**Committee against Torture - General Discussion on draft General Comment on article 3 of the Convention against Torture in the context of article 22**

***Australian Statement***

Australia welcomes the opportunity to participate in this discussion with the Committee Against Torture on the implementation of article 3 of the Convention Against Torture in the context of article 22.

Australia is firmly committed to its obligations under the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and considers *non‑refoulement* to be a fundamental principle of international law. Australia engages in good faith with the Committee as a State that receives a high volume of communications under Article 22. In this light, Australia is pleased to advise that it intends to ratify the Optional Protocol to the Convention later this year, subject to consultation with Australian states and territories.

Australia agrees with the tenor of submissions made by Canada, Denmark, Finland, France, Germany, Latvia, the Netherlands, New Zealand, Norway, Switzerland, the United Kingdom of Great Britain and Northern Ireland and the United States of America. Australia also supports the joint observations of Canada, Denmark, the United Kingdom and the United States on diplomatic assurances.

Australia’s strong view is that United Nations human rights treaty bodies should interpret human rights obligations consistently with one another. The interpretation of article 3 in the draft General Comment is inconsistent with long-standing interpretations of that obligation. Australia is concerned that the draft General Comment seeks to expand the scope of *non‑refoulement* under article 3 to conduct or acts that do not constitute torture. In Australia’s view, article 3 cannot be read without recourse to the definition of ‘torture’ in article 1 of the Convention.

The *non-refoulement* obligation in article 3 does not extend to cruel, inhuman and degrading treatment or punishment and Australia seeks that the Committee clarify this in the draft General Comment.

Australia submits that diplomatic assurances can be obtained and relied on consistently with article 3. Australia reiterates its support for the views expressed in the joint observations of Canada, Denmark, the United Kingdom and the United States on diplomatic assurances. Factors relevant in assessing a diplomatic assurance will include the content of the diplomatic assurance and its reliability and credibility in the specific context of the individual in respect of whom the assurance is sought. The key question will be whether there are substantial grounds for believing that an individual is in danger of being subjected to torture in the receiving country despite that assurance.

In respect of article 22, Australia notes that the author of a communication bears the onus of proving that there are substantial grounds for believing that he or she is in danger of being subjected to torture and that the risk he or she faces is real, foreseeable and personal.

Australia reiterates its support for the work of the Committee. It sincerely hopes that the Committee seriously considers the comments and concerns raised by States when it reviews and finalises the draft General Comment. It looks forward to continued engagement in developing this and other General Comments.