

Australia has Violated the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:

Victims Include Indigenous People in Prisons (including Indigenous Women), Children in Prisons with Adults and in Other Cruel and Inhuman Conditions, Children Suffering Corporal Punishment, and Migrants in Offshore Immigration Detention Centres / Prisons



Shadow Report

Respectfully submitted to the

United Nations Committee Against Torture

On the occasion of the Committee's consideration of the 6th Periodic Report, submitted by Australia on 28 March 2019 under the Torture Convention, Article 19

for Hearings of the

United Nations Committee against Torture, at United Nations European Headquarters

Geneva, Switzerland



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Executive Summary

A. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment Protects All Persons in Australia and Outside Australia and subject to the Jurisdiction and Control of Australia

Australia became a party to the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter “Torture Convention”), through ratification on August 8, 1989, after it signed on December 10, 1985.² As party to the Torture Convention, Australia is obligated to comply fully with the Torture Convention. Australia has committed acts of torture or other cruel, inhuman, or degrading treatment. Australia has failed to prevent acts of torture or other cruel, inhuman, or degrading treatment. Australia has failed to provide effective remedies for acts of torture or other cruel, inhuman, or degrading treatment. Specifically, Australia has breached the Torture Convention as follows:

- a. Australia hyperincarcerates Indigenous people (including women) in its prisons, and imposes cruel, inhuman, and degrading treatment of these Indigenous people (including women) in prison, in violation of Article 16 of the Torture Convention;
- b. Australia subjects children (juveniles) to cruel, inhuman, and degrading conditions in prison, in violation of Article 16 the Torture Convention;
- c. Australia permits corporal punishment of children in Australia, in violation of Article 16 of the Torture Convention;
- d. Australia perpetrates cruel, inhuman, and degrading treatment on detainees in offshore immigration detention centres / prisons, in violation of Article 16 of the Torture Convention;
- e. Australia does not track redress and compensation for victims of cruel, inhuman or degrading treatment to ensure a right to redress and compensation, in violation of Article 16 of the Torture Convention; and
- f. Australia does not keep data regarding victims of cruel, inhuman or degrading treatment or punishment under systematic review, in violation of the Articles 11 and 16 of the Torture Convention.
- g. Australia does not track complaints of cruel, inhuman or degrading treatment nor their outcomes, in violation of Articles 13 and 16 of the Torture Convention

² Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, [hereinafter “Torture Convention”]. The Torture Convention was adopted through United Nation General Assembly Resolution 39/46; and it entered into force on June 26, 1987. Australia ratified the Torture Convention on Aug. 8, 1989. Relevant information regarding the Torture Convention can be found at the United Nations Treaty Collection Website, https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-9&chapter=4&clang=_en ; Relevant information regarding Australia’s ratification of the Torture Convention here can be found at <https://humanrights.gov.au/our-work/commission-general/chart-australian-treaty-ratifications-may-2012-human-rights-your>

B. Australia's History with the Current Issues

Australia's violations of the Torture Convention discussed in this Shadow Report are recurring issues. Long before Australia consented to be bound to the Torture Convention, Australia has perpetrated cruel, inhuman or degrading treatment against the people in Australia and people subject to Australian jurisdiction. The Torture Committee has addressed several of the current issues in documents related to Australia's Torture Convention periodic reports, including Indigenous hyperincarceration, abuse of children in prison, and conditions in migrant offshore immigration detention facilities.³

C. Torture Committee Review of Australia's Compliance with the Torture Convention

Pursuant to the Torture Convention, Australia is required to take various steps to comply fully with Torture Convention, including the following steps:

- a. Immediately upon ratifying the Torture Convention, Australia was obligated to ensure that all of its internal laws, policies, and practices fully complied with the Torture Convention, and that Australia did not commit torture or cruel, inhuman, or degrading treatment upon anyone in Australia or anyone subject to Australian jurisdiction.
- b. The Torture Convention requires Australia to submit to the Torture Committee reports regarding the status of torture or cruel, inhuman, or degrading treatment occurring within Australia and within territories subject to Australian jurisdiction.⁴
- c. Periodically, the Torture Committee holds hearings at which Australia appears and the Torture Committee analyzes whether or not Australia has fully implemented and complied with the Torture Convention. The government of Australia is scheduled to appear before the Torture Committee on 15 and 16 November 2022 in Geneva, Switzerland (at the United Nations European Headquarters) for a hearing on Australia's compliance (or non-compliance) with the Torture Convention.

D. The Torture Committee Hearing on Australia's 6th Periodic Report (Geneva, Switzerland)

At the November 2022 hearing, the Torture Committee will seek to determine whether, and to what extent, Australia's laws, policies, and practices violate the Torture Convention.

- a. On 9 January 2017, all the primary issues raised in this Shadow Report were presented in the *List of Issues* the Torture Committee issued to Australia, and will be a focal part of the Torture Committee's consideration of whether Australia has breached its obligations under the Torture Convention.
- b. The relevant part of the Committee's *List of Issues* topics on Australia are below⁵:

i. Indigenous Hyperincarceration

“Issue 2. With regard to the Committee's previous concluding observations and the information received from the State party in follow-up to the concluding observations,

³ UN. Doc. CAT/C/AUS/CO/4-5, (2014), <https://digitallibrary.un.org/record/790514?ln=en>

⁴ UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, Article 19
https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&clang=en

⁵ UN. Doc. CAT/C/AUS/QPR/6, Committee Against Torture, *List of issues prior to submission of the sixth periodic report of Australia*, p. 2, 5, 8, 9, 11, (2017), <https://digitallibrary.un.org/record/857779?ln=en>

please provide the following information in relation to the overrepresentation of indigenous people in prisons for each state and major mainland territory of the State party.

- (a) An evaluation of the impact of justice reinvestment initiatives and programmes addressing the problem. Please indicate whether such initiatives were conducted on the basis of justice mapping, as recommended by the Senate Legal and Constitutional Affairs Legislation Committee, and if so, what justice targets were set, how far they have been achieved and the existing gaps in services required to reduce crime that have not yet been addressed;
- (b) Annual statistical data on the indigenous imprisonment rate, disaggregated by gender and age, in relation to the total prisoner population.”

“**Issue 17.** With reference to the previous concluding observations (para. 11), please indicate which recommendations made by the Royal Commission into Aboriginal Deaths in Custody in 1991 have not yet been implemented and the plans to address the gaps in implementation.”

i. Juvenile Justice

“**Issue 18.** With reference to juvenile justice, please provide the following information for each state and major mainland territory of the State party:

- (d) Steps taken to ensure that children in conflict with the law are held separately from adults.”

ii. Corporal Punishment for Children

“**Issue 27.** Please provide information on the measures taken since the last review, including awareness-raising campaigns and parenting education programmes, to end the practice of corporal punishment in all settings, including in the home, and to ensure that corporal punishment of children is explicitly prohibited in all settings in all states and territories in Australia.”

iii. Off-shore Detention Facilities

“**Issue 9.** With reference to the previous concluding observations on the offshore processing of asylum claims, please provide information on:

- (a) The steps taken to ensure that asylum seekers are not being transferred to locations where the reception conditions are inadequate and unsafe, such as those in the regional processing centres of Nauru, Manus Island.”

iv. Remedies for Victims of Torture

“**Issue 21.** Please provide annual statistical data from 2014 onwards, disaggregated by crime, the sex and age range of the victim and the minority group to which he or she belongs, if applicable, on: (a) the number of complaints filed and police reports initiated relating to torture, as well as the number of such complaints and reports related to ill-treatment,

attempted commission of, or complicity or participation in, such acts, and killings or excessive use of force allegedly committed by or with the acquiescence or consent of law enforcement, security, military or prison personnel; (b) the number of investigations initiated as a result of those complaints and by which authority; (c) the number of those complaints that were dismissed; (d) the number of those complaints that led to prosecutions; (e) the number of those complaints that led to convictions and the penal and disciplinary sanctions that were applied to public officials who were found guilty, including the length of prison sentences; (f) the number of ex officio investigations into cases of torture and ill-treatment and the number of ex officio prosecutions per year; and (g) the number of cases of torture or ill-treatment reported by doctors following medical examinations of detainees, and the outcome of those cases.”

E. Purpose of the Shadow Report

This Shadow Report is submitted to the Torture Committee to demonstrate that the government of Australia has failed to fulfill its obligation under the Torture Convention to protect the human rights of all peoples within its jurisdiction, specifically:

- a. The Australian government has failed to prevent Indigenous peoples’ hyperincarceration in prisons in cruel, inhuman and degrading conditions.
- b. The Australian government has failed to protect children who are forced to endure cruel, inhuman, and degrading treatment in prison conditions.
- c. The Australian government has failed to protect its children from corporal punishment, with children experiencing cruel, inhuman and degrading treatment
- d. The Australian government has failed to protect migrants in offshore immigration detention centres / prisons from cruel, inhuman, and degrading treatment in prison conditions.
- e. The Australian government has failed to ensure a right to redress and compensation for victims of cruel, inhuman or degrading treatment or punishment.
- f. The Australian government has failed to keep data regarding victims of cruel, inhuman or degrading treatment or punishment under systematic review.
- g. The Australian government has failed to ensure victims of cruel, inhuman or degrading treatment or punishment have a right to complain.

Furthermore, this Shadow Report offers recommendations on each of the issues that may assist Australia to fulfill its Torture Convention obligations. The contributors of this report emphasize the importance of Australia eradicating cruel, inhuman, or degrading treatment or punishment within Australia and wherever Australia exercises jurisdiction.

**Proposed Recommendations to the
United Nations Committee Against Torture
Under the United Nations Convention Against Torture and
Cruel, Inhuman or Degrading Treatment or Punishment
to Protect Rights of Indigenous Peoples in Prisons (including Indigenous Women),
Children in Prisons with Adults and in Other Cruel and Inhuman Conditions,
Children Suffering Corporal Punishment, and
Migrants in Offshore Immigration Detention Centres / Prisons**

We respectfully request that the United Nations Torture Committee adopt the following recommendations and urge Australia to comply fully with the Torture Convention and to afford fully all rights hereunder to Australian and non-Australian citizens in Australia and Elsewhere where Australia Exercises Jurisdiction and Control:

I. Proposed Recommendations Regarding Hyperincarceration of Indigenous People (including Women), Cruel Conditions, and Failure to Address Both Issues

Proposed Recommendation # 1 of 24: End Hyperincarceration

The Committee Against Torture urges Australia to end the hyperincarceration of Indigenous peoples, including hyperincarceration of women and children.

Proposed Recommendation # 2 of 24: 1991 Royal Commission Recommendation

The Committee Against Torture urges Australia to implement all recommendations from the 1991 Royal Commission on Aboriginal Deaths in Custody.

Proposed Recommendation # 3 of 24: Implement Closing the Gap

The Committee Against Torture urges Australia to implement all programs and resources set forth in the national Closing the Gap strategy designed to reduce disproportionate prison rates.

Proposed Recommendation # 4 of 24: Fair Policing Practices

The Committee Against Torture urges Australia to design and adopt fair policing practices that do not facially discriminate or result in a discriminatorily disparate impact on Indigenous peoples, including women and children.

Proposed Recommendation # 5 of 24: Create and Enforce Reasonable Restraint and Shackling Policy

The Committee Against Torture urges Australia to stop shackling pregnant women, in conformity with the Mandela Rules and the Torture Convention.

Proposed Recommendation # 6 of 24: End the Practice of Strip Searching Prisoners

The Committee Against Torture recommends that Australia abolish the practice of strip searching prisoners.

Proposed Recommendation # 7 of 24: Healthcare Support for Indigenous People in Prison

The Committee Against Torture recommends that Australia provide adequate healthcare for Indigenous prisoners.

Proposed Recommendation # 8 of 24: Implement a National Preventive Mechanism (NPM)

The Committee Against Torture recommends that Australia implement a National Preventive Mechanism (NPM) as required by Article 17 of the Optional Protocol to the Convention Against Torture.

Proposed Recommendation # 9 of 24: Decriminalize Public Drunkenness

The Committee Against Torture urges Australia to decriminalize public drunkenness throughout Australia.

II. Proposed Recommendations Regarding Conditions at Banksia Hill Detention Centre and Incarcerating Children With Adults

Proposed Recommendation #10 of 24: End Lockdowns for Children in Prison that Force Children to Remain in Their Cells for Extended Periods

The Committee Against Torture recommends that Australia end the practice of lockdown for children in prison, that force children to remain in their cells for extended periods.

Proposed Recommendation #11 of 24: Adequately Fund All Child Prisons in Australia, including Banksia Detention Centre / Prison

The Committee Against Torture recommends that Australia provide all child prisons with adequate funding for staffing, social welfare services, and other resources needed to prevent the children from being subjected to cruel, inhuman or degrading treatment or punishment.

Proposed Recommendation # 12 of 24: Cease Incarceration of Children at Adult Prison Facilities

The Committee Against Torture urges Australia to stop putting children in prisons with adults.

III. Proposed Recommendations Regarding Children Subjected to Corporal Punishment

Proposed Recommendation # 13 of 24: Prohibit Corporal Punishment Against Children

The Committee Against Torture recommends that Australia prohibit corporal punishment, in all its forms, nationwide, against children.

Proposed Recommendation # 14 of 24: Facilitate State and Territory Corporal Punishment Against Children Laws

The Committee Against Torture recommends that Australia facilitate legal reform in each state and territory in Australia to prohibit corporal punishment of children

Proposed Recommendation # 15 of 24: Develop Effective Programs and Strategies to provide alternatives to corporal punishment against children

The Committee Against Torture recommends that Australia develop effective, culturally appropriate parenting programs and strategies that provide a non-violent alternative to corporal punishment, and ensure that parents, caregivers, and other appropriate people have access to these funded programs and strategies.

IV. Proposed Recommendations Regarding Conditions for Migrants on Offshore Immigration Detention Centres / Prisons

Proposed Recommendation # 16 of 24: Close All Offshore Immigration Detention Centres / Prisons, including the Immigration Detention Centre / Prison at Christmas Island

The Committee Against Torture recommends that Australia close all its offshore immigration detention centres / prisons and related operations for refugees, asylum seekers, persons subjected to deportation or removal orders, or others, including the Detention Centre / Prison at Christmas Island.

Proposed Recommendation # 17 of 24: Create and Implement Lawful Rules for Processing Asylum Claims in a Timely Fashion

The Committee Against Torture recommends that Australia develop lawful rules and regulations to process all asylum claims in a reasonable amount of time.

Proposed Recommendation # 18 of 24: Medical Care for Persons in Immigration Detention

The Committee Against Torture urges Australia to provide all persons subject to an immigration detention with adequate medical and mental health care.

Proposed Recommendation # 19 of 24: Ban Solitary Confinement in Australian Immigration Detention Centres / Prisons, on Christmas Island and Anywhere Else.

The Committee Against Torture urges Australia to end solitary confinement practices at all Australian Immigration Detention Centres / Prisons, including at Christmas Island.

Proposed Recommendation # 20 of 24: Create Separate Facilities for Asylum Seekers and “501s”

The Committee Against Torture urges Australia to provide separate facilities for asylum seekers and migrants with revoked visas resulting from decisions made by the Australian Government pursuant to sections 116 and 501 of the Migration Act.

V. Effective Remedies for Victims

Proposed Recommendation # 21 of 24: Fully Implement a Redress and Compensation Tracking System

The Committee Against Torture recommends that Australia implement a national redress and compensation reporting system to ensure a right to redress and compensation pursuant to its Article 16 obligations.

Proposed Recommendation # 22 of 24: Fully Implement a Systematic Review

The Committee Against Torture recommends that Australia implement an accurate national reporting system of complaints, investigations, and outcomes fulfilling its obligation to have a “systematic review” pursuant to its Article 11 obligation.

Proposed Recommendation # 23 of 24: Implement a Complaint Process Reporting System

The Committee Against Torture recommends that Australia implement an accurate national reporting system to track the complaint process of cruel, inhuman or degrading treatment and punishment and their outcomes, to help ensure that victims are fully afforded a right to complain pursuant to Article 13 of the Torture Convention and a right to redress pursuant to Article 16 of the Torture Convention.

Proposed Recommendation # 24 of 24: Implement a Human Rights Act

The Committee Against Torture urges that Australia implement a national Human Rights Act that allows redress and compensation for victims of torture, and cruel, inhuman or degrading treatment or punishment.

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The Main Body of the Shadow Report –

Australia has Violated the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:

Victims Include Indigenous People in Prisons (including Indigenous Women), Children in Prisons with Adults and in Other Cruel and Inhuman Conditions, Children Suffering Corporal Punishment, and Migrants in Offshore Immigration Detention Centres / Prisons

I. Introduction

1. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is Relevant and Binding on Australia

1.1. Torture Convention Requirements.

The Torture Convention is a human rights treaty that defines torture and proscribes the use of torture in Australia as a State Party and elsewhere where Australia exercises jurisdiction or control. The Torture Convention follows from a recognition in Article 55(c) of the United Nations Charter that the United Nations shall promote “universal respect for, and observance of, human rights and fundamental freedoms,” and from Article 5 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights, “both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”⁶ The Torture Convention obligates States Parties to, *inter alia*, refrain from the use of torture and cruel, inhuman or degrading treatment or punishment, to submit periodic reports to the Committee Against Torture on how Australia is complying with its Torture Convention obligations, participate in hearings before the Torture Convention based on the periodic reports prepared by Australia, and follow recommendations the Torture Committee provides to Australia after the hearings.

1.2. Australia’s consent to be bound by the Torture Convention.

Australia signed the Torture Convention on 10 December 1985, and ratified the Convention on 8 August 1989,⁷ and thus expressed Australia’s consent to be bound by the Torture Convention.

⁶ United Nations, *Treaty Series: Treaties and international agreements registered or filed and recorded with the Secretariat of the United Nations*, vol. 1465, p. 113 https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&clang=en; <https://treaties.un.org/doc/Publication/UNTS/Volume%201465/v1465.pdf>

⁷ United Nations, Treaty Collection, Depository, Chapter IV (Last Updated 10 January 2022) https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&clang=en

1.3. Optional Protocol to the Torture Convention Requirements.

The Optional Protocol to the Torture Convention (“Torture Convention Optional Protocol”) is a human rights treaty that sets up a system in which detention facilities are inspected in States Parties, to supplement protections provided for in the Torture Convention.

1.4. Australia’s consent to be bound by the Optional Protocol to the Torture Convention.

Australia signed the Torture Convention Optional Protocol on May 19, 2009, and ratified it on December 21, 2017,⁸ thus expressing its consent to be bound by the Optional Protocol to the Torture Convention.

2. Torture Convention Provisions that Relate to Indigenous Peoples in Prisons (including women), Children in prison, Children Suffering from Corporal Punishment, and Migrants in Offshore Immigration Detention Centres / Prisons include⁹:

2.1. Torture Convention Article 1 provides:

“1. For the purposes of this Convention, the term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.”

2.2. Torture Convention Article 2(1) provides:

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2.3. Torture Convention Article 11 provides:

“Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons

⁸ United Nations, *UN Treaty Body Database*
https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=9&Lang=EN

⁹ UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Resolution 39/46, Art. 1, 2(1), 11, 13, and 16, (10 December 1984), <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>

subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.”

2.4. Torture Convention Article 13 provides:

“Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.”

2.5. Torture Convention Article 16 provides:

“1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.”

3. What is the definition of “cruel, inhuman or degrading treatment or punishment” according to the Torture Convention and the Torture Committee?

3.1. The Torture Convention, in addition to prohibiting “torture” (Article 1 and Article 2), also prohibits “cruel, inhuman or degrading treatment or punishment.” The Torture Convention does not expressly provide a definition of “cruel, inhuman or degrading treatment or punishment” nor is there yet any international legal definition of “cruel, inhuman or degrading treatment or punishment.” However, Article 16¹⁰ of the Torture Convention describes it as comprising:

“Acts... which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”.

3.2. Defining “cruel, inhuman, or degrading treatment or punishment” requires reviewing the elements of “torture,” while recognizing that “[i]n practice, the definitional threshold between [cruel, inhuman or degrading treatment or punishment] and torture is often not clear.”¹¹

¹⁰ *Id.* Article 16.

