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

Australian Appearance

15-16 November 2022

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Opening Statement

Head of Delegation – Mr Simon Newnham, Deputy Secretary, Australian Attorney-General’s Department

Open and greet the Committee

Mr Chairperson, rapporteurs, and distinguished members of the Committee

It is an honour to appear before you today to discuss Australia’s implementation of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and to present our Sixth State Party Report.

Introducing the Australian Delegation

Reflecting the importance Australia places on our obligations under the Convention, our multi-sector delegation comprises senior officials from across government.

My name is Simon Newnham. I am the Deputy Secretary for the Integrity and International Group of the Commonwealth Attorney-General’s Department and the Head of Australia’s Delegation.

I am joined by Australia’s Permanent Representative to the United Nations Office and other International Organisations in Geneva, Ambassador Amanda Gorely.

From the Attorney General’s department, I am joined by colleagues Mr Colin Minihan, Acting Assistant Secretary of the Human Rights Branch, and Dr Claire Cronin, also from the Human Rights Branch.

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From the Department of Home Affairs, I am joined by Minister Counsellor Mr Andrew Rose.

From the Department of Social Services, I am joined by Ms Greta Doherty, Group Manager for the Women's Safety Group.

From the National Indigenous Australians Agency, I am joined by Ms Ursula Carolyn, Branch Manager for the Families and Safety Branch.

From the Royal Australian Navy, I am joined by Rear Admiral Brett Wolski.

I am also joined by officials from the Australian Permanent Mission to the United Nations, Ms Seema Chandra, Counsellor Humanitarian and Ms Deb Livermore, First Secretary Human Rights.

I would also like to acknowledge the presence of the Australian Human Rights Commissioner Ms Lorraine Finlay, and of the Commonwealth Ombudsman Mr Iain Anderson, both of whom have travelled here to Geneva to meet with the Committee and facilitate this constructive dialogue.

I would like to cover four issues for the Committee today.

- First, Australia's Human Rights Framework and commitment to international human rights
- Second, an update on Australia's commitment to the Convention
- Third, a summary of Australia's key progress and achievements relevant to the Convention, and
- Fourth, Australia's efforts to implement the Optional Protocol on Torture and the recent suspended SPT visit.

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1. Australia Human Rights Framework and Commitment to International Human Rights

Australia takes its international human rights obligations, including those under the Convention and its Optional Protocol, extremely seriously.

- Our commitment to human rights is enduring, and goes to the very heart of our national consciousness.
- Australia is proud of the role we played in forging a new international system in the aftermath of the Second World War.
- Australia was an original signatory to the Universal Declaration of Human Rights, and has been a leading proponent of its consistent and comprehensive implementation since then.

Australia is a State Party to all seven core international human rights treaties, and continues to be a leader in international human rights fora

- most recently serving a three-year term on the Human Rights Council from 2018 to 2020, through which we guided other UN member states to achieve their goals of gender equality, freedom of religion, the protection of the rights of their indigenous peoples, and the strengthening of their national human rights institutions.

Australia is committed to complying with its international obligations, including under the Convention Against Torture, Cruel, Inhuman or Degrading Treatment or Punishment.

There are a variety of means by which we give effect to our international obligations

- Through the Australian Constitution

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- Our representative democracy, rule of law, independent courts and body of Common Law
- Commonwealth and State and Territory legislation
- And through administrative measures, policy and practice

Our Government is committed to a human-rights based approach to public life in Australia as a priority

Underpinned by a strong institutional framework for protecting and advancing human rights

- on 27 October for example, this year the Government enacted new legislation to ensure the integrity of our National Human Rights Institution, the Australian Human Rights Commission, by requiring merits-based and publicly advertised appointments.

The Government believes that all people are entitled to respect, equality, dignity and the opportunity to participate in the social, cultural; and economic life of our nation

- Australia is committed to ensuring our human rights framework appropriately protects these fundamental human rights
- The Government is constantly considering whether the existing protections are adequate, fit for purpose or require reform

Australia recognises that to enjoy civil and political rights on an equal basis with others, people need to be able to do so free from discrimination

Our federal system of Government means that each jurisdiction has anti-discrimination legislation and a body dedicated to promoting human rights and equal opportunity.

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2. Update on Australia's Commitment to the Convention

Australia remains highly vigilant to its commitments under the thirty-three articles of the Convention, including:

- The requirements on our legal framework and justice systems to prevent torture and ill-treatment and to provide for redress for victims
 - o And to keep these policy and legislative settings under review
- The requirements in our training and education for officials involved in places of custody and detention
- The need to have complaints and review mechanisms, prompt and impartial investigations, and protections against reprisals for allegations of breaches of the Convention

Since Australia's last appearance before the Committee in 2014, we have made significant progress in implementing the Convention, taking action in response to the Committee's concluding observations.

