

# **List of issues prior to reporting: Australia's seventh periodic review**

Submission to the Committee against Torture

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**Australian  
Human Rights  
Commission**

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## **About the Australian Human Rights Commission**

Our vision is an Australian society where human rights are respected, promoted and protected and where every person is equal in dignity and rights.

The Commission's key functions include:

- **Access to justice:** We help people to resolve complaints of discrimination and human rights breaches through our investigation and conciliation services.
- **Fairer laws, policies and practices:** We review existing and proposed laws, policies and practices and provide expert advice on how they can better protect people's human rights. We help organisations to protect human rights in their work. We publish reports on human rights problems and how to fix them.
- **Education and understanding:** We promote understanding, acceptance and public discussion of human rights. We deliver workplace and community human rights education and training.
- **Compliance:** We are the regulator for positive duty laws requiring employers and others to address sexual harassment, sex discrimination and other unlawful conduct.

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# Overview

## Summary

1. This submission is made by the Australian Human Rights Commission (Commission). The Commission is Australia's National Human Rights Institution, with recognised independent status and roles in UN human rights fora.
2. The submission identifies key issues of compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) the Commission considers should be included in Australia's next periodic report to the Committee Against Torture (CAT). It also provides an update regarding Australia's ongoing failure to fully comply with the Optional Protocol to the Convention Against Torture (OPCAT).
3. The submission is based on work undertaken by the Commission in accordance with our mandate and functions. The Commission undertakes a range of policy development and research tasks that aim to promote compliance with Australia's human rights obligations, while also investigating and conciliating complaints of unlawful discrimination and breaches of human rights.
4. Since Australia last appeared before CAT in 2022, there have been a number of significant national inquiries that set out, in concrete terms, what needs to be done to improve human rights outcomes across the country, including protection from torture and cruel, inhuman or degrading treatment. The Commission notes the national human rights reform agenda it has set out in the Free and Equal project and the work of the Parliamentary Joint Committee on Human Rights (PJCHR) calling for a new national human rights framework.<sup>1</sup> Comprehensive Royal Commissions have also been conducted on disability issues as well as veteran suicide.<sup>2</sup>
5. While there have been positive developments, the Commission continues to have serious concerns relating to criminal and child justice, immigration detention and asylum, and the lack of monitoring of the conditions and treatment of people in 'secondary' places of detention, including in aged care, mental health and disability facilities.
6. The systemic human rights issues in these areas are well known, having been the subject of numerous reports and inquiries. These problems do not arise from a lack of knowledge, but rather from a lack of implementation.
7. CAT should request information from Australia about key topic areas and also emphasise the importance of Australia reporting on progressive measures it is taking and how it is considering implementing long-standing recommendations that would improve human rights outcomes and protect against ill-treatment.

## Recommendations

8. The Commission recommends that CAT request Australia to report and provide information on the following.

### Recommendations

The Australian Government should:

1. report on progress to review the use and application of mandatory sentencing laws in all jurisdictions.
2. report on progress to establish an independent mechanism to monitor and report on the status of the implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody.
3. report on measures to ensure the availability of diversionary programs for Indigenous Peoples, expand community-led justice reinvestment programs and fund Indigenous legal assistance programs.
4. report on progress in raising the minimum age of criminal responsibility in all jurisdictions to 14 years.
5. report on progress to set national standards on treatment in child justice and detention systems and how the principle of detention as a measure of last resort for children is being upheld.
6. provide information on the steps taken to prohibit the use of solitary confinement in child detention facilities and prohibit the use of isolation as punishment.
7. report on progress in banning spit hoods across Australian jurisdictions, for all ages and in all settings.
8. report on the implementation status of recommendations of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability that relate to the treatment of people with disability in the criminal justice system, and next steps to implement those recommendations.
9. report on the implementation status of recommendations 8.12 and 8.13 of the Disability Royal Commission on reviewing the National Statement of Principles Relating to Persons Unfit to Plead or Not Guilty by Reason of Cognitive or Mental Health Impairment and supporting legislation requiring the annual collection and publication of data on people detained in forensic systems.

10. provide information on the steps taken to end mandatory immigration detention, implement alternatives to detention and amend the *Migration Act 1958* (Cth) to prohibit the detention of children in all circumstances.
11. provide information on steps taken to ensure immigration detention is only used as a last resort, is strictly limited and time bound.
12. provide information on its offshore asylum processing arrangements, including the existence of safeguards, and mechanisms for independent monitoring and oversight. It should also provide information on the steps taken to provide viable long-term protection for all asylum seekers and refugees subject to third country processing.
13. provide information on steps taken to ensure refugee status determination and assessment of *refoulement* risks, including during interceptions and boat turnbacks, comply with its international obligations.
14. report on the timeline for ensuring that all National Preventive Mechanisms (NPMs) are fully operational and adequately funded. It should also provide information on the implementation of recommendations outlined in the Commission's Road Map to OPCAT Compliance report.
15. report on progress in adopting an inclusive approach to the interpretation of 'places of detention' under OPCAT, ensuring both 'primary' and 'secondary' places of detention are included within the scope of all NPMs.
16. report on progress towards the introduction of adult safeguarding laws and independent statutory bodies to administer safeguarding functions in all states and territories.
17. report on progress towards adopting uniform legislation across all states and territories that prohibits forced sterilisation and abortions without the free, prior and informed consent of the person concerned.
18. report on progress in developing a national framework to monitor, regulate, reduce and eliminate the use of restrictive practices in all settings and contexts where they are used.