¹¹ UN. Doc. CAT/C/GC/2, Committee Against Torture, *General Comment No. 2, para 3: Implementation of Article 2 by States Parties*, 24 January 2008, available at <https://digitallibrary.un.org/record/618009?ln=en>. In 2008, the Torture Committee

- 3.3.** For purposes of this Shadow Report on Australia’s violation of the Torture Committee, the Torture Committee will examine portions of the definition of torture (article 1 of the Torture Convention) that shed light on the definition of “cruel, inhuman or degrading treatment or punishment” (Article 16 of the Torture Convention) that are relevant to Australia’s violations. The Torture Committee, when assessing whether Australia perpetrated cruel, inhuman or degrading treatment or punishment, should consider whether Australia engaged in the following acts, but at levels that “do not amount to torture”.
- 3.3.1.** There must be “any act causing severe pain or suffering, whether physical or mental”;
- 3.3.2.** That act “must be intentionally inflicted on a person for various purposes . . . including or for any reason based on discrimination of any kind”;
- 3.3.3.** The pain or suffering must be inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity; and
- 3.3.4.** And, “torture does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”.
- 3.4.** The Torture Committee appears to not draw major distinctions between “cruel” or “inhuman” treatment or punishment, but has recognized that these are each and both other forms of “ill-treatment” that “do not amount to torture”. On the other hand, “degrading treatment or punishment” might be associated with embarrassing or humiliating a victim.¹²
- 3.5.** “Other acts of cruel, inhuman or degrading treatment or punishment”, as prohibited by the Torture Convention, is a broad concept.
- 3.6.** The Australian Government has perpetrated cruel, inhuman or degrading treatment, in breach of the Torture Convention, against Indigenous people in prisons (including Indigenous women), children with adults in prison and in other cruel and inhuman prison conditions, children suffering from corporal punishment, and migrants in off-shore immigration detention centres / prisons.

promulgated General Comment No. 2 titled “Implementation of Article 2 by States Parties”. This General Comment addressed cruel, inhuman or degrading treatment or punishment – which it collectively referred to as “ill-treatment”. Paragraph 3 of General Comment No. 2 provides, in relevant part:

“3. The obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter ‘ill-treatment’) under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture.”

¹² Manfred Nowak and Elizabeth McArthur, *United Nations Convention Against Torture: a commentary*, Oxford University Press, p. 558, para 44 (2008), “degrading treatment or punishment can be defined as the infliction of pain or suffering, whether physical or mental, which aims at humiliating the victim.”

4. Australia has violated the Torture Convention Articles 1, 2 and 16, causing harm to Indigenous people in prisons (including Indigenous women), children with adults in prison and in other cruel and inhuman prison conditions, children suffering from corporal punishment, and migrants in offshore immigration detention centres / prisons.

4.1. Australia breached its obligation to prevent cruel, inhuman, or degrading treatment or punishment under the Torture Convention, as follows:

4.1.1. Australia breached Articles 2 and 16 by subjecting Indigenous Women to inhuman living conditions and disproportionately incarcerating Indigenous people when compared to non-Indigenous populations.

4.1.2. Australia breached Article 16 by subjecting children in detention centres / prisons to cruel, inhuman, and degrading conditions and failing to protect children imprisoned with adults.

4.1.3. Australia breached Article 16 by failing to prevent corporal punishment in Australia.

4.1.4. Australia breached Article 16 by systematically sending migrants to offshore immigration detention centres / prisons to face cruel, inhuman and degrading conditions.

4.1.5. Australia breached Articles 11 and 16 by failing to provide effective remedies for violations of the Torture Convention.

VIII. Indigenous People Imprisoned in Violation of the Torture Convention

A. Issues

5. Australia violates Article 16 of the Torture Convention by hyper-imprisoning Indigenous people, in a discriminatory fashion, resulting in severe physical and mental harm to Indigenous prisoners and to the Indigenous community as a whole.
6. Australia violates Article 2 of the Torture Convention by not taking effective measures to prevent the hyperincarceration of Indigenous people and by not addressing long-standing issues at the root of the problem.
7. Australia violates Article 16 of the Torture Convention by subjecting Indigenous women to cruel, inhuman, degrading treatment conditions in prisons, in a discriminatory fashion. Because Indigenous women are overrepresented in prisons and have different identities and backgrounds than non-Indigenous women, the conditions affect them at a disproportionate rate.
8. Australia violates Article 2 of the Torture Convention by failing to take effective measures to ensure prison conditions are not cruel, inhuman, or degrading, including failure to provide adequate healthcare, in a discriminatory fashion.

B. Hyperincarceration¹³ of Indigenous People

9. **Australia's Torture Convention Obligation under Article 16.** Article 16 of the Convention against Torture states that Australia shall: "Undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment."¹⁴
10. **Non-Discrimination and Cruel, Inhuman or Degrading Treatment.** In the General Comment No. 2, the Torture Committee stated:

"The principle of non-discrimination is a basic and general principle in the protection of human rights and fundamental to the interpretation and application of the [Torture] Convention."¹⁵

¹³ Thalia Anthony and Harry Blagg, *Hyperincarceration and Indigeneity*, *Oxford Research Encyclopedia, Criminology and Criminal Justice* p. 2 (2020) (Explaining the use of the term "hyperincarceration" to 'describe the phenomenon of overrepresentation in the criminal justice system.')

¹⁴ U.N. General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Resolution 39/46, Art. 16, (10 December 1984), <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>

¹⁵ UN. Doc. CAT/C/GC/2, Committee Against Torture, *General Comment No. 2, para 20: Implementation of Article 2 by States Parties*, 24 January 2008, available at <https://digitallibrary.un.org/record/618009?ln=en>

Longstanding discrimination against Indigenous peoples in Australia can be demonstrated by showing directly policies and practices of discrimination, or by showing that policies and practices of discrimination disparately and negatively affect Indigenous peoples, with discrimination being at the heart of Australia's perpetration of cruel, inhuman, or degrading treatment against Indigenous people in Australia.

11. Indigenous Australians are overrepresented in prisons.

Indigenous peoples in Australia comprise about 3% of the population in Australia.¹⁶ However, Indigenous peoples represent nearly 30% of the prison population.¹⁷

Appendix A to this Shadow Report contains a Chart produced by the Australian Government in 2019 in its 6th Periodic Report to the Torture Committee that shows the disproportionately high rate of incarceration for Indigenous people versus non-Indigenous people in Australia. The Australian Government Chart in Appendix A disaggregates Indigenous versus non-Indigenous incarceration rates of all Australian States and Territories.¹⁸ For example, the Chart shows that the Northern Territory of Australia has the second largest rate of imprisoned indigenous populations per Australia State, and Indigenous people in New South Wales in 2016 - 2017 were over thirteen times more likely than non-Indigenous people in New South Wales to be imprisoned, that is, 13.7 Indigenous persons (Aboriginal and Torres Strait Islander persons) were incarcerated for every 1 non-Indigenous person incarcerated in New South Wales in 2016 - 2017.¹⁹

12. The number of Indigenous women incarcerated compared to the general population is concerning.

Indigenous women are vastly overrepresented in prison compared to their non-Indigenous counterparts.²⁰ Additionally, "Aboriginal women often care for both their biological and nonbiological children within extended family and community networks... . The higher rate of imprisonment has 'significant consequences on their communities and potentially expose[s] children to risk of neglect, abuse, hunger and homelessness.'"²¹ Even after release, the hyperincarceration of the women has a damaging effect on the households.²² In multiple ways, the Australian Government is perpetrating

¹⁶ Human Rights Watch, *Australia: Act on Indigenous Deaths in Custody* (14 April 2021) <https://www.hrw.org/news/2021/04/14/australia-act-indigenous-deaths-custody>

¹⁷ *Id.*

¹⁸ Appendix A is titled: "Appendix A: Hyperincarceration of Indigenous People in Australia, by State, per a Chart Contained in Australia's 6th Periodic Report Submitted to the United Nations Torture Committee under Article 19 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc. CAT/C/AUS/6, para. 41 (28 March 2019)"

¹⁹ U.N. Doc. CAT/C/AUS/6, Australia's 6th Periodic Report to the Torture Committee (2019) <https://digitallibrary.un.org/record/3823101?ln=en>

²⁰ Thalia Anthony, Gemma Sentance, & Larissa Behrendt, "We're Not Being Treated Like Mothers": Listening to the Stories of First Nations Mothers in Prison, *Laws* 2021, 10, 74 p. 13 (2021) ("First Nations women in Australia comprise one-third (36 per cent) of the female population, yet only 1.29 per cent of the general adult female population.")

²¹ Lorena Allam, *Number of women sentenced to jail in Queensland jumped 338%, with a third being Indigenous*, *The Guardian* (August 16, 2022), <https://www.theguardian.com/australia-news/2022/aug/17/number-of-women-sentenced-to-jail-in-queensland-jumped-338-with-a-third-being-indigenous>

²² Thalia Anthony, Gemma Sentance, & Larissa Behrendt, "We're Not Being Treated Like Mothers": Listening to the Stories of First Nations Mothers in Prison, *Laws* 2021, 10, 74, p. 13 (2021) (Explaining how the hyperincarceration of women in prison leads

cruel, inhuman, and degrading treatment against Indigenous women in prisons like shackling and strip searching practices.

13. Hyperincarceration of Indigenous children remains a problem.

Indigenous children in Australia also suffer from hyperincarceration at alarming rates. In all Australian territories in the year 2020-2021, Aboriginal and Torres Strait Islander youth were at least four times as likely to face imprisonment than non-Indigenous children.²³ In the Northern Territory, Aboriginal and Torres Strait Islander youth were approximately 31 times as likely to be incarcerated.²⁴ This cruel, inhuman or degrading treatment disproportionately affects Indigenous children.

14. Disparities in prison reduction numbers since COVID-19.

Even as Australia's overall prison population declined from 2019 to 2021 during the COVID-19 pandemic, Indigenous incarceration decreased at a significantly lower rate than non-Indigenous.²⁵

15. Disproportionate death rates of Indigenous population to non-Indigenous in total population statistics.

Indigenous people's deaths accounted for 18% of deaths while in custody in Australia in the year 2020-2021,²⁶ though Indigenous peoples only comprise 3% of the Australian population. Hyperincarceration leads to disproportionately higher rates of Indigenous deaths relative to the general population. Furthermore, Jamie McConnachie of the National Aboriginal and Torres Strait Islander Legal Services states, "A prison sentence should not be a death sentence."²⁷

16. UN Torture Committee Report on Hyperincarceration.

The UN Torture Committee has expressed concerns about Australia's disproportionate number of Indigenous peoples imprisoned compared to the number of non-Indigenous people imprisoned as it relates to Articles 2, 11, and 16 of the Convention, including, for example, in the Torture Committee's

to issues to employment after release, increased likelihood of child protection authorities removing their children from the home, and lack of access to housing.)

²³ Australia Sentencing Advisory Council, *Indigenous Young People in Detention* (2021).

²⁴ *Id.*

²⁵ Alex James and Madeline Austin, *Prison numbers have fallen during the COVID pandemic, but not for the First Nations people*, ABC NEWS (7 Nov 2021), <https://www.abc.net.au/news/2021-11-08/prison-numbers-down-but-not-for-first-nations-people/100596344> ("Between September 2019 and 2021, the number of male prisoners fell 8.6 per cent and female prisoners fell 19.4 per cent. Meanwhile, the number of Aboriginal male prisoners fell 2.3 per cent and Aboriginal female prisoners fell 9.2 per cent.").

²⁶ Laura Doherty, *Statistical Report 37: Deaths in custody in Australia in 2020-21*, Australian Institute of Criminology, p. 3 (2021) https://www.aic.gov.au/sites/default/files/2021-12/sr37_deaths_in_custody_in_australia_2020-21_v3.pdf.

²⁷ Cameron Gooley, *Spotlight on Vic justice system after Aboriginal man dies in custody*, NITV NEWS (12 Aug 2022) <https://www.sbs.com.au/nitv/article/2022/08/12/spotlight-vic-justice-system-after-aboriginal-man-dies-custody1> (Discussing Indigenous deaths in prison following a death in 2022 at a Melbourne maximum security prison.).

2014 Concluding Observations to Australia's 4th and 5th periodic reports.²⁸ The Committee noted, "overrepresentation of indigenous people in prisons seriously impacts indigenous young people and indigenous women."²⁹ The Torture Committee appears to have affirmed the position of advocates that hyperincarceration is not just difficult for those imprisoned, but has a severe mental affect on the entire Indigenous population.³⁰

17. The Torture Convention protects racial minorities in criminal justice systems.

The Torture Committee has expressed concern about vulnerable groups, including racial and ethnic minorities, being treated unfairly in a criminal justice system, for example, by the excessive use of force from law enforcement officers.³¹

18. The U.N. Special Rapporteur on the Rights of Indigenous Peoples expressed concerns about hyperincarceration of Indigenous people in Australia.

On a 2017 visit to Australia, the Special Rapporteur on the Rights of Indigenous Peoples expressed numerous concerns about the hyperincarceration of Indigenous peoples.³²

19. Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance concerns about hyperincarceration.

In 2017, the United Nations Special Rapporteur on the Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance noted that disproportionate number of Indigenous peoples in prison in Australia begins with policing practices with a discriminatory effect:

"[T]he current policing of indigenous communities is too punitive and needs to change urgently as its consequences can only lead to even further devastation for these communities. The techniques that Australia has pioneered in policing non-indigenous sections of the population would need to be harnessed to address the growing crisis of incarceration of indigenous persons".³³

²⁸ UN. Doc. CAT/C/AUS/CO/4-5, (2014) *Concluding observations on the combined fourth and fifth periodic reports on Australia*, para. 12 <https://digitallibrary.un.org/record/790514?ln=en>.

²⁹ *Id.*

³⁰ *See id.* See also Thalia Anthony, Gemma Sentance, & Larissa Behrendt, "We're Not Being Treated Like Mothers": Listening to the Stories of First Nations Mothers in Prison, *Laws* 2021, 10, 74, p. 9 (2021) (Specifically discussing women, the hyperincarceration "send[s] a message that the First Nations mothers inside are not good enough.").

³¹ See UN. Doc. CAT/USA/CO/2, (2006) §37, <https://undocs.org/Home/Mobile?FinalSymbol=CAT%2FCO%2FUSA%2FCO%2F2&Language=E&DeviceType=Desktop&LangRequested=False>; UN. Doc. CAT/C/FRA/CO/3, §15 (2006), <https://digitallibrary.un.org/record/572276?ln=en>

³² U.N. Doc. A/HRC/36/46/Add.2, §66-86, *Report of the Special Rapporteur on the Rights of Indigenous Peoples on her visit to Australia* (2017), <https://digitallibrary.un.org/record/1303201?ln=en>

³³ U.N. Doc. A/HRC/35/41/Add. 2, §47 (2017), *Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance on Australia*, <https://www.ohchr.org/en/documents/country-reports/ahrc3541add2-report-special-rapporteur-contemporary-forms-racism-racial>

20. Discrimination or disparate impact from policing practices.

Former Chief Justice of Western Australia Wayne Martin stated:

“Aboriginal people are much more likely to be questioned by police than non-Aboriginal people. When questioned they are more likely to be arrested. If they are arrested, they are much more likely to be remanded in custody than given bail. Aboriginal people are much more likely to plead guilty than go to trial, and if they go to trial, they are much more likely to be convicted. If convicted, they are much more likely to be imprisoned than non-Aboriginal people, and at the end of their term of imprisonment they are much less likely to get parole than non-Aboriginal people”.³⁴

C. Australia has failed to take effective measures under Article 2 to reduce the gap in prison rate disparities between Indigenous and non-Indigenous Australians.

21. Torture Convention Obligation under Article 2.

Article 2 of the Torture Convention provides:

“Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”³⁵

22. Australia is obligated to take effective measures to address the hyperincarceration of Indigenous peoples.³⁶

Through ratification, States Parties to the Torture Convention have, per Article 2, “assumed the implied and inherent legal obligation to implement these measures and achieve reasonable results in eradicating the practice of torture as defined in state policy.”³⁷ Moreover, the Torture Committee has explained that Article 2 not only applies to torture under its definition in Article 1, but to all other articles of the Torture Convention, including Article 16.³⁸ While Australia appears to be engaged in “progressive implementation” to address several root issues of hyperincarceration, such is insufficient to satisfy Australia’s Article 2 obligations.

³⁴ Dechlan Brennan, *Why Australia’s Indigenous People Fear the Police*, The Diplomat (22 Mar 2022), <https://thediplomat.com/2022/03/why-australias-indigenous-people-fear-the-police/>

³⁵ UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, Article 19 https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&clang=en

³⁶ Ahcene Boulesbaa, *The Nature of the Obligations incurred by States Under Article 2 of the UN Convention Against Torture*, (1990) 12 Human Rights Quarterly (HRQ) 53, at p 78 (1990), <https://www.jstor.org/stable/762165>, (Analyzing the principles and travaux preparatoires of Article 2 of the Torture Convention with Article 2 of the Covenant on Civil and Political Rights)

³⁷ *Id.* at p. 56

³⁸ UN. Doc. CAT/C/GC/2, Committee Against Torture, *General Comment No. 2, para 3: Implementation of Article 2 by States Parties*, 24 January 2008, available at <https://digitallibrary.un.org/record/618009?ln=en>

23. History of hyperincarceration.

Indigenous communities continue to be an important part of the global population and they are “considerably more likely to be marginalised, disempowered, impoverished and vulnerable.”³⁹ According to Australian scholars Thalia Anthony and Harry Blagg, hyperincarceration of Indigenous peoples in Australia dates back to colonial practices in Australia.⁴⁰ Anthony and Blagg contend that historically, prisons and the criminal justice system were used by settlers “in tandem with” the settler violence and to push for advancement of colonialism.⁴¹ They assert that after the initial violence, the “Aboriginal Acts” began removing Aboriginal children from their homes and forced confinement of the Indigenous populations,⁴² and maintain that the modern-day laws and policing strategies are a continuation of forced confinement of Indigenous peoples in Australia.⁴³ Anthony and Blagg write:

“The hyperincarceration of Indigenous peoples across settler colonies [existing today] is the logical extension of several centuries of policies, laws, and practices designed to complete the dispossession of Indigenous people as bearers of Indigenous sovereignty.”⁴⁴

24. Australia has not taken effective measures to remedy root causes of the hyperincarceration of Indigenous peoples.

The Australian Government has discussed issues facing Indigenous people in Australia that do not, at least in some cases, directly affect non-Indigenous people, and that may contribute to higher incarceration rates for Indigenous people.⁴⁵ These issues include addressing “child removal, youth detention, child abuse, substance misuse, family violence, low educational attainment, mental and physical health issues, disability, homelessness, unemployment and intergenerational and childhood trauma.”⁴⁶ “Recidivism is rampant” in Indigenous women, and the failure to address these issues contributes to the cycle or imprisonment.⁴⁷

³⁹ Benedict Coyne, Amy MacGuire, & Bethany Butchers, *Margins and Sidelines: The Marginalisation of Indigenous Perspectives in International Climate Governance*, 14 *Newcastle Law Review* 30, p. 31 (2019), https://heinonline-org.proxy.ulib.uits.iu.edu/HOL/Page?collection=journals&handle=hein.journals/nwclr14&id=30&men_tab=srchresults

⁴⁰ Thalia Anthony and Harry Blagg, *Hyperincarceration and Indigeneity*, OXFORD RESEARCH ENCYCLOPEDIA, CRIMINOLOGY AND CRIMINAL JUSTICE p. 6 (2020).

⁴¹ *Id.* at p. 5.

⁴² *Id.* at p. 6-7.

⁴³ *Id.* at p. 8

⁴⁴ *Id.* at p. 4.

⁴⁵ See Australian Government, *Closing the Gap: Commonwealth Implementation Plan*, (2021) <https://www.niaa.gov.au/sites/default/files/publications/commonwealth-implementation-plan-130821.pdf> (Discussing the issues Indigenous Australian’s face compared to non-Indigenous Australians that lead to higher imprisonment rates.)

Page 5 of the *Implementation Plan* notes this:

“This Implementation Plan sets out the actions the Commonwealth is taking to drive and embed real and positive change and how the Commonwealth will contribute to realising the ambition of the National Agreement. This is the first Implementation Plan. It establishes a strong foundation for the Commonwealth to deliver on its commitments and embed the Priority Reforms.”

⁴⁶ *Id.* at p. 48.

⁴⁷ Julius Dennis, *Number of women being sentenced to prison in Queensland quadruples in 15 years*, ABC NEWS (16 Aug 2022), <https://www.abc.net.au/news/2022-08-17/qld-prison-female-incarceration-rate-quadruples-raise-the-age/101336904>

25. Australia has not effectively implemented the State’s “Closing the Gap” strategy.

Since 2008, Australia has developed and relied upon a national strategy called “Closing the Gap” to address inequalities between Indigenous and non-Indigenous Australians.⁴⁸ In 2017, the Special Rapporteur on the Rights of Indigenous Peoples found Australia had failed meaningfully to implement the Closing the Gap strategy that was intended to improve the overall quality of life of Indigenous peoples, including education and employment.⁴⁹ Indeed, former Prime Minister Scott Morrison conceded in 2021 that not enough meaningful progress had been made.⁵⁰ Because the initiatives of the Closing the Gap strategy directly affect incarceration, the failure to meet the standards continue to contribute to the hyperincarceration.⁵¹ Regarding the relationship between Australia’s attempt to close the gap and Indigenous hyperincarceration, one First Nations woman imprisoned in New South Wales stated, “We talked a lot about closing the gap. You know how they create the gap? By taking our children away from us [through imprisonment].”⁵²

26. Australia has refused to adopt all recommendations from the 1991 Royal Commission into Aboriginal Deaths in Custody (“1991 Royal Commission”) that could reduce the imprisonment gap.

