

Committee against Torture

REFERENCE: Follow-up/CAT – Australia

10 December 2024

Excellency,

In my capacity as Rapporteur for Follow-up to Concluding Observations of the Committee against Torture, I have the honour to refer to the follow-up to the examination of the sixth periodic report of Australia, in accordance with the Guidelines for follow-up to concluding observations (CAT/C/55/3).

At the end of its 75th session held from 31 October to 25 November 2022, the Committee transmitted its concluding observations to your Permanent Mission. The Committee's concluding observations (CAT/C/AUS/CO/6, para. 53) requested the State party to provide within one year further information on the specific areas of concern identified in paragraphs 28, 32 and 38 of the concluding observations.

On behalf of the Committee, allow me to express appreciation for your letter of 13 May 2024 providing your Government's response to the above-mentioned paragraphs (CAT/C/AUS/FCO/6) and to make the following comments:

Mandatory immigration detention, including of children (para. 28 of the Committee's concluding observations)

While taking note of the information provided by the State party, the Committee is concerned that the State party did not take any steps to amend the Migration Act of 1958 to put an end to the mandatory detention of persons entering its territory irregularly and to ensure that such 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. While welcoming the decision of the High Court that "unlawful non-citizens" cannot be kept in immigration detention for the purpose of their removal from the State party's territory if there is no real prospect of their removal becoming practicable in the reasonably foreseeable future, the Committee is concerned that the law still does not establish statutory time limits for immigration detention, which reportedly results in protracted periods of deprivation of liberty. It is also 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 been refused

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can still be detained indefinitely, without adequate access to an effective judicial remedy to challenge their detention. Moreover, it is concerned about reports that unaccompanied children and families with children continue to be detained solely because of their immigration status, and that alternatives to closed immigration detention are not sufficiently resorted to. Furthermore, it is concerned about reports of poor material conditions of detention, restrictions on access to social, education and health services, and limited recreational and rehabilitative activities in some immigration detention facilities, including in alternative places of detention, and about high reported rates of mental health problems among detainees, which allegedly correlate with the length and conditions of detention. While acknowledging the complaint and oversight mechanisms in place to ensure that force and physical restraint are only used as a last resort and that appropriate disciplinary measures are imposed on persons involved in violence against detainees in immigration detention centres, the Committee is concerned about the reported excessive use of force and physical restraint perpetrated with impunity against migrants, refugees and asylum-seekers (2/C).

Conditions of detention (para. 32 of the Committee's concluding observations)

While noting the steps taken by the State party to improve conditions of detention in general, alleviate the overcrowding of penitentiary institutions and other detention facilities, including through the application of non-custodial measures, and address the overrepresentation of First Nations Australians and inmates with disabilities, in particular intellectual or psychosocial disabilities, in the prison population, the Committee is concerned about reports that the State party did not take sufficient measures to address the persistently high number of detainees in many places of deprivation of liberty, including by identifying the underlying causes of the high rates of incarceration of Aboriginal and Torres Strait Islander peoples and persons with intellectual or psychosocial disabilities and by enhancing the use of non-custodial measures and diverting programmes. The Committee also notes the steps taken by the State party to reduce recidivism by developing rehabilitation and reintegration programmes. However, it is concerned about reports that recreational and educational activities to foster rehabilitation of detainees, particularly First Nations inmates, remain extremely limited. In spite of the recruitment efforts to increase the number of prison staff, the Committee is concerned about reports indicating that the number of trained and qualified personnel, including medical personnel, remains relatively low, and that these staffing shortages allegedly continue to impact the access and effectiveness of key support services for prisoners in many detention facilities and appear to be a major cause of prison lockdowns and cell lock-ups, which is likely to contribute to increased inter-prisoner violence. While noting the information provided by the State party that detainees receive the same level of health care as the general public under Australia's public health system, the Committee is concerned at reports that, in a number of places of deprivation of liberty, health-care services, in particular mental health services, remain inadequate, particularly for prisoners with intellectual or psychosocial disabilities and Aboriginal and Torres Strait Islander inmates. Moreover, the Committee takes note of the information provided by the State party that means of physical or chemical restraint in adult correctional facilities are used by trained custodial staff as a last resort and with the minimum level of force required to manage the situation, and that such use is duly regulated and monitored and requires prior authorization by the competent authority. Nevertheless, it is concerned by reports of