# 1 Criminal and child justice

This section describes some of the issues related to criminal and child justice, such as:

- deaths in custody and the overrepresentation of First Peoples
- mandatory sentencing risking arbitrary detention
- harsh penalties for children and criminal responsibility for 10-year-olds
- unfitness to stand trial risking arbitrary detention.

This section also emphasises the need for diversionary programs and non-custodial measures.

9. Australia's criminal and child justice systems continue to give rise to serious concerns. First Peoples continue to be significantly overrepresented in Australian prisons,<sup>3</sup> especially children,<sup>4</sup> and people with cognitive impairments or psychosocial disability.<sup>5</sup> The number of adult prisoners who are on remand rose to 18,036 people in 2024, up by 13% from 2023. This amounts to 41% of the total prison population.<sup>6</sup>

## First Peoples and other negatively racialised communities

10. Mandatory minimum sentencing laws persist across most Australian jurisdictions.<sup>7</sup> These laws raise concerns regarding the rule of law, may lead to arbitrary detention and disproportionately affect Aboriginal and Torres Strait Islander people.<sup>8</sup>
11. **Recommended issue 1: The Australian Government should report on progress to review the use and application of mandatory sentencing laws in all jurisdictions.**
12. There have been 610 Indigenous deaths in custody since the 1991 *Royal Commission into Aboriginal Deaths in Custody*.<sup>9</sup> At the date of writing (October 2025), 82 people, 25 of whom were First Peoples, have died in custody in Australia this year alone.<sup>10</sup>
13. The *Royal Commission into Aboriginal Deaths in Custody* was established in 1987 to investigate the unacceptably high number of deaths of Aboriginal people in custody.<sup>11</sup> The final report, published in 1991, found major failures by governments, police and prison authorities, and made 339 recommendations to support fundamental changes. However, over the past 30 years, Australian Governments have failed to properly implement and monitor the recommendations, and the number of First Peoples entering the criminal justice system has substantially increased.<sup>12</sup>
14. In 2023-2024, the rate of Aboriginal and Torres Strait Islander young people aged 10–17 years in detention on an average day was 26.1 per 10,000 young

people in the population, which is higher than the previous 4 years. The rate of detention for non-Indigenous young people declined from 1.4 to 1.0 per 10,000 over the same period.<sup>13</sup> Aboriginal and Torres Strait Islander women are the fastest growing prisoner population in Australia.<sup>14</sup> While Aboriginal and Torres Strait Islander children are overrepresented in the child justice system, they are underrepresented in terms of access to basic services in the broader community.<sup>15</sup> For example, school attendance rates for Aboriginal and Torres Strait Islander students continue to be lower than for non-Indigenous students.<sup>16</sup>

15. According to Australia's Productivity Commission, only 4 of the 19 socio-economic targets under the National Partnership Agreement on Closing the Gap to overcome the inequality experienced by Aboriginal and Torres Strait Islander people, are on track. Four targets, including criminal justice, are worsening, and there has been very limited progress on implementing the Agreement's priority reforms.<sup>17</sup>
16. Consultations conducted as part of the Commission's National Anti-Racism Framework project identified racism, especially racism targeting First Peoples, as being pervasive across the systems and processes that underpin the justice system, including in the police and legal systems.<sup>18</sup>
17. Racist police misconduct is a direct manifestation of systemic racism. It commonly includes targeting, racial profiling, over-policing, negligence, and assumptions of criminality towards Aboriginal and Torres Strait Islander communities, particularly in remote regions, as well as other negatively racialised communities, for example African Australian communities.<sup>19</sup>
18. The Commission's proposed National Anti-Racism Framework for Australia recommends:
  - establishing an independent body to oversee the prevention of First Peoples deaths in custody
  - ensuring all places and the duration of detention comply with international human rights standards
  - conducting an independent external audit of justice systems across the country to identify and address structural racism
  - increasing support for community-controlled legal and support services
  - investing in approaches to diversion and rehabilitation for people in contact with the justice system
  - implementing anti-racism training for police and other workers in the justice system.<sup>20</sup>
19. These initiatives contribute to addressing the root causes of crime and focus on prevention.

20. **Recommended issue 2: The Australian Government should report on progress to establish an independent mechanism to monitor and report on the status of the implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody.**
21. **Recommended issue 3: The Australian Government should report on measures to ensure the availability of diversionary programs for Indigenous Peoples, expand community-led justice reinvestment programs and fund Indigenous legal assistance programs.**
22. In 2024, the Western Australian Office of the Inspector of Custodial Services (OICS) raised significant concerns with the Department of Justice regarding conditions in Hakea Prison, one of Western Australia's maximum-security prisons housing adult males, where First Peoples are significantly overrepresented. OICS cited a serious risk to the safety, care or welfare of people being held there and that they were being subjected to cruel, inhuman or degrading treatment.<sup>21</sup> A follow up inspection found that conditions have improved slightly but remain 'entirely unacceptable'.<sup>22</sup>
23. The Commission also has serious concerns relating to the treatment and conditions for people detained at Yatala Labour Prison in South Australia. Recent media reports have highlighted the case of a First Peoples man who, according to the reports, has been held there in solitary confinement for approximately 800 days and attempted suicide 3 times. Requests to visit the man have reportedly been denied.<sup>23</sup> These reports raise serious concerns about a potential breach of Australia's international human rights obligations and has the potential to result in yet another Indigenous death in custody.