The crime of “public drunkenness” in Australia has historically disproportionately affected Indigenous populations, and has led to unequal incarceration rates and death rates in custody.⁵³ The abolition of this crime was recommended by the 1991 Royal Commission, but does not appear to be fully implemented in Australia.⁵⁴ Current concerns also exist about the accuracy of the Deloitte report

⁴⁸ Australian Government, *Closing the Gap: Commonwealth Implementation Plan*, p. 1 (2021) <https://www.niaa.gov.au/sites/default/files/publications/commonwealth-implementation-plan-130821.pdf> (Explaining the background of the strategy.)

⁴⁹ UN. Doc. A/HRC/36/46/Add.2, *Report of the Special Rapporteur on the Rights of Indigenous Peoples on her visit to Australia*, §46-47 (2017), <https://digitallibrary.un.org/record/1303201?ln=en>

⁵⁰ Australian Government, *Closing the Gap: Commonwealth Implementation Plan*, p. 1 (2021) <https://www.niaa.gov.au/sites/default/files/publications/commonwealth-implementation-plan-130821.pdf> (“It is an endeavour built on good faith and the best of intentions. There has been no lack of good will or work. But the results tell us our approach hasn’t made the progress it should.”)

⁵¹ UN. Doc. A/HRC/36/46/Add.2, *Report of the Special Rapporteur on the Rights of Indigenous Peoples on her visit to Australia*, §86 (2017), <https://digitallibrary.un.org/record/1303201?ln=en>, (Applying the Closing the Gap objectives to the imprisonment rates.)

⁵² Thalia Anthony, Gemma Sentance, & Larissa Behrendt, “We’re Not Being Treated Like Mothers”: *Listening to the Stories of First Nations Mothers in Prison*, *Laws* 2021, 10, 74, p. 9 (2021).

⁵³ T. Anthony, K. Jordan, T. Walsh, F. Markham, & M. Williams, *30 years on: Royal Commission into Aboriginal Deaths in Custody recommendations remain unimplemented.*, p. 9 (Centre for Aboriginal Economic Policy Research, Working Paper No. 140/2021) https://caep.cass.anu.edu.au/sites/default/files/docs/2021/4/WP_140_Anthony_et_al_2021.pdf

⁵⁴ Eden Gillespie, *Queensland inquiry considers decriminalising public drunkenness and begging*, *The Guardian* (29 August 2022), <https://www.theguardian.com/australia-news/2022/aug/29/queensland-inquiry-considers-decriminalising-public-drunkenness-and-begging> (Queensland has begun hearings on decriminalisation of public drunkenness, but not enacted any measures. It is the last jurisdiction to not pass legislation to repeal the prohibition.); Adeshola Ore, *Decriminalisation of public drunkenness delayed by Victorian government*, *The Guardian*, (22 April 2022), <https://www.theguardian.com/australia-news/2022/apr/23/decriminalisation-of-public-drunkenness-delayed-by-victorian-government> (The Victorian government has decided to repeal public drunkenness, but has yet to do so.)

heavily relied upon by the Australian government to track the progress made from the 1991 Royal Commission into Aboriginal Deaths in Custody.⁵⁵

D. Australia imposes cruel, inhuman, and degrading conditions for Indigenous peoples in prisons, including conditions that specifically affect women. Furthermore, Australia fails to take effective measures to prevent these conditions.

27. Convention Obligation under Article 16.

Article 16 of the Convention against Torture states that Australia shall: “Undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment.”⁵⁶

28. The Torture Committee has interest in protecting torture or cruel, inhuman, or degrading treatment affecting women.

In the 2008 General Comments No. 2, the Torture Committee stated, “The Committee emphasizes that gender is a key factor. Being female intersects with other identifying characteristics or status of the person such as race, nationality, religion, sexual orientation, age, immigrant status etc. to determine the ways that women and girls are subject to or at risk of torture or ill-treatment and the consequences thereof.”⁵⁷ Because Indigenous women are the fastest growing prison population in the country, Australia’s practices affect them greater than non-Indigenous women.⁵⁸

29. Shackling women during childbirth violates Article 16 of the Torture Convention and Rule 48 of the Mandela Rules.

The Torture Committee previously expressed concerns that the shackling of women during childbirth violates the Torture Convention.⁵⁹ Additionally, Rule 48 of the Mandela Rules bans use of restraint during “labour, childbirth, and immediately after childbirth” with no exceptions.⁶⁰

⁵⁵ T. Anthony, K. Jordan, T. Walsh, F. Markham, & M. Williams, *30 years on: Royal Commission into Aboriginal Deaths in Custody Recommendations Remain Unimplemented*, Centre for Aboriginal Economic Policy Research, Working paper No. 140/2021, p. 1 (2021), https://caep.r.cass.anu.edu.au/sites/default/files/docs/2021/4/WP_140_Anthony_et_al_2021.pdf

(“We maintain that the Deloitte review’s finding that 78% of the 339 recommendations have been fully or mostly implemented is highly questionable, and that it obscures the issue of the effectiveness of any responses to the RCIADIC recommendations.”)

⁵⁶ UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, Art. 16; For a further discussion on the definition and its application, see I Introduction earlier in this report

⁵⁷ UN. Doc. CAT/C/GC/2 (2008), UN Torture Committee General Comments, #2, para. 22, <https://digitallibrary.un.org/record/618009?ln=en>

⁵⁸ UN. Doc. A/HRC/36/46/Add. 2, Report of the Special Rapporteur on the Rights of Indigenous Peoples on her visit to Australia §73, (2017) <https://digitallibrary.un.org/record/1303201?ln=en>

⁵⁹ UN. Doc. CAT/C/USA/CO/2, (2006) para. 33, <https://digitallibrary.un.org/record/580893?ln=en> (The Torture Committee expressing concerns about shackling conditions in the United States during birth.)

⁶⁰ *United Nations Standard Minimum Rules for the Treatment of Prisoners (The Mandela Rules)*, Rule 48, UN. Doc. A/C.3/70/L.3 (2015), <https://digitallibrary.un.org/record/805001?ln=en>

30. Australia violates Article 2 by not enacting measures to prevent the shackling of women during labour or childbirth, which has a disproportionate on Indigenous women as a result of hyperincarceration.

Australia's national policies on use of restraints do not ban shackling during childbirth, an act which the Torture Committee has ruled violates the Torture Convention.⁶¹ Principle 3.1.16 of the Guiding Principles for Corrections in Australia, written and revised by the Corrective Services Administrative Council in 2018, states, "Instruments of restraint are not used on prisoners receiving treatment for significant medical conditions, such as end of life care or pregnancy, unless there is a serious risk to themselves or others, a substantial risk of escape, or they cannot be restrained by any other means."⁶² The policy defies Rule 48 of the Mandela Rules which completely bans uses of restraint "during labour, childbirth, or immediately after birth."⁶³ The language of the Guiding Principles does not prohibit shackling during childbirth, which has been determined to violate Article 16 of the Torture Convention.⁶⁴ Furthermore, the phrases "serious risk" or "substantial risk" are subjective and create a possibility for misuse. For these reasons, Australia violates Article 2 of the Torture Convention to prevent torture.

31. Western Australia unnecessarily shackles pregnant women during medical care visits, causing severe mental harm.

Western Australia maintains a policy of handcuffing pregnant women to an officer when being transported to medical facilities for prenatal healthcare.⁶⁵ The shackling is a relatively new phenomenon, with the department recently adopting the policy in 2016.⁶⁶ The practice contradicts Australia's own standards of the Guiding Principles of Corrections.⁶⁷ Even though the policy applies to women less than six months pregnant, the Office of the Inspector of Custodial Services, who reports on prison conditions, found women more than six months pregnant were being shackled, even though pregnant women pose an extremely low risk to escape or create harm.⁶⁸ The use of shackles is

⁶¹ UN. Doc. CAT/C/USA/CO/2, (2006) para. 33, <https://digitallibrary.un.org/record/580893?ln=en> (The Torture Committee expressing concerns about birth shackling conditions in the United States.)

⁶² Australian Corrective Services Administrative Council, *Guiding Principles for Corrections in Australia*, (2018), https://files.corrections.vic.gov.au/2021-06/guiding_principles_correctionsaustrevised2018.pdf

⁶³ UN. Doc. A/C.3/70/L.3 (2015), *United Nations Standard Minimum Rules for the Treatment of Prisoners (The Mandela Rules)*, Rule 48, <https://digitallibrary.un.org/record/805001?ln=en>

⁶⁴ Anita Mackay, *Human Rights guidance for Australian prisons: Complementing implementation of the OPCAT*, 46 *Alternative Law Journal* 20, p. 24 (2021), <https://journals.sagepub.com/doi/full/10.1177/1037969X20962863>

⁶⁵ Office of the Inspector of Custodial Services, *Routine restraint of people in custody in Western Australia*, p. 12-13 (May 2020), <https://www.oics.wa.gov.au/wp-content/uploads/2020/06/Routine-use-of-restraints-review.pdf> ("Department policy requires women in custody who are less than six months (26 weeks) pregnant to be routinely restrained during escort outside of the prison. Between 2014 and 2018, 67 pregnant women were held in custody. Most of these women were Aboriginal (80%).")

⁶⁶ *Id.* at 12-13. ("Up until 2016, pregnant women were escorted unrestrained regardless of their term of pregnancy. This policy was changed in response to a woman, who was four months pregnant, escaping custody.")

⁶⁷ Australian Corrective Services Administrative Council, *Guiding Principles for Corrections in Australia*. (2018), https://files.corrections.vic.gov.au/2021-06/guiding_principles_correctionsaustrevised2018.pdf (Principle 3.1.16 states women should not be restrained when receiving medical treatment for pregnancy.)

⁶⁸ Office of the Inspector of Custodial Service, *Routine restraint of people in custody in Western Australia*, Page V (May 2020), <https://www.oics.wa.gov.au/wp-content/uploads/2020/06/Routine-use-of-restraints-review.pdf>

particularly distressing for Indigenous women, who can feel “that they [are] ‘re-living history.’”⁶⁹ The women suffer severe mental harm, thus violating Article 16 of the Torture Convention.

32. The UN Torture Committee has expressed concerns over strip searches.

Long ago, the Torture Committee stated concerns about strip searching prisoners:

“With regard to body searches, the Committee has recommended that searches to both visitors and detained persons should be duly regulated and conducted only when strictly necessary and proportionate to the intended objective by trained personnel. Searches should be conducted in private, and in a way that is the least intrusive and most respectful of the individual dignity and integrity. Whenever possible, States should use alternatives, such as electronic detection scanning methods. . . Often concerns were expressed by the Committee for the ‘frequent’, ‘systematic’, ‘widespread’, ‘routine’ use of body searches. Similarly, in a report on France, the Committee showed concerns for the ‘intrusive and humiliating nature’ of body searches, especially internal, and regretted that the procedures regulating the frequency and methods of searches in prisons and detention centres were determined by the prison authorities themselves.”⁷⁰

33. Australia maintains a practice of cruel degrading strip searches resulting in severe mental harm.

Prison employees frequently subject women to strip search practices, including one report labeling a search as “degrading and traumatising.”⁷¹ Even though the Office of the Inspector of Custodial Services of Western Australia states that the practice is largely ineffective against women and is “routine, excessive, and rarely driven by intelligence.”⁷² This is especially important because Indigenous women imprisoned in Australia are more likely to be a victim of family violence or sexual abuse.

Up to 90% of Indigenous female prisoners in Western Australia were victims of family violence.⁷³ Research suggests that Aboriginal and Torres Strait Islander female prisoners were more likely to have experienced sexual and family violence in most, or all, of Australian territories

⁶⁹ Report: Ombudsman investigation into the Department for Correctional Services in relation to the restraining and shackling of prisoners in hospitals. p. 29 (July 2012) https://www.ombudsman.sa.gov.au/publication-documents/investigation-reports/2012/correctional_services_july_2012.pdf

⁷⁰ Manfred Nowak and Elizabeth McArthur, *United Nations Convention Against Torture: a commentary*, 2nd edition, Oxford University Press, p. 329-330, para. 37 (2019) <http://fdslive.oup.com/www.oup.com/academic/pdf/openaccess/9780198846178.pdf>; UN. Doc. CAT/C/FRA/CO/4-6 (2010), para. 28, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2FCO%2FFRA%2FCO%2F4-6&Lang=en

⁷¹ Association for the Prevention of Torture, *Australia: Detainee’s courage drives change on strip searches*, (Nov. 24, 2021), https://www.apt.ch/en/news_on_prevention/australia-detainees-courage-drives-change-strip-searches

⁷² Office of the Inspector of Custodial Services, *Strip searching practices in Western Australia Prisons*, p. 16 (2019), <https://www.oics.wa.gov.au/wp-content/uploads/2019/04/Strip-Searches-Review.pdf>

⁷³ Australian Law Reform Commission, *Pathways to Justice - Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Page 351 (2017), https://www.alrc.gov.au/wp-content/uploads/2019/08/final_report_133_amended1.pdf

than non-Indigenous women.⁷⁴ The strip search technique on the trauma-susceptible population of Indigenous women causes severe mental harm and rises to the level of cruel, inhuman, and degrading under Article 16.⁷⁵ While some prisons have started investing in less invasive scanning technology,⁷⁶ we have seen no evidence that Australia has taken a national approach to implementing the scanners. Because Indigenous women are imprisoned at much higher rates than non-Indigenous women and are more likely to experience familial or sexual violence, these cruel and degrading practices affect them disproportionately.

34. Failure to provide adequate medical care to detainees violates obligations under Article 16.

The UN Torture Committee has expressed concerns on multiple occasions about States' failure to provide medical care, resulting in those States violating their obligations under the Convention Against Torture.⁷⁷

35. Australia fails to provide adequate healthcare for Indigenous-specific needs.

Following a 2017 visit to Australia, the Special Rapporteur on the Rights of Indigenous Peoples wrote:

“Adequate and culturally appropriate health services in detention facilities are lacking and should be ameliorated by the targeted recruitment of Aboriginal health professionals.”⁷⁸

Australia's inadequate healthcare system for Indigenous prison populations enables imprisoned people to die from preventable illnesses, including substance abuse self-inflicted wounds⁷⁹ and ear infections, which Indigenous peoples are more susceptible to than non-Indigenous people.⁸⁰

⁷⁴ Australian Law Reform Commission, *Pathways to Justice - Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Page 351 (2017), https://www.alrc.gov.au/wp-content/uploads/2019/08/final_report_133_amended1.pdf (Discussing the gap between Indigenous women subjected to family violence compared to non-Indigenous women subjected to family violence in Western Australia, New South Wales, and Victoria.)

⁷⁵ Anita Mackay, *Towards Human Rights Compliance in Australian Prisons*, p. 28 (2020), <https://library.oapen.org/handle/20.500.12657/43143> (Discussing reports from the Ombudsman from both Queensland and Victoria, along with other sources, the traumatic experiencing of strip searching on Indigenous women who have suffered familial violence.)

⁷⁶ Association for the Prevention of Torture, *Australia: Detainee's courage drives change on strip searches*, (24 November 2021), https://www.apt.ch/en/news_on_prevention/australia-detainees-courage-drives-change-strip-searches (Discussing how one particularly cruel and degrading strip search incident led Australian Capital Territory to begin investing in less-invasive scanners.)

⁷⁷ UN. Doc. CAT/C/NPL/CO/2, §31 (2007), <https://digitallibrary.un.org/record/564705?ln=en> ; A/53/44, §175 (1998), <https://digitallibrary.un.org/record/262524?ln=en>

⁷⁸ UN. Doc. A/HRC/36/46/Add. 2, §81 (2017) Special Rapporteur on the Rights of Indigenous Peoples on her visit to Australia, <https://digitallibrary.un.org/record/1303201?ln=en>

⁷⁹ Nakari Thhorpe, *Death of Aboriginal man in prison cell 'brings great shame on white Australia', inquest finds*, ABC NEWS (6 July 2022), <https://www.abc.net.au/news/2022-07-06/kevin-bugmy-custody-death-inquest-findings/101213490>

⁸⁰ Dijana Damjanovic, *Mootijah Shillingsworth's death in custody ruled 'preventable'* NITV NEWS, (22 July 2022) <https://www.sbs.com.au/nitv/article/2022/07/22/mootijah-shillingsworths-death-custody-ruled-preventable> (Describing a 2022 case in which a man died from an infection from treatable ear infection that was not properly addressed.)

E. Failure to Address Cruel Conditions for Indigenous Peoples

36. Australia's Torture Convention Obligations under Article 2.

Article 2 of the Torture Convention states: "Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction."⁸¹

37. Australia must take "urgent measures" to prevent cruel conditions.

A State Party that consents to be bound by the Torture Convention or its Optional Protocol must reflect those instruments in the States Party's policies and procedures and "must be transposed into clear national provisions and instructions."⁸² Though a specific timeline for implementation is not provided, the UN Torture Committee has previously stated a State Party shall take "urgent measures" to prevent torture or cruel, inhuman, or degrading punishment.⁸³

38. Australia's obligation to create a National Preventive Mechanism under the Optional Protocol to the Convention Against Torture.

Australia ratified the Torture Convention Optional Protocol in 2017 and is obligated to create a National Preventive Mechanism ("NPM") to monitor detention conditions. The deadline to complete the implementation of the Optional Protocol was January 2022.⁸⁴ NPMs are "independent domestic bodies. . . which conduct both announced and unannounced visits" to monitor conditions to determine if conditions amount to torture or cruel, inhuman, or degrading treatment.⁸⁵ According to Torture Convention Optional Protocol Article 3, States parties should set up, designate or maintain at domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment.⁸⁶ Under Articles 18, 19, 20, and 21 of the Torture Convention Optional Protocol, "States' [have a] legal obligation of ensuring that members of NPMs have the relevant expertise, that these mechanisms have (i) sufficient financial and human resources, (ii) unrestricted access to all places where persons are, or may be, deprived of liberty, and (iii) the ability to work without threats or sanctions being made against them or against those who work with them or provide them with relevant information."⁸⁷

⁸¹ UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, (10 December 1984), United Nations, Treaty Series, vol. 1465, p. 85, Art. 2

⁸² Manfred Nowak and Elizabeth McArthur, *United Nations Convention Against Torture: a commentary*, Oxford University Press, p. 97, para. 22 (2008)

⁸³ UN. Doc. CAT/C/GTM/CO/4, §16 (2006), <https://digitallibrary.un.org/record/579982?ln=en> ("The State party should take urgent measures to ensure that no persons within its jurisdictions are subjected to torture, or to inhuman or degrading treatment.")

⁸⁴ Laura Grenfell & Steven Caruana, *Are we OPCAT ready? So far, bare bones*, *Alternative Law Journal*, Vol. 47, 54 (2022), <https://journals.sagepub.com/doi/full/10.1177/1037969X211065185>

⁸⁵ *Id.*

⁸⁶ UN General Assembly, *Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment*, (9 January 2003), A/RES/57/199, <https://www.ohchr.org/sites/default/files/cat-one.pdf>

⁸⁷ United Nations. Office of the High Commissioner of Human Rights, *Preventing Torture: The Role of national Preventive Mechanisms: A Practical Guide*, p. 1. (Discussing the legal requirements for NPMs that States' must comply with.)

39. The importance of Australia establishing an NPM.

The impact of NPMs is monumental. Dr. Anita Mackay writes, “The NPM offers the most potential for improving the human rights of people in Australian prisons.”⁸⁸ Former High Commissioner for Human Rights Zeid Ra’ad Al Hussein emphasized the importance of NPMs, and wrote, “Owing to their regular visits to places of detention at national and local levels. . . NPMs have a key role to play in preventing torture and complementing the work of international bodies.”⁸⁹ Australia’s failure to implement the Torture Convention Optional Protocol is a failure to implement “one of the most effective legislative measures to prevent torture in the sense of Article 2.”⁹⁰

40. Australia has not taken effective steps to prevent torture by its failure to implement the Optional Protocol to the Convention.

As recently as early 2022, experts report that the country was not compliant with the NPM standards.⁹¹ Australia has taken a “dispersed” approach to compliance, with each territorial jurisdiction responsible for implementation.⁹² As a result, all territories have taken different approaches, with differing results. However, one result persists: non-compliance. Professor Laura Grenfell and researcher Steven Caruana write, “A survey of Australian jurisdictions indicates that only the ‘bare bones’ of the OPCAT implementation framework is present.”⁹³

F. Proposed Recommendations Regarding Hyperincarceration of Indigenous Peoples, Cruel Conditions, and Failure to Address Both Issues

Proposed Recommendation #1 of 24: End Hyperincarceration

The Committee Against Torture urges Australia to end the hyperincarceration of Indigenous peoples, including hyperincarceration of women and children.

Proposed Recommendation # 2 of 24: 1991 Royal Commission Recommendation

The Committee Against Torture urges Australia to implement all recommendations from the 1991 Royal Commission on Aboriginal Deaths in Custody.