- in 2017 Australia ratified the Optional Protocol to the Convention
- we have made progress towards establishing a network of National Preventive Mechanisms which aligns with Australia's federal constitutional system.
- **Australia has also made significant progress in other areas flagged as priorities by the Committee,** including combatting violence against women and children, addressing the overrepresentation of First Nations Australians in places of detention, and protecting the rights and dignity of Australians with disability.

COVID-19 and Human Rights

Mr Chair, in the period since our last appearance, **the COVID-19 pandemic has presented unique challenges for the protection of human rights around the world.**

Australia's response to these challenges has been based on a respect for human rights and fundamental freedoms, and the imperative to uphold the dignity of all persons.

We recognise opportunities for improvement

While this opening statement will highlight some of our achievements, we acknowledge that progress is never without challenge.

We welcome the opportunity to engage in a constructive dialogue with the Committee over the next two days in a spirit of mutual cooperation.

3. Australia's Key Actions Relevant to the Convention

Mr Chairperson, distinguished members of the Committee, I would now like to set out a number of **significant actions Australia has taken in terms of deepening and strengthening implementation of our obligations under the Convention since our last appearance.**

I would like to cover 5 main areas of progress and achievements in this section.

To begin with, First Nations Australians

Australia is deeply committed to improving the lives of First Nations Australians and has made significant progress in respecting the rights of our First Nations peoples.

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- In July 2022 our Prime Minister announced there would be a public referendum to vote on giving First Nations Australians a permanent voice to Parliament.
- This was a response to the 2017 *Uluru Statement from the Heart*. The Uluru Statement called for a First Nations Voice to be enshrined in the Australian Constitution,
 - o and for the establishment of a Makarrata Commission to assist Australia to come to terms with its colonial history by establishing a process of agreement-making between governments and First Nations and truth telling about our history.

Australia believes that First Nations people have always held the solutions to matters that affect them

- this philosophy sits at the heart of the *National Agreement on Closing the Gap*, and the *Uluru Statement*.

In 2020, **Australia produced the National Agreement on Closing the Gap**, developed in genuine partnership between Australian Governments and peak First Nations bodies, which sets out ambitious outcomes to improve the lives of Indigenous Australians.

- The Agreement acknowledges that intergenerational trauma and socio-economic disadvantage are key drivers of First Nations incarceration.
- All Australian States and Territories have made progress towards the 17 Closing the Gap targets, including reducing the rates of youth and adult incarceration.

In 2021 **the Government established the Justice Policy Partnership** – a collaborative initiative which seeks to address the overrepresentation of First

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Nations Australians in places of detention, and the crisis of Aboriginal and Torres Strait Islander deaths in custody.

- The Justice Policy Partnership brings together all levels of government in Australia, peak organisations and First Nations representatives to achieve better justice outcomes.
- The Australian Government has committed over \$81 million to expand justice reinvestment initiatives and to create a National Justice Reinvestment Unit.

Second, addressing violence against women and children

Mr Chair, **since our last appearance, Australia has further demonstrated our commitment to end violence against women, children and LGBTIQ+ people.**

This year, our government launched a ten-year National Plan to End Violence against Women and Children, which provides a strategic framework for responding to the pervasive problem of gender-based violence.

- The Plan recognises that all sectors of society, including governments, businesses and workplaces, media, schools and educational institutions, the family, domestic and sexual violence sector, communities and all individuals, must work together to achieve the shared vision of ending gender-based violence in one generation.
- The Plan sets out actions across four domains: prevention; early intervention; response; and recovery and healing. It has been supported with a \$1.7 billion investment.

Australia recognises that First Nations women and children are more likely to be victims of gender-based violence

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- therefore a First Nations National Plan is also being developed through a consultative process that supports genuine partnership and shared decision-making, as articulated in the National Agreement on Closing the Gap.

In 2022 the Australian Government committed to fully implementing all 55 recommendations of the Australian Human Rights Commission's Respect@Work Report to address sexual harassment in the workplace.

The Australian Government has brought before the Commonwealth Parliament the Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Bill 2022.

- This ground-breaking legislation introduces a positive duty on employers to take reasonable and proportionate measures to eliminate workplace sexual harassment, victimisation and sex discrimination.
- Passage of this legislation is a key commitment of the Government, and the legislation is expected to be enacted before the end of 2022.

Third, tackling modern slavery

Australia has continued to tackle human trafficking, slavery, and slavery-like practices at home and abroad.

- Committing to further reform what is already a world-leading, comprehensive legislative and operational framework to counter modern slavery and related practices.

Since our last appearance, the Australian Government has launched a new five-year national action plan to combat modern slavery, and is implementing 46 new actions to prevent, disrupt, investigate and prosecute modern slavery, and support and protect victims and survivors.

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Australia has also implemented its *Modern Slavery Act 2018* to drive business action to combat modern slavery in global supply chains. We are reviewing the Act and will introduce a role of an Anti-Slavery Commissioner to help take forward reforms. We have continued to lead regional efforts as Co-Chair of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime. These efforts are in line with *Australia's international engagement strategy on human trafficking and modern slavery: Delivering in partnership*.