## Children's rights

24. Child justice and the cruel treatment of children in child detention facilities is an area of acute concern.
25. Despite widespread calls for reform, most jurisdictions continue to hold children as young as 10 years old criminally responsible, with minimal progress to raise the age.
26. In a positive development, the Australian Capital Territory (ACT) passed legislation in 2023 raising the minimum age of criminal responsibility to 12 years, without exception. From 1 July 2025, this has increased to 14 years, with exceptions for certain listed serious offences, including murder.<sup>24</sup>
27. In 2024, the Victorian Government passed legislation to raise the minimum age of criminal responsibility to 12, effective 30 September 2025.<sup>25</sup> However, this reform was accompanied by new police powers in relation to children aged 10 and 11. These include powers to transport children in a police vehicle; detain them, including at police stations, without any express time limits; use force on

them and subject them to searches.<sup>26</sup> The previous Victorian commitment to raise the age to 14 years by 2027 has been dropped.<sup>27</sup>

28. In 2024, the Northern Territory took the retrograde measure of lowering the age of criminal responsibility from 12 to 10.<sup>28</sup> This reversal came just 2 years after the previous government had raised the age to 12 years, implementing a recommendation of the 2017 *Royal Commission into the Protection and Detention of Children in the Northern Territory* and making the Northern Territory at the time the first jurisdiction in Australia to do so.
29. **Recommended issue 4: The Australian Government should report on progress in raising the minimum age of criminal responsibility in all jurisdictions to 14 years.**
30. Over the 5 years from 2019–2020 to 2023–2024, the number of young people aged 10–17 in detention on an average day fell by 3.7% (from 858 to 827), while the rate of young people aged 10–17 in detention declined by 4.5% (from 2.8 to 2.7 per 10,000).<sup>29</sup>
31. Despite this positive trend, Australia is increasingly adopting harsher penalties and other measures which do not comply with Australia's human rights obligations to children. Many Australian states and territories have or are introducing new bail-related offences, which will likely lead to a significant increase in child imprisonment.<sup>30</sup> Queensland's 'adult crime, adult time' laws, which apply the same penalties to children as adults for certain crimes, have seen more than 1,250 children charged since their introduction in 2 phases in December 2024 and May 2025.<sup>31</sup> Queensland, Victoria and the Northern Territory have each passed legislation which means detention is no longer required to be a 'last resort' for children.<sup>32</sup>
32. The overwhelming majority of children in detention are unsentenced, on remand, with some detained because there is no safe place for them to live while on bail.<sup>33</sup>
33. Mandatory minimum sentencing laws also undermine the principle of detention as a last resort. The Northern Territory has repealed many of its provisions, but has recently introduced and expanded mandatory sentencing for a number of offences, including domestic violence order breaches.<sup>34</sup> In Western Australia, mandatory minimum sentences for certain offences still apply to children.<sup>35</sup> In Queensland, recent amendments introduced as part of the 'adult crime, adult time' laws mean that mandatory minimum sentencing to life imprisonment for murder, which previously applied only to adults, now also applies to children.<sup>36</sup>
34. The Commission's *'Help way earlier!' How Australia can transform child justice to improve safety and wellbeing* report proposed reforms to address the key human rights challenges in child justice systems nationally, driven by the establishment of a National Taskforce for Reform of Child Justice Systems and a National

Roadmap for cross-portfolio legislative and policy reform. This includes ensuring that Australia's approach to the child justice system focuses on prevention, early intervention and rehabilitation; invests in evidence-based diversionary programs and restorative justice conferencing; and creates consistent standards for monitoring children's detention facilities.<sup>37</sup> Its recommendations have yet to be responded to by the Australian Government or implemented.

35. **Recommended issue 5: The Australian Government should report on progress to set national standards on treatment in child justice and detention systems and on how the principle of detention as a measure of last resort for children is being upheld.**
36. In Australia, the power to isolate a child in a detention facility is subject to statutory limitations, however, these protections vary by jurisdiction, and no jurisdiction expressly prohibits the solitary confinement of children.<sup>38</sup>
37. Many children entering detention have disabilities and mental health issues and are harmed by the conditions in detention, including extended periods of time in isolation in their cells.<sup>39</sup>
38. As detailed below, official inquiries continue to find that children have been impacted by mistreatment in detention, including being subjected to prolonged isolation, across the nation. Some children are being held in adult facilities, where they have not been kept safe from harm.
39. CAT has previously expressed serious concerns about the 'practice of keeping children in solitary confinement, in particular at the Banksia Hill youth detention centre in Western Australia, the Don Dale youth detention centre in the Northern Territory and the Ashley youth detention centre in Tasmania, which contravenes the Convention and the Nelson Mandela Rules'.<sup>40</sup>
40. In October 2023, Cleveland Dodd, a 16-year-old, died by self-harm in a separate wing of Western Australia's Casuarina Prison, called Unit 18, a maximum-security adult prison. The First Peoples teenager was held in solitary confinement for more than 22 hours per day before he fatally self-harmed.<sup>41</sup>
41. Unit 18 has been used to detain children from mid-2022, following a series of incidents at Banksia Hill Detention Centre. Initially seen as a temporary circuit-breaker for the frequency of critical incidents, Unit 18 continues to be used to detain children.
42. In August 2024, a 17-year-old First Peoples teenager died in his cell at Banksia Hill Detention Centre in Western Australia.<sup>42</sup> This was the second death of a child within the state's youth detention system in less than a year.
43. In 2022, the Western Australian Inspector of Custodial Services found that children detained in the Intensive Support Unit of Banksia Hill Detention Centre were often being held in conditions akin to solitary confinement and in breach

of international human rights agreements. Due to staffing shortages, children were often locked into their cells for most of the day, preventing meaningful social interaction with peers and staff. This led some children to act out and increasingly more children were self-harming.<sup>43</sup>