⁸⁸ Anita Mackay. *Towards Human Rights Compliance in Australian Prisons*, p. 54 (2020), <https://library.oapen.org/handle/20.500.12657/43143>

⁸⁹ United Nations Office of the High Commissioner of Human Rights, *Preventing Torture: The Role of national Preventive Mechanisms: A Practical Guide*, p. iii

⁹⁰ Manfred Nowak and Elizabeth McArthur, *United Nations Convention Against Torture: a commentary*, Oxford University Press, p. 115, §54 (2008)

⁹¹ Laura Grenfell & Steven Caruana, *Are we OPCAT ready? So far, bare bones*, *Alternative Law Journal*, Vol. 47(1), p. 54 (2022), <https://journals.sagepub.com/doi/full/10.1177/1037969X211065185>

⁹² *Id.* at 55.

⁹³ *Id.* at 57.

Proposed Recommendation # 3 of 24: Reduce Disproportionate Prison Rates

The Committee Against Torture urges Australia to implement all programs and resources set forth in the national Closing the Gap strategy designed to reduce disproportionate prison rates.

Proposed Recommendation # 4 of 24: Fair Policing Practices

The Committee Against Torture urges Australia to design and adopt fair policing practices that do not facially discriminate or result in a discriminatorily disparate impact on Indigenous peoples, including women and children.

Proposed Recommendation # 5 of 24: Create and Enforce Reasonable Restraint and Shackling Policy

The Committee Against Torture urges Australia to stop shackling pregnant women, in conformance with the Mandela Rules and the Torture Convention.

Proposed Recommendation # 6 of 24: End the Practice of Strip Searching Prisoners

The Committee Against Torture recommends that Australia abolish the practice of strip searching prisoners.

Proposed Recommendation # 7 of 24: Healthcare Support for Indigenous People in Prison

The Committee Against Torture recommends that Australia provide adequate healthcare for Indigenous prisoners.

Proposed Recommendation # 8 of 24: Implement a National Preventive Mechanism (NPM)

The Committee Against Torture recommends that Australia implement a National Preventive Mechanism (NPM) as required by Article 17 of the Optional Protocol to the Convention Against Torture.

Proposed Recommendation #9 of 24: Decriminalize Public Drunkenness

The Committee Against Torture urges Australia to decriminalize public drunkenness throughout Australia.

IX. Treatment of Children in prison

A. Issues

41. Australia violates Article 16 of the Torture Convention by imposing cruel and inhuman conditions on imprisoned children, resulting in severe mental harm to child prisoners.
42. Australia is violating Article 16 of the Torture Convention by incarcerating children with adults.

B. Child Prison Conditions

43. Australia's Obligation under the Torture Convention.

Article 16 of the Torture Convention against Torture states that Australia shall:

“Undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment.”⁹⁴

44. Previous UN Torture Committee List of Issues on Child Prison Conditions.

The **UN Torture Committee** expressed concerns about Australia's measures to enhance the rights and protection of children in detention centres / prisons as it relates to Article 16 of the Convention in its combined 4th and 5th Periodic Report.⁹⁵

45. Australia's violation of the Torture Convention.

Australia violates Article 16 of the Torture Convention against Torture by subjecting children to cruel and inhuman conditions in prison.⁹⁶

46. Previous Legal Conclusions regarding lockdown.

47. Australia is breaching the Torture Convention by forcing children to be locked in their cells for 22 hours per day, which amounts to cruel, inhuman, or degrading treatment or punishment.

⁹⁴ UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, Art. 16; For a further discussion on the definition and its application, see I Introduction earlier in this report

⁹⁵ UN. Doc. CAT/C/AUS/Q/5, *List of issues prior to the submission of the fifth periodic report of Australia*, para. 45, (2011), <https://digitallibrary.un.org/record/698682?ln=en>

⁹⁶ See UN. Doc. A/HRC/13/39, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, (2010), <https://digitallibrary.un.org/record/679133?ln=en> (In 2010, the United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment observed that conditions of detention may constitute cruel, inhuman, or degrading treatment.)

48. In 2021, the Office of the Inspector of Custodial Services of Western Australia produced a report upon inspection of the Intensive Support Unit (hereinafter, “ISU”) at Banksia Hill Detention Centre due to “increasing concerns about the welfare of detainees and staff following a rise in the number of critical incidents, including detainee self-harm, suicide attempts, and staff assaults.”⁹⁷ The Government, in its own words, announced deficiencies.
49. Western Australia courts are receiving reports that as a result of inadequate staffing, children in Banksia Hill are forced to be in lockdown for up to 22 hours a day.⁹⁸ The Office of the Inspector of Custodial Services reported that the ISU was understaffed 17 days out of 30 in November 2021 and concluded that detainees in the ISU “are not provided with meaningful time out of cell.”⁹⁹

In 2002, the Torture Committee expressed concern for prisoners in Spain who had:

“to remain in their cells for most the day, and in some cases are allowed only two hours in the yard, are excluded from the group, sports and work activities” and concluded that the conditions of their imprisonment are inconsistent with methods of rehabilitation and “could be considered prohibited treatment under Article 16 of the Convention.”¹⁰⁰

50. **Children detained in the ISU at Banksia have poor quality of life.** The Office of the Inspector of Custodial Service’s report included four case studies of children detained in the ISU. The ISU is authorized under Western Australia’s Young Offender Act of 1995.¹⁰¹ It is meant for housing unwell children and people detained for poor behavior.¹⁰² In its *Concluding Observations on the Initial Report of Mauritania*, the Torture Committee urged the State to bring living conditions in prison to international standards which includes “sufficient natural and artificial light and ventilation in cells.”¹⁰³ The ISU is a concrete and wire roofing section in the back of the prison that receives no natural light.¹⁰⁴ Children housed in the ISU have referred to it as “a cage.”¹⁰⁵ The Office of the Inspector of Custodial

⁹⁷ Office of the Inspector of Custodial Services, *2021 Inspection of the Intensive Support Unit at Banksia Hill Detention Centre*, p. iii. (March 2022), <https://www.oics.wa.gov.au/reports/141-inspection-of-the-intensive-support-unit-at-banksia-hill-detention-centre/>

⁹⁸ Aja Styles and Lauren Pilat, *Caged, isolated, scared: Why Perth Children’s Court president would rather send kids to an adult prison*, The Sydney Morning Herald (10 Feb 2022), <https://www.smh.com.au/national/western-australia/caged-isolated-scared-why-perth-children-s-court-president-would-rather-send-kids-to-an-adult-prison-20220131-p59soq.html>

⁹⁹ Office of the Inspector of Custodial Services, *2021 Inspection of the Intensive Support Unit at Banksia Hill Detention Centre*, p. 3, 6, (March 2022), <https://www.oics.wa.gov.au/reports/141-inspection-of-the-intensive-support-unit-at-banksia-hill-detention-centre/>

¹⁰⁰ UN. Doc. CAT/C/CR/29/, *Conclusions and Recommendations of the Committee against Torture: Spain*, para. 11(d), (2002), <https://digitallibrary.un.org/record/491556?ln=en>

¹⁰¹ Office of the Inspector of Custodial Services, *2021 Inspection of the Intensive Support Unit at Banksia Hill Detention Centre*, p. v-vii, (March 2022), <https://www.oics.wa.gov.au/reports/141-inspection-of-the-intensive-support-unit-at-banksia-hill-detention-centre/>

¹⁰² *Id.* at p. vii

¹⁰³ UN. Doc. CAT/C/MRT/CO/1, *Concluding observations on the initial report of Mauritania adopted by the Committee at its fiftieth session*, para. 22, (2013), <https://digitallibrary.un.org/record/760380>

¹⁰⁴ Aja Styles and Lauren Pilat, *Caged, isolated, scared: Why Perth Children’s Court president would rather send kids to an adult prison*, The Sydney Morning Herald, (10 Feb 2022), <https://www.smh.com.au/national/western-australia/caged-isolated-scared-why-perth-children-s-court-president-would-rather-send-kids-to-an-adult-prison-20220131-p59soq.html>

¹⁰⁵ *Id.*

Services also concluded that prisoners have a poor quality of life in the ISU in part because of the “very poor state” of the ISU observation cells, with heavily scratched and graffitied viewing panels, objects covering cameras, and shutters being controlled by the officers.¹⁰⁶ Additionally, the report expressed concern that the cells are not provided with enough ventilation and natural light.¹⁰⁷

- 51. The Office of the Inspector of Custodial Services notes that self-harm in the ISU is consistent with long hours of lockdown.** Most of the children detained in the ISU already have mental health issues, and isolation can cause further damage to them psychologically.¹⁰⁸ Through the Inspector's observations and interviews with the detainees, the report found that self-harm is more frequent in the ISU and is usually attributed to long lockdowns.¹⁰⁹ One of the case studies indicated on days when one of the children would threaten to self-harm he had an average of 0.63 hours out of his cell.¹¹⁰ See Appendix B below for claims from child prisoners regarding self-harm and inhuman conditions.

C. Children Incarcerated with Adults

- 52. Australia's Obligation under the Torture Convention.** Article 16 of the Convention against Torture states that Australia shall: “Undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment.”¹¹¹

- 53. Mandela Rules: United Nations Standard Rules for the Treatment of Prisoners**

Rule 11 (d) of the Mandela Rules provides:

“Young prisoners shall be kept separate from adults.”¹¹²

- 54. Havana Rules: United Nations Rules for the Protection of Juveniles Deprived of their Liberty.**

Section 29 of the Havana Rules provides:

“In all detention facilities juveniles should be separated from adults, unless they are members of the same family.”¹¹³

¹⁰⁶ Office of the Inspector of Custodial Services, *2021 Inspection of the Intensive Support Unit at Banksia Hill Detention Centre*, p. 7, (March 2022), <https://www.oics.wa.gov.au/reports/141-inspection-of-the-intensive-support-unit-at-banksia-hill-detention-centre/>
¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at p. 9-10

¹⁰⁹ *Id.* at p. 9

¹¹⁰ *Id.*

¹¹¹ UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, Art. 16; For a further discussion on the definition and its application, see I Introduction earlier in this report

¹¹² UN. Doc. A/C.3/70/L.3, *United Nations Standard Minimum Rules for the Treatment of Prisoners (The Mandela Rules)*, Rule 11(d), (2015), <https://digitallibrary.un.org/record/805001?ln=en>

¹¹³ UN. Doc. A/RES/45/113, *United Nations Rules for the Protection of Juveniles Deprived of their Liberty (The Havana Rules)*, Section 29, (1991), <https://digitallibrary.un.org/record/105555?ln=en>

55. Beijing Rules: United Nations Standard Minimum Rules for the Administration of Juvenile Justice.

Section 26.3 of the Beijing Rules provides:

“Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.”¹¹⁴

56. Previous UN Torture Committee Report on Detaining Children Separate from Adults.

The UN Torture Committee has listed Australia detaining children with adults as issues in its 5th and 6th Periodic Report.¹¹⁵

57. Australia’s Violation of the Torture Convention.

Australia violates Article 16 of the Convention against torture by incarcerating children with adults, which amounts to cruel and inhuman treatment. The UN Torture Committee found that incarcerating children with adults violates Article 16 of the Torture Convention because children in detention are a vulnerable population.¹¹⁶

58. Australia Continues to Detain Children with Adults, in violation of the Torture Convention.

According to The Sydney Morning Herald, in January 2021, due to the conditions at Banksia Detention Centre, the Children’s Court sentenced a 17-year-old boy to 14 months at an adult prison.¹¹⁷ In July 2022, the Department of Justice relocated a group of twenty boys who are deemed “difficult” to an adult prison.¹¹⁸ The youngest in the group transferring to Casuarina Prison was 14 years old.¹¹⁹ According to the Department of Justice Director General, the boys in the group have been “destroying infrastructure, assaulting staff and harming themselves”¹²⁰ and the authorities were “left with no option.”¹²¹ The Director General said the plan would allow “other detainees at Banksia Hill to return to their normal education programs and recreation activities that have been affected by the ongoing

¹¹⁴ UN. Doc. A/RES/40/33, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)*, Section 26.3, (1985), <https://digitallibrary.un.org/record/120958?ln=en>

¹¹⁵ UN. Doc. CAT/C/AUS/Q/5, Concluding observations on the combined 4th and 5th periodic reports of Australia : Committee Against Torture (2014), <https://digitallibrary.un.org/record/790514?ln=en>

¹¹⁶ Manfred Nowak and Elizabeth McArthur, *United Nations Convention Against Torture: a commentary*, 2nd edition, Oxford University Press, p. 456, para. 43-44, (2019), <http://fdslive.oup.com/www.oup.com/academic/pdf/openaccess/9780198846178.pdf>

¹¹⁷ Aja Styles and Lauren Pilat, *Caged, isolated, scared: Why Perth Children’s Court president would rather send kids to an adult prison*, The Sydney Morning Herald, (10 Feb 2022), <https://www.smh.com.au/national/western-australia/caged-isolated-scared-why-perth-children-s-court-president-would-rather-send-kids-to-an-adult-prison-20220131-p59soq.html>

¹¹⁸ Grace Burmas, *Banksia Hill inmates to be relocated to new youth at Casuarina after cells damaged*, ABC News, (5 July 2022), <https://www.abc.net.au/news/2022-07-05/banksia-hill-offenders-relocated-to-youth-facility-casuarina/101211032>

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ Michael Ramsey, *WA government moves boys to adult prison*, The Canberra Times, (20 July 2022), <https://www.canberratimes.com.au/story/7828204/wa-government-moves-boys-to-adult-prison/>

disruptions.”¹²² While the children were housed in a separate facility at Casuarina and it was promised that they would not interact with incarcerated adults, a mother of a youth detainee reported that her son spoke to an adult through a fence while out of his cell to use the restroom.¹²³

59. **Consequences of Detaining Children with Adults.** The group of children was relocated to an adult prison under the decision of the Department of Justice’s officials.¹²⁴ Corrective Services Minister Bill Johnston said that a youth detention facility is built in a different manner and not as securely as an adult male prison.¹²⁵ Additionally, it is also reported that the boys could interact with the incarcerated adults, demonstrating that the children are not kept entirely separated from the adults.¹²⁶ See Appendix B below for claims of children interacting with adults at an adult prison facility.

D. Proposed Recommendations Regarding Conditions at Banksia Hill Detention Centre and Incarcerating Children With Adults

Proposed Recommendation #10 of 24: End Lockdowns for Children in Prison that Force Children to Remain in Their Cells for Extended Periods

The Committee Against Torture recommends that Australia end the practice of lockdown for children in prison, that force children to remain in their cells for extended periods.

Proposed Recommendation #11 of 24: Adequately Fund All Child Prisons in Australia, including Banksia Detention Centre

The Committee Against Torture recommends that Australia provide all child prisons with adequate funding for staffing, social welfare services, and other resources needed to prevent the children from being subjected to cruel, inhuman or degrading treatment or punishment.

Proposed Recommendation # 12 of 24: Cease Incarceration of Children at Adult Prison Facilities

The Committee Against Torture urges Australia to stop putting children in prisons with adults.

¹²² Grace Burmas, *Banksia Hill inmates to be relocated to new youth at Casuarina after cells damaged*, ABC News, (5 July 2022), <https://www.abc.net.au/news/2022-07-05/banksia-hill-offenders-relocated-to-youth-facility-casuarina/101211032>

¹²³ Cason Ho, *Families of Banksia Hill detainees speak out following transfer to Casuarina Prison*, ABC News, (25 July 2022), <https://www.abc.net.au/news/2022-07-26/families-fear-for-banksia-hill-detainees-moved-to-casuarina/101233756>

¹²⁴ Michael Ramsey, *WA government moves boys to adult prison*, The Canberra Times, (20 July 2022), <https://www.canberratimes.com.au/story/7828204/wa-government-moves-boys-to-adult-prison/>

¹²⁵ *Id.*

¹²⁶ *Id.*

X. Australia has perpetrated cruel and inhuman treatment to children by not prohibiting corporal punishment

A. Issue

60. Corporal punishment against children is permitted in all States and Territories in Australia, in violation of article 16 of the Torture Convention, that prohibits cruel, inhuman or degrading treatment.

B. Australia's Failure to Ban Corporal Punishment

61. **The nature of Australia's Torture Convention Article 16 obligation to ban corporal punishment of children in Australia.**

The Torture Convention obligates Australia to ban corporal punishment in any and all circumstances, as corporal punishment of children is cruel, inhuman or degrading treatment or punishment, prohibited by Article 16 of the Torture Convention.

The Convention on the Rights of the Child¹²⁷ and the International Covenant on Civil and Political Rights¹²⁸ -- both of which bind Australia, require bans on corporal punishment, as do the United Nations Secretary General's Study on Violence against Children¹²⁹, and the United Nations Sustainable Development Goal No. 16.2 of "[e]nding all forms of violence against and torture of children"¹³⁰

62. **Torture Committee's List of Issues for Australia's 6th Periodic Report – raises the issue of corporal punishment of children.**

The Torture Committee in its List of Issues prior to Australia's 6th Periodic Report noted the following, in paragraph 27:¹³¹

¹²⁷ Australia consented to be bound to the Convention on the Rights of the Child when she ratified the Convention in 1990. Article 19(1) of the Convention on the Rights of the Child requires Australia to:

“take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”

UN. Doc. E/CN.4/RES/1990/74, *Convention on the Rights of the Child*, Article 19(1), (7 March 1990).

¹²⁸ Australia consented to be bound to the International Covenant on Civil and Political Rights when she ratified the Covenant in 1980.

¹²⁹ UN. Doc. A/61/299, *Rights of the child*, p. 25, para. 98, (2006). <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/491/05/PDF/N0649105.pdf?OpenElement>

¹³⁰ UN. Doc. A/RES/70/1, *Transforming our world: the 2030 Agenda for Sustainable Development*, Goal 16.2, p. 25 (2015). <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/291/89/PDF/N1529189.pdf?OpenElement>

¹³¹ UN. Doc. CAT/C/AUS/QPR/6, Committee Against Torture, *List of issues prior to submission of the sixth periodic report of Australia*, p. 27 (2017), <https://digitallibrary.un.org/record/857779?ln=en>;

In the Torture Committee's Concluding Observations on Australia's 3rd Periodic Report to the Torture Committee, the Torture Committee recommended that Australia:

“adopt and implement legislation banning corporal punishment at home and in public and private schools, detention centres, and all alternative care settings in all States and Territories”.

“27. Please provide information on the measures taken since the last review, including awareness-raising campaigns and parenting education programmes, to end the practice of corporal punishment in all settings, including in the home, and to ensure that corporal punishment of children is explicitly prohibited in all settings in all states and territories in Australia.”

63. Australia’s 6th Periodic Report Respond’s to the Torture Committee’s State Concern about Corporal Punishment of Children in Australia.

The Australian government, in its 6th Periodic Report to the Torture Committee, responded to the Torture Committee’s List of Issues paragraph 27 concern re corporal punishment in Australia, as follows:

“Reply to the issues raised in paragraph 27 of the list of issues”¹³²

353. While Australian law does not explicitly outlaw corporal punishment in all settings, child protection mechanisms and criminal penalties will apply to any person, including family members, who physically abuse or cause serious harm to a child. Corporal punishment is prohibited as a sentence for crimes in Australia.

354. Parenting advice and information provided by all Australian governments focuses on positive behaviour management and emphasises the negative consequences of physical punishment.

355. The Australian Government does not endorse corporal punishment as an approach to student behaviour management in schools. The ACT, NSW, SA, Queensland, Tasmania, Victoria and WA have either explicitly banned the use of corporal punishment in government schools or have removed provisions in legislation that provided a defence to the use of reasonable chastisement by people acting in the place of a parent (such as teachers).

356. The ACT, NSW, NT, Tasmania, and Victoria have legislated to ban corporal punishment in both government and non-government schools. Irrespective of this, criminal penalties apply in all jurisdictions to teachers who abuse or assault children.

357. Several jurisdictions have conducted, or are in the process of, conducting reviews relating to schooling for children with disability which have included consideration of restrictive practices against children. A number of courts are currently considering matters involving the restraint of children with disability in schools.

U.N. Doc. CAT/C/AUS/CO/1, *Torture Committee’s Concluding Observations on its 3rd Periodic Report*, para. 31 (22 May 2008).
<https://digitallibrary.un.org/record/630806?ln=en>

¹³² U.N. Doc. CAT/C/AUS/6, *Australia’s 6th Periodic Report to the Torture Committee*, paras. 353-358 (2019)
<https://digitallibrary.un.org/record/3823101?ln=en>

358. In the NT, the *Youth Justice Legislation Amendment Act 2018* specifically prohibits the administering of corporal punishment of children in detention.”¹³³

64. Australia concedes that it has breached its obligations to ban corporal punishment in Australia.

As demonstrated above, Australia has an obligation to ban corporal punishment of children in Australia, and as demonstrated above, Australia has conceded that she has not banned corporal punishment in Australia, and thus, Australia has conceded that she is in breach of her Torture Convention obligations to ban corporal punishment of children in Australia.

