families, Housing and Communities the day that they occurred. Therapeutic conversations were held with a young person in separation every 15 minutes. In Queensland, separation decisions required approval, were subject to supervision protocols, time limits and record-keeping requirements and were regularly reviewed. Medical assessments and support from youth justice caseworkers, speech-language pathologists, psychologists and others were available. Separation practices were regularly reviewed by internal and external oversight agencies.

47. In South Australia, the use of isolation was subject to time limits, approval processes and reporting requirements. Children and young people were placed in isolation only as a last resort. The detention of children under 12 years of age in "safe rooms" was not allowed. The maximum allowable period of isolation at the state's only youth justice custodial facility was 22 hours; the person in isolation had to have at least two hours of recreational exercise time over the course of the day; a health assessment was required when the period of isolation ended; and, where appropriate, a cultural adviser had to be notified of the isolation. In Tasmania, observation of detainees in isolation was required at least once every 15 minutes and each use of isolation had to be recorded. Isolation was very rarely used in Victoria, where

it was a measure of last resort and involved the completion of multiple risk assessments over the course of the day. In Western Australia, confinement was used as a last resort. It could be ordered for periods of up to 24 hours by a facility superintendent and up to 48 hours by a visiting justice official for offences committed at the facility, and confined detainees were entitled to periods of exercise.

48. In response to Mr. Iscan's question, he wished to clarify that his earlier use of the phrase "to the extent necessary" had been in relation to the determination made by the Government as to whether it was necessary to enact new legislation, in the absence of relevant existing legislation, to implement an international obligation. It was certainly not meant to indicate that a determination was made as to whether the obligation itself was necessary.

49. With respect to the questions raised regarding tasers, he wished to draw the Committee's attention to the information provided in paragraphs 330 to 335 of the sixth periodic report (CAT/C/AUS/6). The preventative detention order scheme contained safeguards to ensure that any use of such orders was reasonable, necessary and proportionate. Only persons over 16 years of age could be placed in preventative detention. Preventative detention could last no longer than 48 hours and persons in such detention could be questioned solely for the purpose of confirming their identity or ensuring their safety and well-being.

50. Under section 34AG of the Australian Security Intelligence Organisation Act, which had been amended in 2020, persons subject to questioning warrants must be treated with humanity and must not be subjected to torture or cruel, inhuman or degrading treatment. Anyone knowingly contravening those safeguards faced up to two years' imprisonment. Under the amendment, the Organisation's detention power had been replaced with a more limited apprehension power. An extraordinary continuing detention order scheme had been introduced in 2016 for offenders who posed an unacceptable risk of committing serious terrorism offences. Courts had to be satisfied that no less restrictive measure would effectively prevent the risk in question before they could issue such an order and were required to review the order annually or sooner upon application by the offender or if new facts warranting consideration arose. Persons detained under such orders must be separated from prisoners serving ordinary prison sentences.

51. The stop, search and seizure powers under division 3A of the Commonwealth Crimes Act, which were intended as a tool of last resort, had yet to be used. Police officers could use no more force and could detain persons no longer than was reasonable and necessary for the conduct of a search. The right of the individual concerned to contact a lawyer or relatives was not restricted. The Commonwealth Ombudsman and the Australian Commission for Law Enforcement Integrity could investigate concerns raised regarding the use of the powers.

52. The delegation would respond in writing to the question on accession to the International Convention for the Protection of All Persons from Enforced Disappearance and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

53. **A representative of Australia** said that the visa status assessment carried out under the Support for Trafficked People Programme did not serve as a barrier to participation because all trafficking victims referred to the programme who required visas received them under the Human Trafficking Visa Framework. An initial period of intensive support lasting 45 or 90 days was available to participants in the programme regardless of whether or not they were involved in a criminal justice process. The Government was still considering proposals for a compensation scheme for victims of trafficking.

54. Corporal punishment was not a generally accepted social norm in Australia, although its use in the home was not prohibited in any state or territory. It was prohibited in detention centres everywhere other than Western Australia; and it was prohibited in schools in every state and territory other than Queensland, although there it was prohibited in certain schools. Corporal punishment was prohibited in residential and foster care settings in all jurisdictions except for the Northern Territory and Western Australia; she was not sure if it was prohibited in those settings in Tasmania.

55. Improvements had been seen in three of the four main indicators under the previous National Plan to Reduce Violence against Women and Their Children – a higher proportion of women who felt safe in their communities, fewer deaths related to domestic violence and sexual assault, and a lower proportion of children exposed to the domestic violence experienced by their mothers or caregivers – but not in the fourth, reduced prevalence of domestic violence and sexual assault. The plan had led to increased public awareness of family, domestic and sexual violence and, consequently, a greater propensity to report cases of such violence. Shortcomings identified in the previous plan included an insufficient framework for attributing the achievement of targeted outcomes to actions taken under the plan; inconsistent data collection across the country; a lack of clarity in the roles of the Commonwealth, states and territories; and a failure to address the needs and the diversity of victims. Victims figured much more prominently in the current plan.

56. One in 10 participants in a survey conducted by the Australian Institute of Criminology had experienced physical violence during the COVID-19 pandemic; one in 12 had experienced sexual violence; and one in three had been subjected to emotionally abusive, harassing and controlling behaviours. The results of the next Personal Safety Survey, expected in 2023, would provide insight into the longer-term impact of the pandemic. The Government was working with the states and territories to develop a prototype data set on demand for front-line services and was investing $A 31 million in research into the prevalence of family, domestic and sexual violence in First Nations communities.

57. **A representative of Australia** said that the Government recognized that disproportionate numbers of First Nations children were in juvenile detention and that finding solutions would require the involvement of First Nations communities.

58. **A representative of Australia** said that the requirements set out in the Australian Security Intelligence Organisation Act ensured that any questioning carried out under a questioning warrant was overseen by an independent, senior barrister with extensive experience and standing within the legal profession. Subsection 34GD (3) of the Act, which penalized the failure to provide any information or item requested by the Organisation under a questioning warrant, did not apply in cases where the person subject to the warrant did not have that information or item. Although subsection 34GD (5) abrogated the privilege against self-incrimination in relation to the information or items requested in order to increase the likelihood that they would be provided, subsection 34GD (6) limited the admissibility of that information or those items in criminal proceedings.

59. **The Chair** said that he wished to thank the delegation for the constructive spirit in which it had approached the dialogue. The Committee looked forward to the State party's next steps with regard to the matters that had been discussed, including those relating to the national preventive mechanism, the Optional Protocol and the Subcommittee's visit to the State party.

60. **Mr. Newnham** (Australia) said he hoped that the answers provided by the delegation during the dialogue had demonstrated the significant progress that Australia had made in implementing the Convention since its previous appearance before the Committee, in 2014, particularly in terms of addressing violence against women and children, protecting the rights of Australians with disability and upholding the rights of First Nations Australians. The Government remained committed to the full implementation of the Optional Protocol in all Australian states and territories and the protection of the human rights of all people in places where they were deprived of their liberty. To that end, it would continue to work with both the Committee and the Subcommittee to uphold its obligations under the Convention and the Optional Protocol.

The meeting rose at 5.50 p.m.