44. On 11 July 2023, the Supreme Court of Western Australia ruled that 3 young people were unlawfully locked in their cells at Banksia Hill Detention Centre and Unit 18 at Casuarina Prison for prolonged periods, amounting to solitary confinement. The 3 children were held in these conditions for a combined total of 167 days in 2022.<sup>44</sup>
45. The *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Disability Royal Commission) heard evidence of the concerning treatment of children with disability within the Banksia Hill Detention Centre, including examples where children with disability were provided with very limited education and therapeutic support, and instances of solitary confinement. It concluded that isolation amounting to solitary confinement is overused in child detention facilities across Australia.<sup>45</sup>
46. In Queensland, the Child Death Review Board's 2022–23 Annual Report highlighted how 2 First Peoples boys, both of whom had disabilities and cognitive impairments, were subjected to extended periods of solitary confinement and separation during their time in detention.<sup>46</sup>
47. In Queensland, children are being detained in adult watch houses (designed as short-term holding facilities for people who have been arrested and are awaiting processing or transfer to a court or detention, usually attached to a police station), some for extended periods of time. While children may be held in a separate cell, the facilities can include adult detainees who can be seen and heard by the children.<sup>47</sup>
48. Regular reviews of police watch houses by the Queensland Family and Child Commission have found that the detention of children in watch houses was increasing significantly.<sup>48</sup> Data showed that children as young as 10 were being detained in watch houses.<sup>49</sup> Data from the Queensland Office of the Public Guardian showed that the number of children aged 13 or under who had been detained in a police watch house had increased by 50% in 12 months during 2023-2024.<sup>50</sup>
49. Video footage has revealed the distressing treatment of children in Queensland police watch houses, many of them with a disability.<sup>51</sup> CCTV footage showed a 13-year-old First Peoples child with an intellectual disability being forcibly restrained and kept in an isolation cell in a Queensland watch house.<sup>52</sup>
50. The Youth Advocacy Centre has shared concerns over several years raised by children held in these watch houses, including concerns about a lack of access

to family, adequate food and nutrition, information about their rights, health care, exercise, hygiene, education and activities.<sup>53</sup>

51. In Tasmania, the Tasmanian Commission of Inquiry heard about 'restrictive practices' and 'lockdowns', which involved restricting all children at Ashley Youth Detention Centre to their rooms and were found by the Commission to be clearly 'isolation by another name, and human rights abuses ... [that] have the same impact as other isolation practices on children's health and wellbeing'.<sup>54</sup>
52. In the Northern Territory, the Holtze Youth Detention Centre was opened in November 2024, with all children in Don Dale Youth Detention Centre being transferred to the new facility.<sup>55</sup> However, in 2025, the Youth Justice Court in the Northern Territory was told that 'multiple children with chronic and complex mental health issues were being exposed to almost continuous lockdowns inside Holtze Youth Detention Centre'.<sup>56</sup>
53. In South Australia, a report published in August 2025 examining the use of isolation on children and young people detained at the Adelaide Youth Training Centre identified cases where the use of isolation was 'in effect, a form of punishment', despite this being prohibited under the state's youth justice law. The report also found that isolations increased by 50% over a period in 2024.<sup>57</sup>
54. **Recommended issue 6: The Australian Government should provide information on the steps taken to prohibit the use of solitary confinement in child detention facilities and prohibit the use of isolation as punishment.**
55. A welcome development is the legislative ban on the use of spit hoods in places of detention in 2 states. South Australia led the way in 2021, becoming the first jurisdiction to prohibit their use.<sup>58</sup> NSW followed suit in 2024, marking a significant step forward in protecting the dignity and rights of people deprived of their liberty.<sup>59</sup>
56. However, in contrast, the Northern Territory recently amended its *Youth Justice Act 2005* (NT) to reinstate the use of spit hoods for children in youth detention, after they were banned 8 years earlier.<sup>60</sup>
57. **Recommended issue 7: The Australian Government should report on progress in banning spit hoods across Australian jurisdictions, for all ages and in all settings.**

## People with disability

58. People with disability continue to be overrepresented and experience discrimination at all stages in the criminal justice system in Australia (including as victims of crime), particularly Aboriginal and Torres Strait Islander people with

disability who experience intersecting and compounding forms of discrimination.<sup>61</sup>

59. There is an urgent need for Australia to address the criminalisation of disability and the discrimination faced by people with disability in the criminal justice system, which can result in indefinite detention. Australia should also address the cumulative disadvantage and inequality that often leads to interactions with the criminal justice system.
60. In September 2023, the Disability Royal Commission handed down its Final Report to government after 4.5 years of inquiry.<sup>62</sup> It heard evidence of discriminatory practices across the criminal justice system and poor conditions of detention for people with disability, with inconsistent practices across state and territory jurisdictions, which have responsibility for their respective justice systems.
61. The Disability Royal Commission made 222 recommendations in total, including 24 recommendations on protecting and promoting the rights of people with disability in the criminal justice system. The majority of the criminal justice recommendations fall within the purview of states and territories, and only one recommendation in this area (on issuing guidelines for National Disability Insurance Scheme (NDIS) supports in transitions to and from the criminal justice system) was accepted in full.<sup>63</sup>
62. In 2020, Human Rights Watch reported that the Western Australian Government was failing to adequately recognise the risk of, provide meaningful mental health support for, and was increasing the likelihood of self-harm and suicide by placing people with disability in solitary confinement.<sup>64</sup> Over a 4-month period in 2020, there were 3 suspected suicides, leading to the creation of a suicide prevention taskforce to examine the management of at-risk prisoners.<sup>65</sup> Human Rights Watch's analysis of coroners' inquest reports found that between 2010 and 2020, '60 percent of people who died in prisons in Western Australia had a disability. Of the 60 percent, 58 percent died as a result of lack of support provided by the prison, suicide, and violence—and half of these deaths were of Aboriginal and Torres Strait Islander prisoners with disabilities'.<sup>66</sup>
63. **Recommended issue 8: The Australian Government should report on the implementation status of recommendations of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability that relate to the treatment of people with disability in the criminal justice system, and next steps to implement those recommendations.**
64. The Disability Royal Commission examined the risk of indefinite detention for people with disability found unfit to stand trial and/or unfit to plead. In some jurisdictions, declarations of unfitness to stand trial or findings of not guilty by way of mental impairment can lawfully result in the arbitrary and indefinite