Likewise, in failing to prohibit corporal punishment against children in Australia, Australia is in breach of its other treaty and customary international law obligations to prohibit corporal punishment of children in Australia.

65. What is corporal punishment of children? Is any physical punishment permitted under international human rights law?

The United Nations Committee on the Rights of the Child defined corporal punishment of children in paragraph 11 of the Committee’s General Comment on Corporal Punishment as:

“any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting (‘smacking’, ‘slapping’, ‘spanking’) children, with the hand or with an implement - a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children’s mouths out with soap or forcing them to swallow hot spices).”¹³⁴

The Committee on the Rights of the Child indicated that “reasonable” or “moderate” or any other form of corporal punishment is prohibited, and that any form of physical corporal punishment is banned. The Committee on the Rights of the Child noted:

“There is no ambiguity: ‘all forms of physical or mental violence’ does not leave room for any level of legalized violence against children. Corporal punishment and other cruel or degrading forms of punishment are forms of violence and the State must take all appropriate legislative, administrative, social and educational measures to eliminate them.”¹³⁵

¹³³ U.N. Doc. CAT/C/AUS/6, Australia’s 6th Periodic Report to the Torture Committee, para. 231 (2019) <https://digitallibrary.un.org/record/3823101?ln=en> (Addressing the *Youth Justice Legislation Amendment Act 2018*, noting that it “led to the Royal Commission into the Protection and Detention of Children in the NT”, and that this Act “specifically prohibits the following. . . The administering of corporal punishment, that is, any action which inflicts, or is intended to inflict, physical pain or discomfort on the detainee [and] [a]ny act or omission intended to degrade or humiliate the detainee.”).

¹³⁴ UN. Doc. CRC/C/GC/8, Committee on the Rights of the Child General Comment No. 8, para. 11 (2006), <https://digitallibrary.un.org/record/583961?ln=en>

¹³⁵ *Id.* at para. 18.

66. To what extent is corporal punishment of children legal in Australia?

In Australia, it is legal for children to be subjected to corporal punishment¹³⁶. Thus, in every Australian state and territory, it is lawful for parents to use physical force against a child with the intent to cause some degree of pain or discomfort, however light. It is lawful for a parent to hit or smack a child with the hand, pinch them, or wash their mouth out with soap.

In several Australian jurisdictions, parents and caregivers are permitted to discipline children in the home using “reasonable” physical force.

In several jurisdictions, common law applies through the courts to permit reasonable corporal punishment (though in these jurisdictions, it is not permissible to punish a child who is incapable of understanding what they have done wrong, or exerting force that is unjustifiable).

In all Australian jurisdictions, corporal punishment is prohibited in early childhood education and care settings.

In most Australian jurisdictions, corporal punishment is prohibited against children in government care.

67. A parallel source of international law that requires Australia to ban corporal punishment of children – the International Covenant on Civil and Political Rights – ICCPR – banning torture and cruel, inhuman or degrading treatment or punishment.

Australia consented to be bound by the International Covenant on Civil and Political Rights (ICCPR). Article 7 of the *ICCPR* provides that:

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”¹³⁷

The Human *Rights* Committee, that oversees implementation of the ICCPR, issued *General Comment 20 (Art. 7)* specifically includes corporal punishment under the prohibitions cited in ICCPR Article 7. *General Comment No. 20* provides that the:

“prohibition in article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim. In the Committee's view, moreover, *the prohibition must extend to corporal punishment*, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure. It is

¹³⁶ For a discussion about the legality of corporal punishment in Australia, see Parent and Family Research Alliance (PAFRA), *Briefing paper -- Corporal punishment of children in Australia: The evidence-based case for legislative reform* (advocating for legislative and other reforms with goals that include “[r]educt cororal punishment of children in Australia”). This Briefing Paper is attached to this Shadow Report as Appendix F. The website of PAFRA is www.pafra.org.

¹³⁷ UN General Assembly Resolution 2200A, *International Covenant on Civil and Political Rights*, Article 7, (Adopted in 1966) <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

appropriate to emphasize in this regard that article 7 protects, in particular, children, pupils and patients in teaching and medical institutions.”¹³⁸ (emphasis added)

The *General Comment No. 20* further provides that

“[i]n addition to describing steps to provide the general protection against acts prohibited under article 7 to which anyone is entitled, the State party should provide detailed information on safeguards for the special protection of particularly vulnerable persons.”¹³⁹

*Human Rights Committee interpretations of Article 7 in criminal proceedings may be instructive in the context of corporal punishment of children at home or in school. The Human Rights Committee found that “irrespective of the nature of the crime that is to be punished or the permissibility of corporal punishment under domestic law, it is the consistent opinion of the Committee that corporal punishment constitutes cruel, inhuman or degrading treatment contrary to Article 7.”*¹⁴⁰

c. Proposed Recommendations Regarding Children Subjected to Corporal Punishment

Proposed Recommendation # 13 of 24: Prohibit Corporal Punishment Against Children

The Committee Against Torture recommends that Australia prohibit corporal punishment, in all its forms, nationwide, against children.

Proposed Recommendation # 14 of 24: Facilitate State and Territory Corporal Punishment Against Children Laws

The Committee Against Torture recommends that Australia facilitate legal reform in each state and territory in Australia to prohibit corporal punishment of children

Proposed Recommendation # 15 of 24: Develop Effective Programs and Strategies to provide alternatives to corporal punishment against children

The Committee Against Torture recommends that Australia develop effective, culturally appropriate parenting programs and strategies that provide a non-violent alternative to corporal punishment, and ensure that parents, caregivers, and other appropriate people have access to these funded programs and strategies.

¹³⁸ UN. Doc. HRI/GEN/1/Rev.1, Human Rights Committee, General Comment 20, p. 31, para. 5 (1994). <https://digitallibrary.un.org/record/201053?ln=en>

¹³⁹ *Id.* at p. 32, para. 11.

¹⁴⁰ U.N. Doc. CCPR/C/74/D/792/1998, *Mr. Malcolm Higginson v. Jamaica*, Communication No. 792/1998, (2002), <https://digitallibrary.un.org/record/473283?ln=en> (Finding that the imposition, rather than only the execution, of a sentence involving whipping with a tamarind switch, violated Article 7.) (emphasis added); *See also* U.N. Doc. CCPR/C/73/D/928/2000, *Boodlal Sooklal v. Trinidad and Tobago*, Communication No. 928/2000, (2001), <https://digitallibrary.un.org/record/456082?ln=en>

XI. Australia has perpetrated cruel and inhuman treatment against people in offshore immigration detention centres / prisons

A. Issues

68. Australia fails to provide adequate healthcare at Christmas Island, violating Article 16 of the Torture Convention.
69. Australia utilizes solitary confinement in Christmas Island, violating both Article 16 Torture Convention and Rule 43 the Mandela Rules.
70. Christmas Island's conditions include the imminent threat of physical violence, exacerbated by the detention of different categories of migrants, causing both mental and physical harm to the migrants, violating Article 16 of the Torture Convention.

B. Lack of Adequate Healthcare

71. Australia's Torture Convention Obligation under Article 16.

Australia is obligated under Article 16 of the Convention against Torture to:

“prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment,”¹⁴¹

72. Australia's History of Offshore Detention Centres / Prisons

For years, Australia has maintained a practice of sending migrants, including asylum seekers and persons who are being deported or removed on “character” grounds under the Migration Act, to offshore detention / prison facilities, drawing concerns from the Committee Against Torture, other divisions of the United Nations, the international community, domestic Australia human rights advocates, and others. Some of these concerns, including inadequate healthcare, solitary confinement, and hostile environments are discussed below, many issues are not, for example, mandatory detention of asylum seekers, prolonged indefinite detention, and others. While Australia may have ceased or slowed offshore detention (for example, at Nauru and Papua New Guinea), offshore immigration detention / prison facilities still exist at Christmas Island, and trigger cruel, inhuman or degrading treatment of migrants forced to be there. For the reasons discussed in the forthcoming sections, conditions at Christmas Island violate the Torture Convention.

¹⁴¹ UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, Art. 16; For a further discussion on the definition and its application, see I Introduction earlier in this report

73. Previous U.N. Torture Committee Concerns regarding Australia's Offshore Immigration Detention Centres / Prisons.

For years, Australia has perpetuated cruel, inhuman and degrading conditions against asylum seekers and other prisoners in offshore immigration detention centres / prisons. The Torture Committee has raised concerns about this issue with the Australian Government many times. In the Concluding Observations to Australia's 4th and 5th Periodic Reports, paragraph 17, the U.N. Torture Committee expressed concern:

“17. The Committee is concerned at the State party's policy of transferring asylum seekers to the regional processing centres located in Papua New Guinea (Manus Island) and Nauru for the processing of their claims, despite reports on the harsh conditions prevailing in those centres, such as mandatory detention, including for children, overcrowding, inadequate health care, and even allegations of sexual abuse and ill-treatment. 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. 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 (arts. 2, 3 and 16).”¹⁴²

74. The U.N. Special Rapporteur on Torture's concerns about detention centre conditions, including lack of access to adequate healthcare.

In 2010, the then U.N. Special Rapporteur on Torture studied torture, cruel, inhuman, or degrading treatment which included an assessment of conditions of detentions. The report concluded:

“Conditions of detention in many of the facilities I visited can only be qualified as inhuman or degrading. I am not only referring to corporal punishment and other forms of torture and ill-treatment inflicted upon detainees, but I am even more concerned about the structural deprivation of most human rights, mainly the rights to food, water, clothing, *health care* and a minimum of space, hygiene, privacy and security necessary for a humane and dignified existence. It is the combined deprivation and non-fulfilment of these existential rights which amounts to a systematic practice of inhuman or degrading treatment or punishment.”¹⁴³ [emphasis added]

¹⁴² UN. Doc. CA, T/C/AUS/CO/4-5, *Concluding Observations on the combined fourth and fifth periodic reports on Australia*, p. 6, para. 17 (2014), <https://digitallibrary.un.org/record/790514?ln=en>

¹⁴³ Manfred Nowak, UN. Doc. A/HRC/13/39/Add.5. *Report of the Special Rapporteur on torture and other cruel inhuman or degrading treatment or punishment, Addendum, Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including conditions of detention*, para. 230 (2010)

75. The Torture Convention requires Australia to provide adequate healthcare to detainees.

The Torture Committee has previously expressed concerns that member States of the Torture Convention's failure to provide adequate healthcare breaches Article 16 of the Torture Convention.¹⁴⁴

76. Australia fails to provide adequate healthcare at Christmas Island.

Australia breaches Article 16 of the Torture Convention by failing to provide adequate healthcare to migrants at Christmas Island. The following are excerpts from testimonies and affidavits the authors received regarding current (September / October 2022) conditions at Christmas Island (with the full texts of these testimonies / affidavits in the Appendices to this Shadow Report):

“I have seen men who have serious medical conditions. These men have told me that all they are given is Panadol, and that their medical needs are not being met.”¹⁴⁵

“My name is Shayne Peter Forrester. . . I was at Christmas Island from 1 December 2020 to about the 7th of February 2021. . . I was in constant pain during this time and thought that I would die unless I received specialist medical care...In early February 2021 I...returned to Yongah Hill. . . PARS (The Prisoner Aid Rehabilitation Society (New Zealand) provided me with assistance. I flew to Christchurch where I stayed with my younger brother. I was finally referred to a urologist. . . On 14 February 2021 I was diagnosed with prostate cancer. Dr. Usher told me that I should have seen a urologist before. I explained that I had been in detention and deprived of proper medical attention. . . The oncologist told me that my cancer had mutated to my liver, lymph nodes, bones, and kidneys. I was told I was likely to be dead within 2 years.”¹⁴⁶

“When Mr. Toimata was five years old...he suffered burns to 80% of his body. Mr. Toimata requires regular surgical cutting and physiotherapy treatment in order to remain physically mobile and relatively free of pain. . . These necessary medical services were not provided to Mr. Toimata when he was in immigration detention at Yongah Hill or on **Christmas Island**. The weather on Christmas Island caused his skin to become irritated, itchy and sore. He was constantly scratching or needing to scratch. Mr. Toimata was passed around to every nurse in the detention centre. The most help he was given was over-the-counter anti-fungal creams. The least help was sorbolene or

¹⁴⁴ UN. Doc. CAT/C/NPL/CO/2, §31 (2007), <https://digitallibrary.un.org/record/564705?ln=en> ; A/53/44, §175 (1998), <https://digitallibrary.un.org/record/262524?ln=en>

¹⁴⁵ Testimony of Ms. Filipa Payne (Human Rights Advocate), para. 28 (Discussing her experience at Christmas Island.), (full text is in Appendix C).

¹⁴⁶ Affidavit of Mr. Shayne Forrester dated 30 September 2022, paras. 1, 55, 57, 69, 83-85, 88-90, 92, 93(full text is in Appendix D).

Vaseline. None of these treatments eased his symptoms. He begged to see a special dermatologist.”¹⁴⁷

“Mr. Naikar was going downstairs to breakfast when he slipped on a step and landed on his back. . . Mr. Naikar was seriously injured . . . From 8:30 am to 1:00 pm, no officers came to him and no medical assistance was provided. . . From 1:00 pm to 6:00 pm, no one came to see Mr. Naikar. Mr. Naikar was crying because of the pain. . . At 11:00 am [the following day], a doctor saw Mr. Naikar and gave him Panadol. Mr. Naikar complained that he was in immense pain. Mr. Naikar was left like this for ten days. Then they sent Mr. Naikar to the Christmas Island Public Hospital and he was admitted from 27th of December 2017 to 4th of January 2018. . . On the 5th of January, they scanned Mr. Naikar and they found three bulging discs. . . Mr. Naikar was in this condition until July 2018, and his back pain was so bad they put him in emergency care. [O]n the 6th of July, they conducted his first emergency surgery.”¹⁴⁸

C. Use of Solitary Confinement

77. Australia’s Torture Convention Obligation under Article 16.

Australia is obligated under Article 16 of the Convention against Torture to:

“prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment,”¹⁴⁹

78. The Mandela Rules (United Nations Standard Rules for the Treatment of Prisoners) address solitary confinement.

Rule 43(1)(b) of the Mandela Rules states:

“In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, shall be prohibited: (b) Prolonged solitary confinement.”¹⁵⁰

Rule 44 of the Mandela Rules defines solitary confinement:

¹⁴⁷ Testimony of Mr. Kopa Toimata conducted by Filipa Payne (Christmas Island Detainee), paras. 2, 14, 15, and 16 (Discussing lack of healthcare access to treat burn injuries.), (full text is in Appendix E).

¹⁴⁸ Testimony of Mr. Ritesh Naikar conducted by Filipa Payne (Christmas Island Detainee), paras. 17, 19, 22, 24, 28, 30, 31, 32, 33, 38, and 39 (Discussing the detention centre’s / prison’s response to an injury sustained at the facility.), (full text is in Appendix F).

¹⁴⁹ UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, Art. 16; For a further discussion on the definition and its application, see I Introduction earlier in this report

¹⁵⁰ UN. Doc. A/C.3/70/L.3, *United Nations Standard Minimum Rules for the Treatment of Prisoners (The Mandela Rules)*, Rule 43(1)(b), (2015), <https://digitallibrary.un.org/record/805001?ln=en>

“confinement of a prisoner for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days.”¹⁵¹

79. Previous Torture Committee concerns on solitary confinement.

The Torture Committee has repeatedly expressed concerns over the past several decades that solitary confinement in detention facilities constitutes a violation of the Torture Convention.¹⁵²

80. Australia uses solitary confinement in Christmas Island, violating both the Torture Convention and the Mandela Rules.

At Christmas Island in January 2021, riots arose as prisoners protested what was described as harsh conditions, which included prolonged solitary confinement.¹⁵³ Leading up to the riots, it is alleged that prisoners were isolated and locked inside their cells for 22 hours a day.¹⁵⁴

81. Recent incident of solitary confinement of several occupants of Christmas Island.

“Mr. Toimata was part of a group of 8 detainees who had an altercation with asylum seekers. They were later sent to the segregation wing of Christmas Island, where they were kept in cells for 23 hours a day. They were given a jug of water. They were kept in segregation for one month.”¹⁵⁵

D. Threats of Imminent Violence – Christmas Island

82. Australia’s Torture Convention Obligation under Article 16.

Australia is obligated under Article 16 of the Convention against Torture to:

“prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment,”¹⁵⁶

¹⁵¹ *Id.* Rule 44.

¹⁵² See UN. Doc. CAT/C/CR/32/4, *Conclusions and recommendations of the Committee against Torture: New Zealand*, paras. 5(d), 6(d) (2004), <https://digitallibrary.un.org/record/524525?ln=en>; UN Doc CAT/C/USA/CO/2, *Conclusions and Recommendations of the Committee against Torture: United States of America*, para 36 (2006) <https://digitallibrary.un.org/record/580893?ln=en>; UN. Doc. CAT/C/JPN/CO/1, *Conclusions and recommendations of the Committee against Torture: Japan*, para. 18 (2007), <https://digitallibrary.un.org/record/605370?ln=en>

¹⁵³ Paul Karp, *Fresh disturbance at Christmas Island detention centre due to 'inhumane' conditions, advocates say*, The Guardian, (10 Jan 2021), <https://www.theguardian.com/australia-news/2021/jan/10/fresh-disturbance-at-christmas-island-detention-centre-due-to-inhumane-conditions-advocates-say#:~:text=1%20year%20old-Fresh%20disturbance%20at%20Christmas%20Island%20detention%20centre,'inhumane'%20conditions%2C%20advocates%20say&text=Further%20unrest%20among%20detainees%20on,conditions%2C%20refugee%20advocates%20have%20said>.

¹⁵⁴ *Id.*

¹⁵⁵ Testimony of Mr. Kopa Toimata conducted by Filipa Payne (Christmas Island Detainee), paras. 2, 14, 15, and 16 (Discussing lack solitary isolation of detainees following an altercation.), (full text is in Appendix E).

¹⁵⁶ UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, Art. 16; For a further discussion on the definition and its application, see I Introduction earlier in this report

83. Australia subjects migrants to threats of imminent violence through its practice of housing multiple types of migrants at Christmas Island.

Two categories of migrant prisoners are now being held at Christmas Island. The two categories of migrants are: (1) asylum seekers awaiting processing,¹⁵⁷ and (2) “501s,” men exiting prison who were detained on Christmas Island after having their visas revoked as a result of section 501 of the Migration Act.¹⁵⁸

Several problems appear to result from the mixing. Simmering resentment from the ex-prisoner population, who are facing visa revocation, places asylum seekers at a serious risk of both mental and physical harm.¹⁵⁹

The Asylum Seeker Resource Centre visited Christmas Island and reported that approximately 30 asylum seekers were mixed with approximately 200 “501” detainees, with most asylum seekers describing an environment of physical violence and a constant fear that the 501s would attack the asylum seekers.¹⁶⁰ The severe physical harm, and corresponding mental harm, resulting from the intermingling of the two categories amounts to cruel, inhuman, or degrading treatment or punishment under Article 16 of the Torture Convention.

84. Australia Human Rights Commission’s 2017 Christmas Island visit.

In 2017, Australia’s Human Rights Commission visited Christmas Island and deemed the facility not appropriate for immigration detention.¹⁶¹ Those housed at the facility were interviewed, and reported “witnessing fights, violence or other distressing incidents; or being subject to threats, intimidation or harassment.”¹⁶² These conditions described by the Australian Human Rights Commission create an environment that causes both severe physical and mental harm to Christmas Island inhabitants, violating Article 16 of the Torture Convention.

¹⁵⁷ Asylum Seeker Resource Centre, *Report on Christmas Island Detention Centre*, <https://asrc.org.au/resources/report-on-christmas-island/> (last accessed September 30, 2022).

¹⁵⁸ Australian Human Rights Commission, *4. What are the human rights raised by refusal or cancellation of visas under section 501?* <https://humanrights.gov.au/our-work/4-what-are-human-rights-issues-raised-refusal-or-cancellation-visas-under-section-501/> (last accessed September 30, 2022);

¹⁵⁹ Asylum Seeker Resource Centre, *Report on Christmas Island Detention Centre*, <https://asrc.org.au/resources/report-on-christmas-island/> (last accessed October 1, 2022)

¹⁶⁰ Asylum Seeker Resource Centre, *Report on Christmas Island Detention Centre*, <https://asrc.org.au/resources/report-on-christmas-island/> (last accessed October 1 2022)

¹⁶¹ Australian Human Rights Commission, *Australian Human Rights Commission Inspection of Christmas Island Immigration Detention Centre: Report*, p. 4, (23-25 Aug 2017), <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/australian-human-rights-commission-inspection-1>

¹⁶² *Id.* at p. 13

85. Frequent Riots at Christmas Island Contribute to Violent Conditions.

In January 2021, riots arose as prisoners protested what was described as harsh conditions.¹⁶³ Testimonies received by the authors of this report reveal violence resulting from riots has been an issue since at least 2015. The testimony is quoted below:

“In March 2015, Mr. Toimata witnessed riots at the Christmas Island Detention Centre. The combination of poor food, lack of contact to the outside world, [and] harsh rule enforcement cause detainees to start fires and break windows. . . . When the guards quelled the riots, Mr. Toimata saw dozens of detainees beaten by guards, even if they were not resisting.”¹⁶⁴

E. Proposed Recommendations Regarding Conditions of Migrants on Offshore Immigration Detention Centres / Prisons

Proposed Recommendation # 16 of 24: Close All Offshore Immigration Detention Centres / Prisons, including the Immigration Detention Centre / Prison at Christmas Island

The Committee Against Torture recommends that Australia close all its offshore immigration detention centres / prison and related operations for refugees, asylum seekers, deportable persons, or others, including the Detention Centre / Prison at Christmas Island.