continued excessive use of various means of physical or chemical restraint. While taking note of the legislative and procedural safeguards in place across all state and territory jurisdictions to ensure respect for the inmate's privacy and dignity during strip-searches, and the increasing use of body scanners to minimise the need for strip-searches, the Committee is concerned about reports that strip-searches are still performed routinely and inappropriately on persons deprived of their liberty, particularly on First Nations prisoners. It also regrets the lack of information on the measures taken to ensure that search and admission procedures for visitors are not degrading and are subject, at a minimum, to the same rules as those applied to inmates. Finally, the Committee notes the information provided by the State party that solitary confinement may only be used in some places of detention for purposes of protecting the detainee's safety, the safety of other prisoners or the security and good order of a correctional facility, and that such measure is subject to regular review and oversight. However, it is concerned about reports of the continued use, in both federal and state and territory correctional facilities, of prolonged and indefinite solitary confinement, which disproportionately affects Indigenous inmates and inmates with intellectual or psychosocial disabilities (2/B2).

Juvenile justice (para. 38 of the Committee's concluding observations)

While noting the information provided by the State party that, in all jurisdictions, there is a rebuttable presumption that a child under the age of 14 is not criminally responsible, and that several state and territorial jurisdictions are taking steps to raise the minimum age of criminal responsibility to 12 or 14 years, the Committee is concerned that the minimum age of criminal responsibility remains very low, as it is still set at 10 years at the federal level and in most state and territory jurisdictions. The Committee is also concerned about the reportedly persistent overrepresentation of indigenous children and children with disabilities in the juvenile justice system, despite the State party's efforts to reduce incarceration rates for these children. While noting that the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability's final report recommended ending regimes allowing for the indefinite detention of persons with disabilities, including children with disabilities, the Committee is concerned about reported cases of children with disabilities still being detained indefinitely without conviction and that their detention is not subject to regular judicial review. Moreover, while taking note of the information provided by the State party that most state and territory jurisdictions have legislation that provides for the use of restraints in youth justice settings as a last resort and in very limited circumstances, the Committee is concerned that the State party did not take measures to explicitly prohibit force, including physical restraints, as a means of coercion or disciplining children under supervision, and regrets the lack of information on the steps taken to promptly investigate all cases of abuse and ill-treatment of children in detention and to adequately sanction the perpetrators. Furthermore, the Committee notes the information provided by the State party that, across state and territory jurisdictions, the use of isolation, segregation or confinement in youth justice settings is mostly limited to circumstances when it is reasonably necessary for the child's protection, or the protection of another child or property. However, it is concerned about the reported persistence of the practice of prolonged solitary confinement for children, including children with disabilities, across all jurisdictions. In addition, while noting the various programmes in place to divert children from youth justice systems and to ensure that detention of children is used as a measure of last resort, the Committee is

concerned at reports that the number of children in detention, both on remand and after sentencing, remains high and that the State party did not take sufficient steps to actively promote non-judicial measures for children accused of criminal offences and, whenever possible, the use of non-custodial sentences, and to ensure that pretrial detention is regularly and judicially reviewed. Besides, while taking note of the information provided by the State party that, in cases in which detention is unavoidable, children are generally detained in youth detention settings separate from adult correctional facilities, the Committee is concerned about reports that children are not always detained separately from adults. Finally, the Committee notes the measures taken by the State party to ensure that children in detention are informed of their rights and of the numerous avenues to raise complaints about their detention. However, it is concerned about reports that these children still lack awareness about their rights and how to report abuses, and regrets the lack of information on the steps taken to protect complainants from any risk of reprisals (2/B2).

Implementation plans (para. 53 of the Committee's concluding observations)

Lastly, the Committee regrets that the State party has not provided information about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations included in its concluding observations (C).

The Government of Australia is encouraged to provide additional information, if there is any, which would further contribute to the Committee's analysis of the progress made regarding the specific issues of concern cited above. This additional information may be provided in any subsequent report by the State party pursuant to the Committee's request in its concluding observations on the sixth periodic report of the Australia or other future periodic reports.

The Committee looks forward to a continued constructive dialogue with the authorities of Australia on the implementation of the Convention.

Accept, Excellency, the assurances of my highest consideration.



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