detention of unconvicted people with disability, including children and young people and First Peoples.<sup>67</sup> The Commission considers that many instances may amount to arbitrary detention. This means that individuals can be detained for longer than the maximum sentence they would have received if convicted. People found unfit to stand trial are also at risk of being detained in unsuitable placements that lack the support or services they need to progress towards unconditional release to live in the community.<sup>68</sup>

65. According to media analysis, more than 1,200 people with a mental impairment were being indefinitely detained in Australia in 2022.<sup>69</sup> In Queensland and the Northern Territory, court orders had been used to detain individuals for up to 42 years and 30 years respectively.<sup>70</sup>
66. Fitness to plead laws vary across Australian states and territories. The Disability Royal Commission identified the laws in the Northern Territory, Queensland, Tasmania and Victoria, where there is no fixed maximum term of detention, as most punitive.<sup>71</sup> In the Northern Territory and Victoria, the order for detention or 'supervision order' continues for an 'indefinite term', unless the court orders otherwise.<sup>72</sup> While other jurisdictions do include review provisions, such as NSW, these can nonetheless still result in indefinite or prolonged detention.<sup>73</sup>
67. There have, however, been some positive developments. The *Criminal Law (Mental Impairment) Act 2023 (WA)* commenced on 1 September 2024, establishing a new legal framework for accused persons deemed unfit to stand trial due to mental impairment. The framework introduced a requirement that custody orders include a 'limiting term' (an end date), expanded the range of orders courts may impose and established a Mental Impairment Review Tribunal to oversee the supervision of individuals deemed unfit to stand trial and to review decisions relating to their custody.
68. The indefinite detention of people with disability has been raised as a serious concern in treaty reviews by the CRPD Committee and has also been the subject of several individual communications to the Committee.<sup>74</sup>
69. The Disability Royal Commission recommended that the Australian Government, together with state and territory governments, review the 2019 *National Statement of Principles Relating to Persons Unfit to Plead or Found Not Guilty by Reason of Cognitive or Mental Health Impairment* (National Statement), including to specify that laws providing for indefinite detention should be repealed and include a limiting term.<sup>75</sup> It also recommended that the Australian Government and state and territory governments consider modifications to the trial process to enable access to justice on an equal basis with others and that step-down and diversion options be provided, including medium and low secure and community-based accommodation options, for the placement of people in the

forensic system to facilitate their progressive transition to less restrictive environments.<sup>76</sup>

70. The Standing Council of Attorneys-General recently announced the establishment of a cross-jurisdictional working group to review the National Statement in response to the Disability Royal Commission;<sup>77</sup> however, South Australia and Victoria both indicated that the recommendation is 'subject to further consideration' so it remains unclear to what extent the Disability Royal Commission recommendation will be implemented.<sup>78</sup>
71. There are significant gaps in data collection and transparency regarding people in detention who have been found unfit to plead, including the duration of detention. The Disability Royal Commission recommended the Australian Government and state and territory governments support legislation requiring the annual collection and publication of data on people detained in forensic systems.<sup>79</sup> This recommendation was accepted in principle by all jurisdictions, subject to scoping work.<sup>80</sup>
72. As mentioned above, in 2024, the PJCHR recommended that the Australian Government introduce a federal Human Rights Act.<sup>81</sup> The Committee recommended that the Human Rights Act protect civil and political rights including the right to liberty and security of person, the right to a fair trial and the prohibition of torture or cruel, inhuman or degrading treatment or punishment as well as economic, social and cultural rights.<sup>82</sup> The Australian Government is yet to respond to the report.
73. **Recommended issue 9: The Australian Government should report on the implementation status of recommendations 8.12 and 8.13 of the Disability Royal Commission on reviewing the National Statement of Principles Relating to Persons Unfit to Plead or Not Guilty by Reason of Cognitive or Mental Health Impairment and supporting legislation requiring the annual collection and publication of data on people detained in forensic systems.**

## 2 Immigration detention and asylum

This section describes some of the issues related to immigration detention and asylum, such as:

- mandatory detention for all non-citizens, including children
- risk of prolonged and indefinite detention
- offshore processing in Nauru
- boat turnbacks and takebacks risking *refoulement*.

This section also emphasises the need for alternatives to detention.