Fourth, Non-Refoulement

Australia has taken steps to strengthen its ability to uphold its non-refoulement obligations. The *Migration Amendment (Clarifying International Obligations for Removal) Act 2021* clarifies that the Migration Act does not require or authorise the removal of a person to a country in relation to which a protection finding has been made in the course of assessing their protection visa application. The term protection finding is defined to reflect the circumstances in which Australia has non-refoulement obligations in relation to a person, including because of a real risk of torture.

Fifth, People with Disability

Mr Chairperson, since our last appearance, **Australia has taken great steps forward in terms of protecting the rights of Australians with disability,** including those who are in places where they may be deprived of their liberty. Australia's Disability Strategy for 2021 to 2031 sets out a national framework, committed to by all levels of Australian government, to improve outcomes for people with disability. The Safety, Rights and Justice Outcome Area of the Strategy is targeted towards promoting, upholding and protecting the rights of

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people with disability, and recognises that people with disability are at a heightened risk of violence, abuse, neglect and exploitation in the criminal justice system.

In 2019 the Government established the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. The Royal Commission is investigating, independent of government:

- prevention and better protecting people with disability from experiencing violence, abuse, neglect and exploitation
- achieving best practice in reporting, investigating and responding to violence, abuse, neglect and exploitation of people with disability; and
- promoting a more inclusive society that supports people with disability to be independent and live free from violence, abuse, neglect and exploitation.

Optional Protocol and the SPT visit

Mr Chairperson, members of the Committee, in 2014 your concluding observations recommended that Australia ratify the Optional Protocol to the Convention against Torture (OPCAT), which our country did in 2017.

Australia is committed to its implementation of OPCAT and is actively and urgently progressing implementation.

We note, too, our commitments to provide unrestricted access to information for the SPT under Article 12, unrestricted access to places of detention under Article 14 and SPT contact with national preventative mechanisms.

These are justifiably high benchmarks. Australia holds itself and others to account to meet these benchmarks.

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- This commitment, from successive Australian Governments, takes account of the Federation we have in Australia, and our commitments apply to all Federal, State and Territory jurisdictions

Regrettably, the Subcommittee on the Prevention of Torture suspended their visit to Australia last month.

Australia is addressing the difficulties identified by the Subcommittee in accessing some detention facilities in Australia, including by engaging with the New South Wales and Queensland State Governments as a matter of urgency.

- The Queensland Government has announced that legislation will be introduced to address legislative barriers to the SPT's access.
- Prior to suspension, we understand the SPT successfully visited facilities in six out of eight jurisdictions, as well as facilities under the Commonwealth Government's control.

The suspension of the SPT's visit does not change Australia's commitment to promoting and protecting human rights domestically and internationally.

- The Australian Government is continuing to work with all States and Territories to resolve the issues that led to the suspension of the visit and to facilitate the resumption of the SPT's visit.
- Australian places of detention must protect the rights of those who are detained.
- Australia is committed to utilising the expertise of the SPT to pre-emptively identify and address any issues.

Since ratifying OPCAT, **Australia has developed a multi-body National Preventative Mechanism system,**

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- We have nominated the Commonwealth Ombudsman as the NPM National Coordinator.
- The Commonwealth Ombudsman's roles as NPM for Commonwealth places of detention and as NPM National Coordinator have been established through authorising legislation.

Australia remains committed to our model of OPCAT implementation. Our approach of utilising a network of National Preventive Mechanisms best suits Australia's federal constitutional system,

- where States and Territories have legal responsibility for places of detention such as prisons, youth facilities, police cells, psychiatric facilities and forensic disability facilities.
- This approach has been supported by all Australian jurisdictions.

In accordance with the NPM network model, the Commonwealth Government, as well as the governments of the Australian Capital Territory, Northern Territory, Tasmania, and Western Australia, have nominated an NPM for their jurisdiction and introduced authorising legislation where required.

Conclusion and welcome constructive dialogue with the Committee

Mr Chairperson, distinguished members of the Committee, I have been pleased to update you on four areas today:

- Australia's commitment to international human rights
- Australia's commitment to the Convention
- A summary of Australia's key areas of progress and achievements in implementing the Convention

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- Finally, Australia's efforts to implement the Optional Protocol on Torture and to address the impediments that led to the recent suspension of the SPT's visit.

On behalf of the Australian Government, I am pleased to share this information on Australia's laws, policies, and programs that promote, strengthen and protect Australia's obligations under the Convention.

We do, however, recognise that more can always be done.

We endeavour to constantly review and evaluate existing measures to ensure they remain appropriate and relevant to achieving the most effective implementation of Australia's obligations under the Convention.

Our appearance before the Committee as an integral part of that evaluation.

On behalf of the Australian delegation, I wish to thank you for this opportunity for a constructive, forward looking dialogue.

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