Proposed Recommendation # 17 of 24: Create and Implement Lawful Rules for Processing Asylum Claims in a Timely Fashion

The Committee Against Torture recommends that Australia develop lawful rules and regulations to process all asylum claims in a reasonable amount of time, in compliance with Australia’s Torture Convention obligations.

Proposed Recommendation # 18 of 24: Medical Care for Persons in Immigration Detention

The Committee Against Torture urges Australia to provide all persons subject to an immigration detention with adequate medical and mental health care.

Proposed Recommendation # 19 of 24: Ban Solitary Confinement in Australian Immigration Detention Centres / Prisons, on Christmas Island and Anywhere Else.

The Committee Against Torture urges Australia to end solitary confinement practices at all Australian Immigration Detention Centres / Prisons, including at Christmas Island.

Proposed Recommendation # 20 of 24: Create Separate Facilities for Asylum Seekers and “501s”

The Committee Against Torture urges Australia to provide separate facilities for asylum seekers and migrants with revoked visas resulting from decisions made by the Australian Government pursuant to sections 116 and 501 of the Migration Act.

¹⁶³ Paul Karp, *Fresh disturbance at Christmas Island detention centre due to 'inhumane' conditions, advocates say*,” The Guardian, (10 Jan 2021), <https://www.theguardian.com/australia-news/2021/jan/10/fresh-disturbance-at-christmas-island-detention-centre-due-to-inhumane-conditions-advocates-say#:~:text=1%20year%20old-.Fresh%20disturbance%20at%20Christmas%20Island%20detention%20centre,'inhumane'%20conditions%2C%20advocates%20say&text=Further%20unrest%20among%20detainees%20on,conditions%2C%20refugee%20advocates%20have%20said>.

¹⁶⁴ Testimony of Mr. Kopa Toimata conducted by Filipa Payne (Christmas Island Detainee), paras. 28 and 30 (Discussing the riot violence occurring on Christmas Island.), (full text is in Appendix E).

XII. Australia has failed to ensure adequate remedies (including redress and compensation) for violations of the Torture Convention, in violation of Articles 11, 13 and 16 of the Torture Convention¹⁶⁵

A. Issues

86. Violations Regarding Failing to Grant redress and compensate the victims.

Australia Violates Article 16 of the Torture Convention by failing ensure a right to redress and compensation for victims alleging cruel, inhuman or degrading treatment or punishment.

In this case, Australia has failed to track measures for ensuring redress and compensation for victims of cruel, inhuman or degrading treatment, and thus, Australia has not ensured the right to redress and compensation, in violation of Article 16.

87. Violations Regarding Failing to Have a “systematic review” Scheme in Place.

Australia violates Articles 11 and 16 of the Torture Convention by failing to implement an accurate national reporting system to track complaints and corresponding investigations of torture and other cruel, inhuman or degrading treatment or punishment, and the outcomes of said complaints.

88. Violations Regarding Failing to Track Complaints of Cruel, Inhuman, or Degrading Treatment or Punishment to Ensure a Right to Complain (per Article 13 of the Torture Convention) and Redress and Compensation for Victims (per Article 16 of the Torture Convention).

Australia violates Article 13 of the Torture Convention by not ensuring that victims have the right to complain, and violates Article 16 of the Torture Convention by not ensuring that victims have an opportunity for redress or compensation.

In this case, Australia has failed to track complaints of cruel, inhuman or degrading treatment nor their outcomes, and thus, Australia has not ensured the right to complain, in violation of Article 13. And, in light of Australia’s failure to ensure the right to complain under Article 13, Australia has breached Article 16’s obligation to provide redress and compensation for victims.

¹⁶⁵ This section of the Shadow Report addresses the interconnectedness of multiple Torture Convention Articles that address remedies for victims of torture or cruel, inhuman or degrading treatment or punishment. The topic of the availability of effective remedies in Australia for violations in international human rights law has been the subject of much debate, in the academy, in domestic and international tribunals, including within the United Nations system. This section of the Shadow Report will be limited in scope to several points related to remedies, specifically as regards Articles 11, 13 and 16. For more on remedies, *see* Kris Gledhill, *Human Rights Acts: The Mechanisms Compared* (Oxford 2015).

B. Australia breached its Torture Convention Obligation to ensure a right grant redress and compensate the victims (per Article 16)

89. Australia's Obligation to ensure individual's right to redress and compensation for breaches, per Article 16 of the Torture Convention.

The first sentence of Article 16 of the Torture Convention, provides, in relevant part:

“Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman, or degrading treatment or punishment.”¹⁶⁶

The Torture Committee has stated:

“the positive obligations that flow from the first sentence of article 16 of the Convention include an obligation to grant redress and compensate the victims of an act in breach of that provision.”¹⁶⁷

90. Before Australia submitted its 6th periodic report, the Torture Committee sent Australia a “List of Issues”¹⁶⁸ that the Torture Committee wanted Australia to address in its 6th periodic report.

Various items list inquiries into Australia's current availability for redress per Article 16 of the Torture Convention including paragraph 24 which states in relevant part:

“Please provide information on measures for ensuring reparation to victims of torture and ill-treatment in each state and major mainland territory of the State party, specifically:

(a) Redress and compensation measures ordered by the courts since the consideration of the State party's previous report. That information should include the number of requests for compensation that have been made, the number granted and the amounts ordered and actually provided in each case;...(c) The measures taken to provide other

¹⁶⁶ U.N. General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Resolution 39/46, Art. 16, (10 December 1984), <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>

¹⁶⁷ UN. Doc CAT/C/29/D/161/2000, *Decision of the Committee Against Torture Under Article 22, Hajrizi Dzemajl et al v. Yugoslavia*, para. 9.6, (21 Nov 2002), <https://undocs.org/Home/Mobile?FinalSymbol=CAT%2FC%2F29%2FD%2F161%2F2000&Language=E&DeviceType=Desktop&LangRequested=False>

¹⁶⁸ UN. Doc. CAT/C/AUS/QPR/6, *Committee Against Torture, List of issues prior to submission of the sixth periodic report of Australia*, (2017), <https://digitallibrary.un.org/record/857779?ln=en>

forms of redress (restitution, satisfaction, including restoration of dignity and reputation, and guarantees of non-repetition) to victims of torture and ill-treatment, and how many of those measures have actually been granted to victims of torture and ill-treatment during the period under review”¹⁶⁹

91. The Torture Committee’s request on rights to redress and compensation per Article 16 of the Torture Convention was in its List of Issues, paragraph 24, and Australia’s reply is in Australia’s 6th periodic report states:

“Reply to the issues raised in paragraph 24 of the list of issues

319. Victims of torture and CIDTP have access to victims’ compensation schemes within their relevant jurisdiction (see paragraph 28).”¹⁷⁰

Paragraph 28 of Australia’s 6th Periodic Report states:

“Under Australia’s federated justice system, victims’ compensation is generally a matter for the states and territories. Each jurisdiction has a victims’ compensation scheme which provide for counselling and financial assistance for compensable violent acts, as well as financial assistance for financial loss and compensable injuries that arise from a violent act.”¹⁷¹

Australia continues her reply to paragraph 24 in the 6th Periodic Report’s paragraph 320 and paragraph 321 stating:

“320. Under state and territory legislation, victims’ compensation schemes may provide financial assistance for medical costs associated with rehabilitation and may provide payment for the treatment of injury, including psychological injury by specialist health services.

321. Jurisdictions do not record data that specifically identify cases of torture and CIDTP or where compensation is requested and granted in these cases.¹⁷² The data that is recorded is not adequate for national reporting.”¹⁷³

¹⁶⁹ *Id.* at para. 24

¹⁷⁰ UN. Doc. CAT/C/AUS/6, Committee Against Torture, *Sixth periodic submitted by Australia under article 19 of the Convention pursuant to the optional reporting procedure, due in 2018*, p. 41 para. 319, (28 Mar 2019) https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fAUS%2f6&Lang=en

¹⁷¹ *Id.* at para. 28

¹⁷² *Id.*

¹⁷³ *Id.* at paras. 320 and 321

92. Australia admitted that she is in breach of Article 16 of the Torture Convention’s obligation.

In paragraphs shown above of Australia’s 6th periodic report, Australia admitted that it does not have a national scheme in place that could comply with Article 16 of the Torture Convention positive right to redress and compensation, and thus Australia concedes that Australia is in breach of Article 16 of the Torture Convention.

Specifically, “jurisdictions do not record data that specifically identify cases of torture and CIDTP or where compensation is requested and granted in these cases.” The absence of such data suggests the absence of the right to redress and compensation.

If Australia had an effective means of tracking redress and compensation for victims of cruel, inhuman or degrading treatment or punishment, Australia might be said to be making progress towards compliance with its Torture Convention obligations.

C. Australia breached its Torture Convention Obligations to have a “systematic review” process in place

93. Australia’s Obligation to conduct “systematic reviews” when people are subject to arrest, detention, or imprisonment, per Article 11 of the Torture Convention.

Australia is in breach of its obligations under Article 11 of the Torture Convention, which requires Australia to have in place a “systematic review” of methods, practices, and arrangements related to any person subject to arrest, detention or imprisonment, in Australia and in any territory under Australia’s jurisdiction.

Article 11 of the Torture Convention provides:

“Each State Party shall keep under systematic review . . . methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.”¹⁷⁴

¹⁷⁴ U.N. General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Resolution 39/46, Art. 11, (10 Dec 1984), <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>

Though on its face, Article 11 might appear only to apply to torture (Torture Convention, Article 1), and not to cruel, inhuman or degrading treatment or punishment (Article 16), Article 16 specifically provides that Article 11 (“systematic review”) applies in Article 16 cases (cruel, inhuman or degrading treatment or punishment). Article 16 of the Torture Convention provides:

“to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at

94. Article 11 Systematic Review.

Although there is no clear definition of ‘systematic review,’ the United Nations Human Rights Committee, and academic scholars, provide insight on the standard.

The Human Rights Committee, which oversees implementation of the United Nations International Covenant on Civil and Political Rights (ICCPR) stated that:

“keeping under systematic review...treatment of persons subjected to any form of arrest, detention imprisonment is an effective means of preventing cases of torture and other forms of ill-treatment.”¹⁷⁵

The Commentaries on the Torture Convention explained obligations under Article 11, stating:

“Although closely interconnected, the States obligations under Article 11 additional to those established under Articles 2 and 16 and are meant to further reinforce the prevention of torture and other forms of ill-treatment. In other words, the use of the term ‘systematic review’ in Article 11 indicates that the obligations under Article 11 go beyond the adoption of a set of rules and practices. States parties, in fact, will not discharge their Convention obligations by simply adopting written rules and instructions, and establishing methods, practices, and arrangements to implement them, but will also have to make sure that such rules and practices are kept under systematic review. This means that States parties must ‘continually stay abreast of the actual situation’ and need to reform their rules and practices if they are not in line with the relevant standards.”¹⁷⁶

95. The Torture Committee previously asked Australia for specific information about systematic reporting of information that would fall under Article 11 of the Torture Convention, but Australia refused to provide this information.

Before Australia submitted its 6th periodic report, the Torture Committee sent Australia a “List of Issues”¹⁷⁷ that the Torture Committee wanted Australia to address in its 6th periodic report. Issue No. 21 of the List of Issues expressly requested that Australia provide the following:

the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.”

¹⁷⁵ Office of the High Commissioner for Human Rights, CCPR General Comment No 20: Article 7, *Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment*, para. 11, (Adopted 10 March 1992) https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fGEC%2f6621&Lang=en

¹⁷⁶ Manfred Nowak and Elizabeth McArthur, *United Nations Convention Against Torture: a commentary*, 2nd edition, Oxford University Press, p. 322, para. 15, (2019) <http://fdslive.oup.com/www.oup.com/academic/pdf/openaccess/9780198846178.pdf>

¹⁷⁷ UN. Doc. CAT/C/AUS/QPR/6, Committee Against Torture, *List of issues prior to submission of the sixth periodic report of Australia*, para. 9.6, (2017), <https://digitallibrary.un.org/record/857779?ln=en>

“**Issue 21.** Please provide annual statistical data from 2014 onwards, disaggregated by crime, the sex and age range of the victim and the minority group to which he or she belongs, if applicable, on: (a) the number of complaints filed and police reports initiated relating to torture, as well as the number of such complaints and reports related to ill-treatment, attempted commission of, or complicity or participation in, such acts, and killings or excessive use of force allegedly committed by or with the acquiescence or consent of law enforcement, security, military or prison personnel; (b) the number of investigations initiated as a result of those complaints and by which authority; (c) the number of those complaints that were dismissed; (d) the number of those complaints that led to prosecutions; (e) the number of those complaints that led to convictions and the penal and disciplinary sanctions that were applied to public officials who were found guilty, including the length of prison sentences; (f) the number of ex officio investigations into cases of torture and ill-treatment and the number of ex officio prosecutions per year; and (g) the number of cases of torture or ill-treatment reported by doctors following medical examinations of detainees, and the outcome of those cases.”¹⁷⁸

96. In Australia’s reply to the Torture Committee’s List of Issues request regarding information on reporting per Article 11 of the Torture Convention, Australia stated a refusal to provide the information.

The Torture Committee’s request for Article 11 information was in its List of Issues, paragraph 21, and Australia’s reply to paragraph 21 of the List of Issues stated:

“while state and territory authorities receive and record complaints in relation to alleged acts of torture, cruel, inhuman or degrading treatment or punishment, or excessive use of force, *data are generally not captured for reporting purposes and are not available in a form that would enable a sufficient response to all parts of this issue.*”¹⁷⁹
[emphasis added]

97. Australia admitted that she is in breach of Article 11 of the Torture Convention.

In paragraph 289 of Australia’s 6th periodic report shown above, Australia admitted that it does not have a “systematic review” scheme in place that could comply with Article 11 of the Torture Convention, and thus Australia concedes that Australia is in breach of Article 11 of the Torture Convention.

¹⁷⁸ *Id.*

¹⁷⁹ UN. Doc. CAT/C/AUS/6, Committee Against Torture, *Sixth periodic submitted by Australia under article 19 of the Convention pursuant to the optional reporting procedure, due in 2018*, p. 41 para. 289, (28 Mar 2019) https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fAUS%2f6&Lang=en via https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=AUS&Lang=EN

D. Australia breached its Torture Convention Obligations to ensure a right to complain and an opportunity for redress by failing to adequately track reported complaints.

98. Australia’s Obligation to ensure a right to complain (per Article 13 of the Torture Convention) and a positive right for redress and compensation (per Article 16 of the Torture Convention).

Australia is in breach of its obligations under Article 13 which requires Australia to ensure individuals subjected to cruel, inhuman or degrading treatment or punishment have a right to complain and have their case promptly and impartially examined by competent authorities.

Article 13 of the Torture Convention provides:

“Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities.”¹⁸⁰

The first sentence of Article 16 of the Torture Convention provides, in relevant part:

“Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman, or degrading treatment or punishment.”¹⁸¹

The Torture Committee has stated:

“the positive obligations that flow from the first sentence of article 16 of the Convention include an obligation to grant redress and compensate the victims of an act in breach of that provision.”¹⁸²

Thus, Article 13 and Article 16 combined require Australia ensure a right to complain (Article 13) and an opportunity for redress and compensation (Article 16). Though some victims may have some access to some mechanisms to seek redress and compensation, any such mechanisms are inadequate, as evidenced by, for example, the failure of Australia to track complaints in which a victim alleges a violation of cruel, inhuman, degrading treatment or punishment.

¹⁸⁰ U.N. General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Resolution 39/46, Art. 13, (10 December 1984), <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>

¹⁸¹ *Id.* at Art. 16

¹⁸² UN. Doc CAT/C/29/D/161/2000, *Decision of the Committee Against Torture Under Article 22, Hajrizi Dzemajl et al v. Yugoslavia*, para. 9.6, (21 Nov 2002), <https://undocs.org/Home/Mobile?FinalSymbol=CAT%2FC%2F29%2FD%2F161%2F2000&Language=E&DeviceType=Desktop&LangRequested=False>

99. The Right to Complain and Access to Redress and Compensation are Interconnected.

The right for victims to complain provides them with the chance to positively express dissatisfaction and disapproval of their treatment. A complaint is also an important first step for the victim to obtain redress.

The NGO REDRESS discusses the interconnectedness between complaints, on the one hand, and redress and compensation, on the other hand.¹⁸³

Redress explained:

“A ‘complaint’ about torture is an important right for victims in and of itself as it provides them with the chance to positively express dissatisfaction and disapproval of their treatment. This may contribute substantially to the reestablishment of their sense of control and dignity. It is also a means to an end, in that it gives notice to the competent authorities of the alleged commission of a crime. In this respect, the complaint is also a trigger for the competent authorities to begin an investigation into the alleged acts with a view to holding the perpetrators accountable as part of criminal or administrative proceedings. A complaint may also be a first step for the victim to obtain other forms of reparation; without the evidence generated by the official investigation of the complaint, it is often difficult for the victim to pursue non-criminal legal remedies such as restitution or compensation. Consequently, the availability of effective complaint mechanisms will have wide implications for the prevention and punishment of torture as well as for remedies and reparation.”¹⁸⁴

100. Australia refused to provide the Torture Committee with complaint data the Torture Committee requested.

In paragraph 290 of Australia’s 6th periodic report, in reply to the Torture Committee’s List of Issues paragraph 21 listed above:

“alleged complaints are received and processed by a variety of divisions within an agency meaning a comprehensive list of complaints is not available. In other jurisdictions, the data and information is either not publicly available or is not disaggregated as requested.”¹⁸⁵

¹⁸³ The REDRESS website describes it as an international organisation dedicated to bringing legal cases on behalf of survivors of torture to deliver justice and reparation for survivors of torture with a goal to challenge impunity for perpetrators and advocate for legal and policy reforms to combat torture. See <https://redress.org/about-us/>

¹⁸⁴ Redress, *Taking Complaints of Torture Seriously: Rights of Victims and Responsibilities of Authorities*, p. 7, (2004), <https://redress.org/publication/taking-complaints-of-torture-seriously-rights-of-victims-and-responsibilities-of-authorities/>

¹⁸⁵ U.N. Doc. CAT/C/AUS/6, *supra* at note 5, para. 290

101. Australia admitted that she is in breach of Article 13 and 16 of the Torture Convention

Australia conceded that it does not have a “comprehensive list of complaints” related to cruel, inhuman or degrading treatment or punishment complaints. The absence of such a list suggests the absence of the right to complain, and, an absence of the right to redress or remedies.

E. Proposed Recommendations Regarding Remedies – Right to Complain, Right to Redress, Right to Compensation

Proposed Recommendation # 21 of 24: Fully Implement a Redress and Compensation Tracking System

The Committee Against Torture recommends that Australia implement a national redress and compensation reporting system to ensure a right to redress and compensation pursuant to its Article 16 obligations.

Proposed Recommendation # 22 of 24: Fully Implement a Systematic Review

The Committee Against Torture recommends that Australia implement an accurate national reporting system of complaints, investigations, and outcomes fulfilling its obligation to have a “systematic review” pursuant to its Article 11 obligation.

Proposed Recommendation # 23 of 24: Implement a Complaint Process Reporting System

The Committee Against Torture recommends that Australia implement an accurate national reporting system to track the complaint process of cruel, inhuman or degrading treatment and punishment and their outcomes, to help ensure that victims are fully afforded a right to complain pursuant to Article 13 of the Torture Convention and a right to redress pursuant to Article 16 of the Torture Convention.

Proposed Recommendation # 24 of 24: Implement a Human Rights Act

The Committee Against Torture urges that Australia implement a national Human Rights Act that allows redress and compensation for victims of torture, and cruel, inhuman or degrading treatment or punishment.