### Mandatory detention

74. Australia enforces one of the harshest immigration detention regimes in the world, with a long-standing policy of mandatory detention for all non-citizens arriving or remaining in Australia without a valid visa, regardless of risk.<sup>83</sup> This includes children, refugees and asylum seekers.
75. According to statistics from the Department of Home Affairs, as of 31 August 2025, there were 1,005 people in immigration detention facilities across NSW, Victoria, Queensland, South Australia, Western Australia and the Northern Territory.<sup>84</sup> This includes less than 70 women and less than 5 children.<sup>85</sup> A further 108 people were living in the community after being approved for a residence determination.<sup>86</sup>
76. The majority of people in immigration detention are held at Villawood Immigration Detention Centre in NSW, which is the largest facility. It also holds the highest number of women. Children are currently held in Alternative Places of Detention (commonly known as APODs).<sup>87</sup>
77. Australia's current immigration detention system, which has been in place since 1992, raises serious human rights concerns, including:
  - loss of liberty
  - arbitrary, prolonged or indefinite detention
  - inadequate living conditions and facilities
  - mental and physical health deterioration
  - lack of access to meaningful activities, services and support
  - family separation and harmful impacts on children.<sup>88</sup>
78. **Recommended issue 10: The Australian Government should provide information on the steps taken to end mandatory immigration detention, implement alternatives to detention and amend the *Migration Act 1958* (Cth) to prohibit the detention of children in all circumstances.**

## Length of detention

79. People have been detained for prolonged and indefinite periods in immigration detention facilities in Australia. There is no time limit on immigration detention.
80. The average period in closed immigration detention reached a peak of 806 days in January 2023, and 1,061 people were in detention at that time.<sup>89</sup> In March 2023, the longest period of time for an individual held in an immigration detention facility was 5,766 days (15.8 years).<sup>90</sup>
81. The average period in closed detention has since declined. As at 31 August 2025, the average time for people held in detention facilities was 445 days.<sup>91</sup> There are 68 people currently in detention who have been there for more than 5 years.<sup>92</sup>
82. The length of time in immigration detention remains far higher in Australia than in comparable jurisdictions. For example, in Canada the average length of detention between 1 January and 31 March 2025 was 17 days.<sup>93</sup> In the United Kingdom, in the year ending June 2025, the most common length of detention was between 1 and 4 weeks, accounting for approximately 39% of people leaving detention.<sup>94</sup>
83. In 2023, the High Court of Australia (High Court) ruled in *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* (2023) 280 CLR 137 (*NZYQ*) that it is unlawful to detain a person without a valid visa indefinitely in immigration detention when there is no real prospect of their removal from Australia in the foreseeable future. This landmark ruling overturned nearly 2 decades of legal precedent in Australia.<sup>95</sup>
84. Since this decision, 358 people have been released from immigration detention as a result.<sup>96</sup>
85. In response, the Australian Government enacted new laws that raise significant concerns about compliance with Australia's international obligations.<sup>97</sup> Some of these laws will potentially impact a much wider group of people, beyond those in the *NZYQ* cohort with criminal records.
86. One law allows the Government to pay other countries to accept non-citizens, including refugees whose protection status has been reversed, under a third country reception arrangement.<sup>98</sup> Under new section 198AHB of the *Migration Act 1958* (Cth), the Australian Government cannot restrain the liberty of a person in connection with a third country reception arrangement. However, there is no such restriction on the receiving third country doing so. This may result in people being subject to detention or movement restrictions that do not meet international human rights standards.
87. Another of the new laws criminalises non-cooperation with a 'removal pathway direction' dealing with steps to facilitate removal to a third country, with penalties of up to 5 years in prison or 300 penalty units, or both.<sup>99</sup> On conviction,

a court must impose a sentence of imprisonment of at least 12 months. A defence of 'reasonable excuse' exists, but a reasonable excuse excludes:

- a genuine fear of persecution or significant harm
- a claim to *non-refoulement*
- a belief that the person will suffer other adverse consequences.<sup>100</sup>

88. Despite the decision in *NZYQ*, individuals in Australia can still be subject to indefinite detention in certain circumstances.
89. In *ASF17 v Commonwealth* [2024] HCA 19, the High Court clarified when a person's removal from Australia is 'practicable in the reasonably foreseeable future'. *ASF17* concerned the indefinite detention of an Iranian citizen, ASF17, who had been refused a protection visa and was subject to removal from Australia. ASF17 refused to cooperate with his removal because he feared serious harm in Iran based on his sexuality. He had been in immigration detention for almost a decade, and his asylum application had been rejected.
90. The High Court dismissed ASF17's appeal, finding that his detention was not unlawful and that his removal remained practicable if he cooperated with the process. The Court clarified that the key question is whether there are steps that can be taken which would realistically result in the person's removal from Australia in the reasonably foreseeable future.<sup>101</sup> This included cooperation in administrative processes directed to removal, where the detainee had the capacity to cooperate. The Court distinguished ASF17's circumstances from people who are incapable of cooperating due to mental incapacity, including psychiatric illness.<sup>102</sup>
91. In February 2025, the Government announced a new third country reception arrangement with Nauru to resettle 3 people from the *NZYQ* cohort. These individuals, who have completed sentences for past criminal offences, had been released from immigration detention but were subsequently re-detained pending removal to Nauru. According to the Government, this new arrangement is intended to protect community safety in Australia.<sup>103</sup> They were granted long term visas to live in Nauru for a minimum of 30 years and would have the rights to work, move freely around the island and access social services.<sup>104</sup>
92. The Australian Human Rights Commissioner wrote to the Minister for Home Affairs on 19 February 2025 requesting transparency around the details of the arrangement and raised concerns about the human rights implications of Australia's attempt to outsource its international obligations.<sup>105</sup> At the time of writing, the Commission has not yet received a direct response to this letter, nor any response to the follow-up letter that was sent on 16 September 2025.
93. The 3 individuals concerned have filed separate legal proceedings against their removal to Nauru and, at the time of writing, it does not appear that any of them have been removed.<sup>106</sup> Their cases raise distinct legal grounds, including the

alleged unlawfulness of protection visa cancellations, a real risk of indirect *refoulement*, lack of procedural fairness and the inadequacy of medical facilities in Nauru.