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Appendices

APPENDIX A:	Hyperincarceration of Indigenous People in Australia, by State, per a Chart Contained in Australia’s 6th Periodic Report Submitted to the United Nations Torture Committee under Article 19 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc. CAT/C/AUS/6, para. 41 (28 March 2019).....	65
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APPENDIX A

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Appendix A

**Hyperincarceration of Indigenous People in Australia, by State,
 per a Chart Contained in
 Australia's 6th Periodic Report Submitted to the
 United Nations Torture Committee under Article 19 of the
 Convention Against Torture and
 Other Cruel, Inhuman or Degrading Treatment or Punishment**

**U.N. Doc. CAT/C/AUS/6, para. 41
 (28 March 2019)**

41. Table 8A.5 – Imprisonment and community corrections population rates per 100,000 adults²

	<i>NSW</i>	<i>Vic</i>	<i>Qld</i>	<i>WA</i>	<i>SA</i>	<i>Tas</i>	<i>ACT</i>	<i>NT</i>	<i>Aust</i>
Crude imprisonment rate (b)									
2016-17									
Male	404.1	275.4	399.2	576.1	421.8	263.8	273.4	1 577.1	398.0
Female	33.2	19.4	37.8	64.2	30.5	23.5	20.8	141.3	34.2
Aboriginal and Torres Strait Islander	2 259.4	1 751.7	1 998.5	4 027.3	2 736.5	662.6	1 945.5	2 846.2	2 411.5
Non-Indigenous	165.3	131.3	151.9	205.9	165.4	119.0	112.7	197.2	156.6
Ratio of crude Aboriginal and Torres Strait Islander/Non-Indigenous rate	13.7	13.3	13.2	19.6	16.5	5.6	17.3	14.4	15.4
Total crude imprisonment rate									
2016-17	215.3	144.6	215.7	321.4	222.5	141.9	144.9	904.3	213.3
2015-16	206.4	134.7	201.2	291.2	213.8	129.8	131.6	921.7	201.0
2014-15	187.4	138.0	194.3	271.1	198.5	116.7	113.5	884.9	190.3

This chart, produced by the Australian Government, shows, for example, that in 2016-2017, in New South Wales (NSW), Australia (1st column of figures), 13.7 Indigenous persons (Aboriginal and Torres Strait Islander persons) were incarcerated for every 1 non-Indigenous person incarcerated.

² Productivity Commission, 2018, *Report on Government Services 2018: Chapter 8, Corrective*

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APPENDIX B

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APPENDIX B

Testimony of Child Prisoners in Australian Prisons Who Are Subject to Cruel, Inhuman or Degrading Treatment or Punishment:

Excerpts from a Representative Complaint Lodged Pursuant to Section 46 PB of the

***Australian Human Rights Commission Act 1986 (Cth)* (“AHRC Act”)**

(September 2022)

The Testimonials in this document were provided by child prisoners in Western Australia who suffered cruel, inhuman, or degrading treatment as they were: (a) subjected to imprisonment with adults; (b) subjected to other cruel, inhuman, or degrading conditions of imprisonment.

The four (4) Testimonial Excerpts below, by children aged 15 – 17, demonstrate that Australia has perpetrated cruel, inhuman or degrading treatment against the children.

To protect identities, the first and last initials of the children are used instead of names.

Courtesies to Mr. Benedict Coyne, Barrister-at-Law, Griffith Chambers (Australia), of counsel to these and many other cases involving alleged human rights violations of child prisoners.

A. TS

1. TS is a 17-year old First Nations / Aboriginal / Indigenous male who was detained at an adult prison from 20 July 2022 to 17 August 2022.
2. TS reported experiencing numerous “rolling lockdowns” whereby he was confined to his cell and subjected to solitary confinement for days and weeks.
3. On 16 August 2022, he stated, “I can’t remember the last time I was allowed outside in the fresh air”.
4. According to TS, it was the protracted period spent in solitary confinement that caused him to feel “angry” and as though he were “going mad”.

B. TB

1. TB is a 15-year old First Nations / Aboriginal / Indigenous male who was detained at an adult prison from 20 July 2022 to 23 August 2022.
2. TB was moved out of the adult prison after attempting suicide by hanging twice in a one-hour period.

[Page 2 of 2 – Child Prisoner Testimonials]

- 3. TB, who has claustrophobia brought on by prolonged periods spent in solitary confinement, reports being placed in his cell for “days” with no adequate time out of his cell.**
- 4. TB reported that his requests to telephone his aunty were often refused and that Youth Custodial Officers and/or Prison Officers refused his requests to say goodbye to his brother before his brother’s release from the same prison.**

C. KB

- 1. KB is a 17-year old Caucasian male who was detained at an adult prison from 17 August 2022 to 23 August 2022.**
- 2. KB was moved out of the adult prison after he used the three (3)-point restraints he was wearing to attempt to commit suicide by hanging and needed to be resuscitated.**
- 3. Whilst incarcerated in the adult prison, K reports having regular contact, both oral and physical, with adult prisoners.**
- 4. K also reports being supervised by a mix of Youth Custodial Officers and Adult Prison Officers at a ratio he describes as being “50/50”.**

D. JH

- 1. JH is a 16-year old First Nations / Aboriginal / Indigenous male who has been detained at an adult prison since 20 July 2022.**
- 2. Prior to transfer, while incarcerated at a juvenile prison, JH attempted to commit suicide on three separate occasions.**
- 3. On 20 August 2022, whilst detained in the adult prison, JH attempted to overdose on his medication and was taken to a hospital for treatment.**
- 4. Since his transfer to the adult prison, Youth Custodial Officers and Prison Officers have routinely verbally vilified and abused JH including with words to the following effect: “black dog”, “black cunt” and “little Abo shit.”**
- 5. In the months leading up to his transfer to the adult prison, JH was confined to the Intensive Support Unit within the juvenile prison and JH spent approximately 79 days locked in solitary confinement in the Intensive Support Unit with heavily restricted access to services, recreation, and socialization.**

APPENDIX C

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APPENDIX C

STATEMENT OF MS. FILIPA PAYNE ADVOCATE, ROUTE501 (AUSTRALIA)

RECORDED 1 OCTOBER 2022

WHILE MS. PAYNE WAS AT CHRISTMAS ISLAND

1. My name is Filipa Payne, I am 50 years old, a single mother, and I have been advocating on behalf of people detained in Australian immigration detention centres for seven years.
2. I am the Director of the Route 501 Support and Advocacy Pty Ltd, a company registered in New Zealand that provides support and advocacy.
3. On September the 25th 2022 I flew to Christmas Island where I have been undertaking visits with detainees. This is my third visit.
4. These visits cost about \$10,000 each.
5. I work in a voluntary capacity and do not receive any income for the advocacy and support that I provide.
6. I pray every day that I can help people to keep hope, and to give them support so that they can keep their mental health stable, and so that they know that someone does care about them, and that someone will continue to be their advocate while they are in detention.
7. On my current visit to Christmas Island, there was no internet coverage. This was problematic as the Detention Centre required five days' notice of my proposed visit.
8. This is just one of the typical problems that can occur when visiting Christmas Island.
9. I feel very disconnected to the wider world, and I feel very isolated.
10. I find it very hard to keep communications going with the legal team that is supporting me.
11. I find it very hard to keep in touch with my children while I am away.
12. The heat is at an extreme level. I have found myself physically and mentally fatigued by the heat.
13. At times I am very fearful and anxious for my own personal safety.
14. I have an emergency beacon from the police station but it is scary for me to be here by myself.
15. People seem to know me without having been introduced to me, to know what I am doing without having been introduced to me. I have found this intimidating.

16. I have had the misfortune of being spoken to disrespectfully, and in a degrading manner, and I experienced a hostile physical presence, from one particular guard at the reception of the Detention Centre.
17. He tried to incite a disagreement with me, which I would not allow him to do. He belittled me and belittled my work.
18. He told me he would be denying me access to visitation because I had not submitted the applications giving five days' notice.
19. I asked him for compassion and consideration due to the lack of internet on the Island. He told me that was my problem and that I should sue my accommodation provider.
20. On the online application for access there is provision for making an application outside of time.
21. I duly explained the reasons for my delay, pointing out that it had already cost me \$6,500 to come to Christmas Island.
22. Since being on Christmas Island one of my bank accounts has been hacked. As I am on Christmas Island, it is impossible to contact my New Zealand bank to sort this out. This illustrates the sort of difficulty that advocates face on Christmas Island.
23. Border Force and SERCO guards treat me with contempt. Fans are no longer provided in the visitation area. I am required to take COVID-19 tests, and despite negative results, am required to wear a mask. The sweltering heat and requirement that I wear a mask when I plainly do not have COVID-19 has made me feel faint and nauseous when making visits.
24. Today during visitation, the fans were not in the room and the toilets were blocked. All I could smell was sewage.
25. I have found that SERCO are not complying with the visit rules. The men are not getting notified of my visits. Normally they would receive a slip and advance notification. Instead, they are being yanked out of their classes and gym. They are sweaty, smelly and upset.
26. I am not allowed to take pen, paper or anything with me into detention so that I can take notes. I have had to take file notes when I return to my accommodation.
27. I have seen men who have had strokes and are paralysed.
28. I have seen men who have serious medical conditions.
29. These men have told me that all they are given is Panadol, and that their medical needs are not being met.
30. The cost of living is extreme and high on Christmas Island. A lettuce costs \$12 and the only one available was half rotten. I have had to live on baked beans, two-minute noodles and bread.
31. The internet access is very limited, it is only available at particular spots and at high expense. I have struggled to communicate with anyone who is not on Christmas Island.
32. The time difference makes things very difficult.
33. On my first visit to Christmas Island in 2017 I was made to take off my bra at the Reception Area to go through a metal detector. This was on the very last day of my visits when I had walked through previously without this requirement having been imposed. There were a group of SERCO Officers at the reception area – more than usual – and I believe this was done to humiliate me.

34. I took off my bra as ordered and walked through, crossing my arms to hide my breasts.
35. I found this so humiliating, but I did not confront the guards about this indignity as it meant more to me to see the people inside than stand there and fight for my dignity.
36. During my current visit I have spent so far approximately about \$500 on singlets and shorts, as many of the men don't have their own clothing, and are required to wear clothes provided by SERCO, which are ill fitting and uncomfortable.
37. The men complain to me that they feel as if they are in prison because they have to wear the SERCO clothes.
38. I also buy hygiene materials for them, which have not been provided by Australia.
39. I hope these gifts bring some joy and comfort to the men.
40. It is costing me more than \$500 to pay for phone services so that I can stay in touch with the outside world, and my clients.
41. The Detention Centre is across the island. The road is being repaired and so I have had to drive through jungle. This road is scary and has made me feel fearful that the care will be break down. Car hire has been more than \$1000 for the two weeks I have been here.
42. I wanted to be here for just one week but as there are no flights available I have had to stay for two weeks, incurring additional expense.
43. There is no pricing on the supermarket shelves. I have been told that I am being "charged as a tourist" and much more than the locals. I was charged over \$20 for a meal that would cost \$5 on the mainland.
44. The normal process to enter a detention centre is that you have to walk through a medical detector or swiped with a wand, and you also need to be swabbed for drug paraphernalia. At no point have I been tested for drug paraphernalia.
45. I have not pointed out this lapse to the detention centre as I do not want them to make my visits more difficult in future.
46. There are no ATMs in Christmas Island and you cannot withdraw cash. The exchange rates are significant.
47. Since being here I have started smoking again and drinking again at night in order to cope.
48. My normal health outlet would be to walk, to clear my thoughts, connect with my emotions and to avoid triggers. On Christmas Island I am too fearful to walk the streets as I am concerned I will be targeted. I have isolated myself and stayed inside my room to feel safe.
49. Whilst I know the men in the detention centre are grateful for my presence and very forthcoming in sharing their stories I have received nasty messages from a partner of one of the people I visited. However I understand that she cannot visit her partner, as she has not seen him over two years, and this triggered her behaviour and jealousy. This again illustrates the human dimension of locking people up thousands of kilometres from their loved ones.
50. Every morning when I wake up I am being contacted by more or more person. There is no way that I can meet the physical and emotional needs for these people. These people are desperate and

suicidal. I try every day to be a voice for those in detention with the capabilities and resources that I have.

51. The majority of the people that I have seen are brown skinned. I believe that racism is one of the reasons they are in detention. The guards ostracise them, and I have witnessed this treatment.
52. There have been many nights since I have arrived on Christmas Island that I have spent isolated in my room crying, upset and scared. 1., because of what I have witnessed inside the detention centre, 2. because of the isolation I have felt; 3. because I feel that people have right to be rehabilitated.
53. I have spoken to a number of men who did not have drug problems before they entered into immigration detention, but who have turned to drugs to manage their mental health and feelings of desperation and are now not being given the services they need to minimise harms.
54. I believe that everyone has the right to dignity. I pray every day that I will survive this trip.
55. I feel ashamed that Australia treats people in this way and regards my humanitarian intentions as some sort of risk, which it is plainly not.
56. I feel constantly watched and observed.
57. I feel vulnerable when I sleep.
58. The applications for visitation were approved, but I am not provided with sufficient advance notice of day-to-day arrangements, allowing me to plan.
59. I have been denied access to some people with no explanation provided.
60. Whilst I am not in the detention centre and have the freedom to move I feel as if my life is regimented.
61. The reality is that if I wanted to leave Christmas Island I could not due to insufficient flights.
62. During the first visit in 2017 I attended a church ceremony where a local Indigenous person gave me a \$3000 cheque for library materials for the detainees. That cheque was confiscated by a SERCO Officer who said that I could not use these funds for that purpose as I did not have an Australian bank account. This officer, who I know by name, has also made unwelcome sexual advances. I refused.
63. I felt that if I did not continue to speak to him at that time that my visits would be cancelled. I felt fearful during this trip due to those unwelcome advances. All I wanted to do was run away and hide.
64. I have overheard people on Christmas Island being critical of me.
65. I will not let this stop me from my advocacy.
66. What is the purpose of the United Nations when human rights are routinely violated by Australia and the detainees cannot get any redress?
67. One of the most significant changes I have noticed in the last seven years is the growing number of people in indefinite detention.
68. I am having trouble sleeping. I am having nightmares. Trauma from my childhood has resurfaced. I have not had these thoughts for many years.

APPENDIX D

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Affidavit of Shayne Peter Forrester dated 30 September 2022

I say on oath:

1. My name is Shayne Peter Forrester and I was born on 25 September 1966.
2. I was born in Christchurch, New Zealand (Aotearoa).
3. This affidavit has been prepared to support submissions to the United Nations made by Dr Patrick Keyzer, Reparation Legal, Level 13, 111 Elizabeth Street, Sydney, NSW, 2000.
4. My sister lives in Townsville and my older brother lives in Melbourne.
5. My family life when I was growing up was hard.
6. My father was physically abusive, and he belted us often.
7. I have found it difficult to maintain relationships as an adult.
8. My father suffered from severe depression and when I was 14 years old, I witnessed him blow his head off with a shotgun.
9. I never went back to school after this happened.
10. After this event I started to engage in criminal offences.
11. At 17 years of age I was placed in Addington Remand Prison, and then Invercargill Youth Prison.
12. As a young adult in New Zealand I raced speedway sidecars.
13. On 7 February 1997 I broke my back.
14. After I was released from hospital, I decided to join my brother, who was then living in Karratha in Western Australia.
15. For about eighteen months I worked in various jobs, including truck driving, cement stabilisation work to fill potholes and repair roads, and the like.
16. In late 1998 I was working in Kununurra in Western Australia when I was offered a shot of amphetamines (speed).
17. I found that speed gave me temporary relief from my depression and my back pain.
18. I became an addict.
19. I became a dealer to support my addiction.



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20. I later became a manufacturer to support my dealing.
21. I have a lengthy criminal history in Australia.
22. My final prison sentence in Australia was a sentence for 28 months for supply of methamphetamine and firearms offences.
23. When I was released from Casuarina Prison in Western Australia I was handcuffed by officers from the Australian Border Force and taken to Yongah Hill, an Australian Immigration Detention Centre in Western Australia.
24. They told me that my visa had been revoked on character grounds, and that I would have to successfully appeal to remain in Australia. I was confused and angry.
25. I was also seriously ill. During my final month in prison I had experienced pain while urinating and I reported this to the medical staff at Yongah Hill.
26. I had a chronically sore stomach and abdomen and sought help from a general practitioner there, Dr George.
27. On 4 November 2020, Dr George told me that he suspected I had prostate cancer. He told me I should see a urologist.
28. By this stage I had hardly any control over my bladder and my pants were often wet with urine.
29. I was contemplating suicide at this point.
30. Dr George also confirmed my diagnosis with depression and prescribed me 100 mg of Endep.
31. I understand that this is a significant dose and indicates that I have severe depression.
32. Due to my deteriorating health I was transferred to a "medical one-out" cell.
33. I was extremely anxious about my deteriorating health and that I was not receiving the specialist care I needed.
34. The day after I was advised my appeal from the revocation of my visa had been rejected, I was told that I was being transferred to Christmas Island.
35. I understand that one of the social workers at Yongah Hill tried to stop this from taking place but was unsuccessful.
36. On the day that I was removed from Yongah Hill I was angry and refused to sign a slip acknowledging receipt of my property.
37. I told the officers of the Australian Border Force that I wouldn't be leaving Yongah Hill.



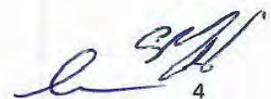
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38. I was told that "you will be going even if we are carrying you".
39. I realised then that resistance to this taking place was futile.
40. I was not allowed to return to my room and say goodbye to the friends I had made there.
41. At 330am the next morning, the Emergency Response Team charged in, handcuffed me, and bused me to the airport.
42. I needed to be close to a toilet at all times, but my requests were not met.
43. We sat on the bus for five hours before the flight.
44. My pants were wet with urine and I was dehydrated.
45. We were flown to Christmas Island handcuffed for the entire journey.
46. We arrived mid-afternoon, around 3.30pm.
47. I was told I was "white as" and taken to the medical bay at the Christmas Island Detention Centre, where I was given painkillers and electrolytic fluids.
48. I was there for about an hour before I was processed.
49. At Christmas Island there were a number of different units.
50. I was shown where a unit called "Green One" was located and pointed toward a 16-person dormitory.
51. I had to walk to the unit myself and negotiate a sleeping arrangement.
52. This room did not have air-conditioning.
53. The room had a toilet that needed to be shared with the eight other people occupying that room.
54. The food was terrible and arbitrary rule changes were issued on an almost daily basis. The environment seemed calculated to be demeaning and to provoke the detainees. There was no point making complaints because SERCO Officers, Emergency Response Team Officers and Australian Border Force Officers did not provide effective responses to any complaints.
55. I was at Christmas Island from 1 December 2020 to about the 7th of February 2021.
56. The weather on Christmas Island during this period was very hot and humid. We were given one hour of free time each day, and it was too hot to go to the gym or the oval.



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57. I was in constant pain during this time and thought that I would die unless I received specialist medical care.
58. For that reason, I signed a declaration on the 14th of December 2020 relinquishing my appeal from the decision of the Minister for Immigration to revoke my visa. I felt I had no choice because I was afraid I would die there.
59. There was a riot at the Christmas Island Detention Centre while I was there.
60. I played no part in the riot and asked the officers at the Detention Centre to bring together the leaders of the by-then opposing parties of detainees so that they could mediate their disputes.
61. When the riot took place, Emergency Response Team officers in full riot gear cut the power and used tear gas to disperse the crowd. I witnessed brutality inflicted by ERT officers and I witnessed them damage the personal property of detainees.
62. Together with three other men we made our way through a hole that had been cut in the fence.
63. We were met with ERT officers there who threw us to the ground, handcuffed us, and took us to the tennis court.
64. We waited there for many hours and then we were taken to a large cell where we sat on a concrete floor for about two days.
65. For the next eleven days I was deprived of all my medications.
66. I was on a 100mg dose of anti-depressants at this time, and I felt as if I had been thrown off a cliff.
67. The conditions there were intolerable. Every day was a struggle. The boredom was relentless.
68. The Australian Border Force interviewed me at this time and I told them that I was signing the declaration to relinquish my appeal rights because the conditions at Christmas Island were intolerable.
69. In early February 2021 I was placed in a van, flown to Perth, and returned to Yongah Hill, to exactly the same unit that I had left two months before.
70. I was overwhelmed with anxiety and pain during this long, hot and uncomfortable journey back to Perth.
71. A few days later I was flown to Auckland via Tasmania. The entire journey took about 20 hours and I was in considerable pain the whole way.