94. In September 2025, the government passed new legislation that strips certain non-citizens of the right to be heard in key migration decisions, including deportation and removal.<sup>107</sup> It permits removal of non-citizens to a third country without providing a meaningful opportunity to respond before a decision is made that has significant consequences for their rights to life, safety, health and family.<sup>108</sup> The law also permits the government to retrospectively validate any actions and decisions related to third country reception arrangements prior to the law's commencement, such as removal pathway directions. This potentially exposes people to retrospective criminal liability for conduct that was not an offence at the time (i.e. non-compliance with removal directions), raising rule of law concerns.
95. This was followed by Australia and Nauru signing a memorandum of understanding to facilitate removals to Nauru.<sup>109</sup> Under the agreement, Australia committed up to \$2.5 billion over the 30-year life of the agreement, including an upfront payment of \$408 million and annual payments of \$70 million thereafter.<sup>110</sup> The agreement is intended to initially enable the deportation of potentially hundreds of individuals from the *NZYQ* cohort. While the government has stated that the agreement includes undertakings to ensure the proper treatment of people transferred, no specific details have been provided.<sup>111</sup> Recent amendments to the Migration Act are designed to remove existing safeguards and procedural fairness, which would otherwise allow affected individuals to be informed of and present their case before a decision is taken effecting their removal to the third country.
96. In October 2025, the Minister for Home Affairs confirmed in a televised interview that visas had been issued to a number of people in the *NZYQ* cohort in the 'high teens to twenties' range.<sup>112</sup>
97. **Recommended issue 11: The Australian Government should provide information on steps taken to ensure immigration detention is only used as a last resort, is strictly limited and time bound.**

## Conditions in detention

98. The Commission conducts ongoing monitoring of conditions in detention and the treatment of people in detention to ensure that Australia's immigration detention system complies with its obligations under international human rights law. The Commission also publishes guidelines that set minimum standards to help protect human rights and ensure the humane treatment of people in detention.<sup>113</sup>

99. In December 2024, the Commission published *Not just an afterthought: The experience of women in immigration detention*, documenting the experiences of women in immigration detention in Australia.<sup>114</sup> The report followed a series of inspections in April and May 2023 of Australia's immigration detention centres which hold women, specifically Broadmeadows Residential Precinct and parts of the adjoining Melbourne Immigration Detention Centre, Villawood Immigration Detention Centre in Sydney, and Perth Immigration Detention Centre.
100. The Commission made 31 recommendations to the Department of Home Affairs, of which 11 were accepted or partially agreed with. Some issues raised during inspections were rectified as soon as the authorities were made aware of them by the Commission, such as ensuring women detained at Villawood could physically access the shop at the centre to make personal purchases.
101. The report called for significant reform to the country's immigration detention system, after finding that the rights, safety and wellbeing of women, including transgender women, are being widely overlooked in a system dominated by men, including:
- women being frequently housed near or with men, creating serious risks of harassment and compromising privacy
  - continued use of 'operational quarantine'
  - lack of female security and medical staff
  - family separation
  - unequal facilities compared to male compounds
  - limited opportunities for meaningful activities and self-development
  - absence of specific policies, guidelines and procedural standards on the accommodation, welfare, security and management of transgender people in immigration detention, leading to an increased risk of unique harms and vulnerabilities.
102. In 2023, the Commission inspected Yongah Hill Immigration Detention Centre in Northam, Western Australia, approximately 100 kilometres north-east of Perth. The report made 33 recommendations, and the Department agreed or partially agreed with 20 of them.
103. The report raised serious concerns over the safety conditions and the level of care for detainees and staff at the Yongah Hill, including:
- a reported rise in the trafficking of drugs and other contraband, bullying and standover tactics, and violence
  - infrastructure issues, including 2 low-security compounds no longer fit for purpose
  - lack of access to healthcare and mental health services
  - inadequate access to counselling, rehabilitation and trauma services, and education to minimise substance use

- limited access to meaningful programs or activities.
104. In 2022, the Commission examined the use of hotel APODs in Melbourne and Brisbane.<sup>115</sup> The Commission made 24 recommendations to the Department, which agreed with only 2 recommendations.
105. Hotels have previously been repurposed as detention facilities, though the Commission has consistently expressed the view that they should only be used in exceptional circumstances and for the shortest possible time.<sup>116</sup> At 31 July 2022, the average length of time that individuals had spent detained in hotel APODs was 69 days. The longest continuous period of detention in a hotel APOD was 634 days.<sup>117</sup> The most recently published statistics record that as at 31 August 2025 there were 67 people in APODs.<sup>118</sup> Updated information about the length of time spent detained in hotel APODs does not appear to have been made publicly available.
106. The Commission identified serious human rights impacts on people detained in hotel APODs, including:
- deteriorating mental health
  - severe movement restrictions
  - inadequate facilities
  - lack of privacy
  - limited activities
  - restricted visitation
  - use of physical restraints during external escorts
  - difficulties accessing appropriate and timely medical care
  - issues with release and inadequate post-release support.
107. The Commission has also inquired into the use of force in immigration detention, which has been raised in a range of complaints against the Department of Home Affairs received by the Commission.<sup>119</sup> A 2019 report examined 14 complaints and found that in 9 cases, the use of force constituted a violation of the ICCPR.<sup>120</sup>
108. In the first half of 2025, Australia's immigration detention network transitioned to new service providers, Secure Journeys and Healthcare Australia. The transition presents a significant opportunity to promote greater compliance with human rights standards and improve the conditions and treatment of people in immigration detention in Australia.
109. The Commission understands, based on engagement with independent monitoring bodies, non-governmental organisations and other stakeholders, that several issues have arisen during and since the transition, including staff shortages, deteriorating food quality, movement restrictions, increased officer presence during escorts, and major disturbances.<sup>121</sup>

110. The Commission is also concerned about the new prohibited items law that came into effect in June 2025. The law expands search and seizure powers in immigration detention centres, potentially including mobile phones.<sup>122</sup> The new law appears to allow for a blanket ban on mobile phones to be imposed across the entirety of a specified immigration detention centre. To the Commission's knowledge, at the time of writing, these powers have not yet been exercised to impose such a ban.