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72. This was a charter flight and all of the (about 18) passengers were surrounded by guards who ate and drank coffee while we were given nothing.
73. I was handcuffed for this entire period.
74. I was in pain the entire journey.
75. I was not allowed to stand up and stretch unless I had to go to the toilet.
76. At Auckland Airport a whole section of the airport was cordoned off in the arrival lounge. I was processed by the New Zealand Government, which included taking my DNA and fingerprints, given \$380, my property and medical records.
77. I was taken to the Ramada Hotel for two weeks to undertake COVID-19 quarantine.
78. I was required to walk up five flights of stairs to the room that was allocated to me, on the fifth floor.
79. I told them that I was too unwell to do this and ultimately, I was allowed to take the lift, accompanied by a guard.
80. By this stage I was urinating blood.
81. I told the people at the hotel I needed a doctor.
82. A doctor saw me and prescribed pills that slowed the flow of blood.
83. PARS (The Prisoner Aid and Rehabilitation Society (New Zealand)) provided me with assistance.
84. I flew to Christchurch where I stayed with my younger brother.
85. I was finally referred to a urologist.
86. Dr Jonathan Usher became my treating doctor.
87. He told me that my "PSA count" was 82 or 84. I was told this was extremely high.
88. On 14 February 2021 I was diagnosed with prostate cancer.
89. Dr Usher told me that I should have seen a urologist before.
90. I explained that I had been in detention and deprived of proper medical attention.
91. I was then referred to an oncologist and a psychologist.
92. The oncologist told me that my cancer had mutated to my liver, lymph nodes, bones and kidneys.



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93. I was told that I was likely to be dead within 2 years.

94. I was prescribed chemotherapy, which I undertook.

95. I have also had a regime of implants to address my prostate cancer problems.

Sworn at: Sydney

Signature of deponent: 

Name of witness: Mathew Lee Henderson

Address of witness: Reparation Legal, Level 11, 113 Elizabeth Street, Sydney NSW 2000

Capacity of witness: Solicitor

And as a witness, I certify the following matters concerning the person who made this affidavit (the deponent):

- 1 I saw the face of the deponent.
- 2 I have confirmed the deponent's identity using the following identification document: Original New Zealand Driver's Licence BH220585

Signature of witness: 

Mathew Lee Henderson
Solicitor of the Supreme
Court of New South Wales
Practising Certificate No: 57522


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APPENDIX E

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APPENDIX E

Testimony of Mr. Kopa Toimata an Indefinite Detainee / Christmas Island Immigration Detention Center Prisoner

(Statement as of 3 October 2022)

1. Mr Kopa Toimata was born in Timaru, New Zealand and arrived in Australia as a child of 10 or 11.
2. When he was five years old, Mr Toimata had an accident. His clothes were set on fire and he suffered burns to 80% of his body. He endured many skin grafts throughout childhood. Mr Toimata requires regular surgical cutting and physiotherapy treatment in order to remain physically mobile and relatively free of pain.
3. Mr Toimata was in prison when he found out that his Australian visa had been cancelled on character grounds. It was Christmas Eve 2014 and he had been looking forward to going home to his family upon his release.
4. He had served his sentence, was rehabilitated and apologetic for his actions but was effectively being punished without having committed any new crime.
5. Mr Toimata was placed in maximum security and segregation after the visa news.
6. Mr Toimata was told he had 28 days to appeal. Mr Toimata did not really understand the letter. He read it to his mother (Patricia) over the phone and she set about finding a lawyer. Patricia couldn't afford to hire a lawyer and couldn't find anyone to act pro bono. Kopa and Patricia did the appeal document themselves.
7. On his release date from prison in 2013 (Mr Toimata served 12 months total). He was then moved to Brisbane Immigration Detention. Mr Toimata's hands were handcuffed.
8. All up, Mr Toimata spent two years in immigration detention – twice as long as his prison sentence. Approximately 14 months of that period was spent on Christmas Island and 10 months at Yongah Hill in Western Australia.
9. This was emotionally crushing for Mr Toimata as his large extended family all live in Brisbane, QLD, which is thousands of kilometres away.
10. As Ms Filipa Payne notes in her affidavit at Annexure F, decisions to detain people thousands of kilometres away from their families are not unusual, but they are cruel.
11. Seven months into his detention, Mr Toimata was woken at 4:00am, handcuffed and put on a flight to Christmas Island.
12. Mr Toimata saw drones for the first time on Christmas Island. They are used for surveillance but he found them intimidating.

13. Importantly, the weather on Christmas Island is hot, tropical and uncomfortable. 80% of Mr Toimata's skin is grafted. The burns incident happened when he was a child so his grafts have to grow with him. Mr Toimata requires regular surgical cutting and physiotherapy treatment in order to remain physically mobile and relatively free of pain.
14. These necessary medical services were not provided to Mr Toimata when he was in immigration detention at Yongah Hill or on Christmas Island.
15. The weather on Christmas Island caused his skin to become irritated, itchy and sore. He was constantly scratching or needing to scratch.
16. Mr Toimata was passed around to every nurse in the detention centres. The most help he was given was over-the-counter anti-fungal creams. The least help was sorbolene or Vaseline. None of these treatments eased his symptoms. He begged to see a specialist dermatologist.
17. Ultimately the tropical conditions made Mr Toimata's skin constantly flare up. It was uncomfortable to wear a shirt in such heat and humidity and clothing agitated my skin.
18. Guards enforced a "shorts on" rule even though this caused Mr Toimata pain.
19. Mr Toimata was in agony one day and needed some air on his skin. He took his shirt off and tried to find a quiet part of the yard.
20. A guard came up to him and said that the sight of his burns offended and sickened him and the guard made Mr Toimata put his shirt back on. This was humiliating and degrading.
21. It was hard for Mr Toimata to keep his skin clean as the shower blocks on Christmas Island had no ventilation and were always covered in mould with a horrible smell. I may even have gotten skin infections from the bathrooms and showers in Detention.
22. Medical help was substandard in immigration detention. Mr Toimata was mentally struggling and depressed. He was told by a nurse that he had symptoms of depression and insomnia and they prescribed Seroquel and Avanza. Mr Toimata took these as directed. He slept better but his depression remained.
23. The guards would enter the rooms of people in detention at night for no reason at-least twice a fortnight. All hours of the night they would come in and switch lights on and either search the room or just leave again.
24. Mr Toimata was part of a group of 8 detainees who had an altercation with asylum seekers. They were later sent to the segregation wing of Christmas Island where they were kept in our cells for 23 hours a day. They were given a jug of water.
25. They were kept in segregation for one month.
26. On Christmas Island Mr Toimata saw another Iranian asylum attempt to commit suicide in front of him by slashing their own wrists and trying to cut their own throat.
27. There was blood everywhere and Mr Toimata still has nightmares about it.
28. In March 2015 Mr Toimata witnessed riots at the Christmas Island Detention Centre. The combination of poor food, lack of contact to the outside world, harsh rule enforcement caused detainees to start fires and break windows.
29. Mr Toimata did not physically partake in the rioting but was later accused of being a ringleader.

30. When the guards quelled the riots, Mr Toimata saw dozens of detainees beaten by guards, even if they were not resisting.
31. After the riots Mr Toimata was handcuffed and feet-shackled and flown back to Western Australia where he spent six months at Albany Prison whilst the matter was being investigated.
32. Mr Toimata was then handcuffed and feet shackled and flown back out to Christmas Island.
33. The thought of returning to Christmas Island broke Mr Toimata. For the last two years his mother had been urging me to hold on and keep fighting the deportation.
34. By this stage Mr Toimata's mental health had degraded to the point where he was constantly talking to myself out loud.
35. Returning Mr Toimata to Christmas Island was the incident that caused him in March 2016 to sign a declaration accepting deportation to New Zealand.
36. Mr Toimata was handcuffed for the flight from Christmas Island to Perth and again for a commercial Flight to Sydney and onwards to Wellington, NZ.
37. Two guards accompanied Mr Toimata on the flights.
38. Mr Toimata live with pain and discomfort from my burns injuries and the loss of 2 years of my life in detention has been hard.
39. Mr Toimata still experiences crushing depression from his experiences in immigration detention.
40. Depriving Mr Toimata of proper medical treatment for his burns was cruel treatment contrary to the Convention against Torture.
41. The other aspects of his treatment noted above were also cruel and degrading.

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APPENDIX F

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APPENDIX F

Testimony of Mr. Ritesh Naikar an Indefinite Detainee / Christmas Island Immigration Detention Center Prisoner

(Statement as of 3 October 2022)

1. Mr Ritesh Naikar was born on the 7th of November in 1980, in Nadi, Fiji.
2. He lived in Fiji until he migrated to Australia in 2012 aged 32 with his then wife Vijay Reddy.
3. Vijay had Australian citizenship and Mr Naikar was granted a partnership visa.
4. Mr Naikar has a degree in mechanical engineering from the Fiji Institute of Technology.
5. Over 20 years Mr Naikar worked in a variety of mechanical engineering and general mechanic jobs.
6. Mr Naikar lived in Melbourne, Victoria for ten years.
7. In August 2016 Vijay Reddy withdrew her partnership visa for me when they separated.
8. In 2017 Mr Naikar served three months in an Australian prison for breach of a domestic intervention order.
9. Mr Naikar's visa was cancelled under section 116 of the Migration Act on 16 March 2017.
10. On 17 March 2017, Mr Naikar was in prison in Melbourne when he found out that his visa had been cancelled.
11. Mr Naikar only had 7 days to appeal. He was unable to find a lawyer to assist. He lodged the appeal without legal advice.
12. The intervention order was predicated on alleged violent threats made by myself over to the phone to my ex-partner over the phone (which I deny doing and have never been proven and now no longer alleged by Vijay).
13. Mr Naikar is currently in the custody of Australian Immigration Detention in Perth, Western Australia
14. Mr Naikar has been in immigration detention since 15 June 2017 (over 4 years).
15. Mr Naikar is presently medically unfit to be deported.
16. On 17 December 2017 he was placed in the Green One Compound, on the second story.
17. Mr Naikar was going downstairs to breakfast when he slipped on a step and landed on his back, heavily.
18. Cleaners had mopped the step.
19. Mr Naikar was seriously injured.
20. Mr Naikar attempted to stand but he was in immense pain.
21. The cleaners apologised to Mr Naikar for failing to put a sign in place saying that the floor was slippery.
22. From 8.30am to 1.00pm no officers came to him and no medical assistance was provided.
23. At 1.00pm a SERCO Officer came and Mr Naikar asked him to go find a doctor.
24. From 1.00pm to 6.00pm no one came to see Mr Naikar.

25. Mr Naikar was crying because of the pain.
26. At 7.39pm another SERCO Officer came. Mr Naikar told her he had been crying.
27. Mr Naikar was assisted into a wheelchair.
28. Officers gave him Panadol but there was still no doctor.
29. Mr Naikar could not sleep.
30. At 11.00am, a doctor saw Mr Naikar and gave him Panadol.
31. Mr Naikar complained that he was in immense pain.
32. Mr Naikar was left like this for ten days.
33. Then they sent Mr Naikar to the Christmas Island Public Hospital and he was admitted from 27th of December 2017 to 4th of January.
34. Mr Naikar was then sent to the mainland for an MRI.
35. A SERCO Officer handcuffed him and put him beside the window, with two officers beside him.
36. When the plane was taking off, he cried for the entire 3-and-a-half hour flight
37. They then put Mr Naikar in a wheelchair and lifted him down.
38. On the 5th of January they scanned Mr Naikar, and they found three bulging discs.
39. Mr Naikar was in this condition until July 2018, and his back pain was so bad they put him in emergency care and on the 6th of July they conducted his first emergency surgery.
40. In Perth Immigration Detention Centre, medication can be administered at 8.00pm but then you have to wait until the next morning for more.
41. This was contrary to Mr Naikar's pain doctor's recommendation that Mr Naikar should have medication administered at midnight.
42. Mr Naikar has since had four surgeries.
43. In September 2020 Mr Naikar was in such pain that he lost control of his urination.
44. On 30 September 2020 Mr Naikar was sent to hospital by ambulance.
45. On 2 October 2020 Mr Naikar was again given surgery.
46. Mr Naikar was then diagnosed with depression.
47. Mr Naikar was discharged into the custody of Perth Immigration Detention Centre.
48. There have been a number of subsequent surgeries.
49. On all these occasions his medication needs were not met in the detention centre.
50. Mr Naikar complained that they put him in a hotel under guard.
51. In 2022, he contracted COVID-19 and was in considerable pain due to coughing.
52. Mr Naikar is presently recovering from his latest surgery in residential house in Banksia Grove Perth under 24-hour guard by SERCO Officers.
53. Mr Naikar does not understand why they have him under 24 hour guard.
54. Notwithstanding what has happened to him, Mr Naikar anticipates that when he is deemed sufficiently recovered, he will be deported to Fiji.
55. Australia deprived Mr Naikar of the immediate and emergency medical assistance he required when he was injured on Christmas Island. This was cruel treatment, and contrary to the CAT.

APPENDIX G

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Briefing paper

Corporal punishment of children in Australia: The evidence-based case for legislative reform

Key recommendations

- Legislative reform to ensure children are protected under law from any form of physical assault (in the same way that adults are) in all settings.
- A public health campaign to inform the population the law has changed.
- Ensure widespread access to alternatives to corporal punishment through widespread dissemination of evidence-based parenting programs and supports, including culturally appropriate parenting strategies.
- A national parenting survey to monitor the impact of legislative reform on corporal punishment in Australia.
- Ongoing evaluation of the impact of the change in legislation and access to supports for non-violence parenting strategies.

Key goals

- Reduce corporal punishment of children in Australia
- Increase public knowledge of the effects of corporal punishment.
- Increase capability of parents to use alternative forms of discipline that are more effective and do not cause children harm.
- Join the 63 countries that have already prohibited corporal punishment:
<https://endcorporalpunishment.org/countdown/>

Background

In Australia, corporal punishment of children is legal. In all states and territories, parents or carers are permitted to punish children using physical force with the intent to cause some degree of pain or discomfort, however light. It remains legally acceptable for a parent or carer to hit or smack their child with the hand, pinch them, or wash their mouth out with soap.

Research shows corporal punishment is not effective as a method of discipline. Alternatives to corporal punishment are much more effective at guiding and teaching children. Research from countries that have prohibited corporal punishment shows that attitudes to using corporal punishment change once legislation is introduced and parents also use it less. Corporal punishment has been found to have a wide range of adverse impacts that radiate across the life span. Physical abuse, a more serious aspect of corporal punishment, has been found to have even greater adverse effects.

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Director Institute of Child Protection Studies
Australian Catholic University

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Current Australian law on corporal punishment

In most states/territories in Australia, hitting children is prohibited in schools or education contexts but allowed in the privacy of the home.

In New South Wales, the Northern Territory, Queensland, Tasmania, and Western Australia, parents and caregivers are permitted to discipline children in the home using 'reasonable' physical force. In Victoria, South Australia, and Australian Capital Territory common law applies through the courts to permit reasonable corporal punishment. However, in these states, punishing a child who is incapable of understanding what they have done wrong, or exerting force that is unjustifiable, is not permitted. In all states and territories, corporal punishment is prohibited in early childhood education and care settings. In most jurisdictions, corporal punishment is prohibited where children are in state care.

These prohibitions have come about in the last 30 years, and have advanced children's rights to protection from physical discipline. They also indicate a legislative appetite for reform to prohibit corporal punishment.

Our international reputation

Australia's position on corporal punishment is inconsistent with international guidelines that the country follows and is signatory to. The United Nations Sustainable Development Goal that aims to 'End all forms of violence against children', and the United Nations Committee on the Rights of the Child urge States to prohibit corporal punishment in all settings and take all appropriate legislative, administrative, social and educational measures to eliminate "all forms of physical or mental violence".

Currently 63 countries around the world have changed their laws, banning corporal punishment in all settings including homes and schools.

Australia's failure to undertake legal reform and prohibit physical punishment by parents and carers has prompted severe rebukes from the international community.

Prevalence of corporal punishment in Australia

The only national data on the use of corporal punishment is from the Australian Child Maltreatment Study that is currently underway. The study assesses corporal punishment among other forms of child maltreatment. Preliminary data reveal 61% of Australians aged 16-24 have experienced corporal punishment four or more times (Higgins, 2022). Other studies conducted from 1999 to 2018 indicate continued use by a substantial proportion of parents (up to 72%) with some decline in more recent years.

Socio-political hurdles in legal reform

To bring about legislative reform in Australia, there is a variety of concerns held by different members of the community that may need to be overcome. These include:



- **Parent rights:** Politicians make significant policy decisions that support child development but they are often concerned about dictating how families raise their children and discipline them. This idea is that the state should not interfere or have control over family matters that are private and influenced by culture and religion. Politicians tread carefully around the issue of parental privacy or parent rights. Their role is to support families, but not to interfere.
- **Effective parenting strategies:** Many parents believe that corporal punishment is effective to correct children's behaviour. Punishment or the threat of its use may result in short-term compliance. However, a meta-analysis of over 70 international studies linked corporal punishment with a vast array of negative effects including that it does the opposite – instead decreasing compliance over time and increasing aggression.
- **Upholding a ban on corporal punishment:** Prohibiting parents' use of corporal punishment through legislation may result in prosecution and criminalisation of parents, fines that would disadvantage families, and a strain on the justice systems. However, such fears are unfounded, based on evidence from other countries, such as New Zealand (see below), who did not have increased prosecution after law reform.
- **Impact on different communities:** Some communities, specifically Indigenous Australians, will need to determine what will help their community if legislation change occurs. With a history of police intervention and child protective involvement fuelled by forced removal of children, family separation and institutionalisation, it will be important that legislative change does not become another punishing experience, marginalising Indigenous families. Law reform may also be a challenge for culturally and linguistically diverse communities where corporal punishment has been more commonly practised. Parent education programs that provide alternatives to corporal punishment will be needed in all communities especially where corporal punishment occurs more often.

Corporal punishment has adverse effects

Numerous studies have shown that the experience of corporal punishment in childhood is linked with mental health problems, negative parent-child relationship, aggression, antisocial behaviour, impaired cognitive ability, low self-esteem, and even in adulthood - domestic violence. It has a profound negative impact on brain development – similar to the effects of physical abuse. Early data from the *Australian Child Maltreatment Study* (Mathews et al., 2021) show that experiencing corporal punishment four or more times as a child almost doubles the risk for anxiety and depression in early adulthood (Higgins, 2022).

Corporal punishment increases the risk of physical abuse and use of violence as an adult

When adults use corporal punishment, they are modelling the use of violent physical behaviour. There is no opportunity to teach children positive alternative behaviour. While it might stop unwanted behaviour immediately, it is unlikely to stop the behaviour from recurring. Corporal punishment has also been associated with a greater risk of acting aggressively in future intimate relationships as well as using physical discipline in later parenting.



Economic costs of corporal punishment

In 2009, the Australian Government estimated the cost of corporal punishment would be A\$211 million between 2012 and 2022. These costs were attributable to pain, suffering and premature mortality. Direct costs are associated with medical treatment for injuries from violence, and indirect costs are associated with services for issues arising from violence in childhood such as mental health, substance abuse, violence, and crime.

Australian's readiness for change

The Australian Child Maltreatment Study found that across the sample aged 16 and over ($N = 8,503$), the proportion who believed that corporal punishment was necessary in raising children reduced dramatically in younger generations: 14.8% of 16-24 year-olds thought corporal punishment was necessary, whereas 37.9% of the oldest cohort (aged 65+) endorsed its necessity (Higgins, 2022). These differences appear to reflect a readiness for legislative change.

Alternatives to corporal punishment

Parenting strategies that do not use corporal punishment are more effective at addressing challenging child behaviours and correcting misbehaviour. They are particularly cost-effective when delivered in early-to-middle childhood, and involve the following approaches:

- improving the quality of the parent-child relationship
- supporting emotional awareness and self-regulation
- rewarding and reinforcing age-appropriate child behaviour
- responding to negative child behaviours with instructions and non-violent consequences.

Learnings from around the globe

In 1989, the United Nations' Convention on the Rights of the Child made corporal punishment illegal. Since then, 63 countries have changed legislation, including New Zealand, Wales, Ireland, Austria, Germany, France, Spain. In most countries, legislative change is typically followed by educational campaigns about the change in law and the impact of violent childrearing. In countries with public health education about the new laws, the public have been made aware of the harmful effects of corporal punishment and provided with alternative parenting strategies to corporal punishment.

New Zealand passed a law prohibiting corporal punishment in 2007. This was done alongside a widespread public health campaign encouraging non-violent discipline, and consultation and work with different communities about the changes. Police monitoring of smacking reports and the impact of the law after the legislative change found an overall reduction in all types of child assault incidents. Attitudes towards corporal punishment also changed (New Zealand Police, 2013) with dramatic reductions in support after the change in legislation.



Changes in parent approval of physical punishment in New Zealand (1981 – 2018)

Year	% of parents approving use of corporal punishment
1981	89%
1993	87%
2008	58% (year after law change)
2013	35%
2018	19%

Conclusion

Changing legislation to end corporal punishment needs to be approached from the perspective of child rights and providing parenting support. Children have the right to be safe from violence both inside and outside the home – in the same way that adults are protected from any form of violence. As a society we have a moral imperative to protect children from all forms of harm.

It's time to reform our current legislation.

It's time to increase public awareness of corporal punishment and its effects.

And it's time for Australian parents to have information, supports, and access to programs that promote alternative forms of discipline that are more effective and do not cause children harm.

Source

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