## Offshore processing

111. Since 2012, asylum seekers arriving by boat without a valid visa have been transferred to Nauru or Manus Island in Papua New Guinea (PNG) for 'offshore' or 'third country' processing. From July 2013, it has been the policy of successive Australian Governments that all asylum seekers arriving by boat would not settle in Australia, even if recognised as refugees.<sup>123</sup>
112. Australia no longer sends asylum seekers intercepted at sea to PNG but continues to fund a Regional Processing Centre (RPC) in Nauru and send asylum seekers there. According to the latest government statistics, as of 31 August 2024, there were 94 'transitory persons' in Nauru.<sup>124</sup> It is unclear from publicly available information whether this includes any children.
113. In October 2024, the UN Human Rights Committee ruled that Australia was responsible for the arbitrary detention of asylum seekers transferred to offshore detention facilities in Nauru, in breach of the ICCPR.<sup>125</sup> The 2 cases involved 25 people who came to Australia by boat in 2013 and 2014, who were subsequently detained in Nauru under arrangements agreed between Australia and Nauru and funded by Australia. Committee member Mahjoub El Haiba stated: 'Where there is power or effective control, there is responsibility. The outsourcing of operations does not absolve States of accountability.'<sup>126</sup> The Commission understands that the government is overdue in its response to the 2 Committee rulings, having been given 180 days to respond.
114. No new asylum seekers have been sent to Manus Island since 2014, and in 2021, Australia formally announced the end of regional processing in PNG.<sup>127</sup> In 2016, the Supreme Court of PNG ruled that the detention of asylum seekers on Manus Island violated the constitutionally protected right to liberty.<sup>128</sup> As of July 2025, 37 refugees and asylum seekers transferred by Australia to PNG still remain there, along with their families.<sup>129</sup> They currently live in Port Moresby in the community, having spent over a decade in PNG following their detention on Manus Island.
115. Widespread concerns have been raised, both internationally and domestically, about these arrangements. While both Nauru and PNG have ratified several core international human rights treaties, gaps have been identified in their

implementation and reporting.<sup>130</sup> Numerous reports and inquiries have alleged serious human rights violations against people removed to Nauru and PNG. These include prolonged and arbitrary detention, inadequate living conditions, physical and sexual assault, child abuse, limited health care, poor physical and mental health outcomes, and the risk of *refoulement*.<sup>131</sup> Reports indicate that preventable deaths have occurred as a result of Australia's offshore processing arrangements, including cases of suicide, homicide, delayed or denied access to medical treatment, and failures to evacuate individuals in time for life-saving care.<sup>132</sup>

116. The Commission has long maintained that transferring asylum seekers offshore does not release Australia from its international obligations and that its current regime of third country processing is inconsistent with international human rights law.<sup>133</sup>
117. The Commission remains seriously concerned about the conditions and treatment of asylum seekers and refugees in Nauru. In 2024, medical staff, caseworkers and asylum seekers reported that healthcare in Nauru is inadequate and extremely limited, with no specialist care or dedicated counselling for trauma and torture survivors.<sup>134</sup> Detainees reported having their phones confiscated and replaced with basic phones unable to take photos, meaning that they would no longer be able to make video calls to contact family or support groups and making it harder to document their situation.<sup>135</sup>
118. There was recently an outbreak of dengue fever in Nauru, and it has been reported that at least 9 asylum seekers contracted it, including one man who was medically evacuated to Australia for treatment and then returned.<sup>136</sup> There are also ongoing concerns regarding security arrangements on the island.<sup>137</sup>
119. There is a lack of transparency and no independent oversight or monitoring of the conditions and treatment of people transferred by Australia to Nauru. This makes it difficult to properly assess whether Australia is complying with its international human rights obligations regarding those conditions and treatment.
120. As with the new third country arrangements with Nauru following the *NZYQ* decision, robust guarantees, independent oversight and monitoring mechanisms, and transparency measures should be in place to ensure Australia complies with its domestic laws and international human rights obligations.
121. **Recommended issue 12: The Australian Government should provide information on its offshore asylum processing arrangements, including the existence of safeguards, mechanisms for independent monitoring and oversight. It should also provide information on the steps taken to provide viable long-term protection for all asylum seekers and refugees subject to third country processing.**

## Boat turnbacks and takebacks

122. Since December 2013, under a policy of turnbacks and takebacks implemented as part of Operation Sovereign Borders (OSB), Australia has intercepted boats carrying asylum seekers and returned them to their point of departure. In some instances, individuals have been returned directly to their countries of origin following a brief and inadequate screening process conducted at sea.
123. These practices have been widely criticised and pose a serious risk of *refoulement*, including chain *refoulement*.<sup>138</sup> Onboard screenings lack proper safeguards and access to legal advice. The circumstances under which they take place, at sea, potentially via teleconference, and while the person is detained on board an Australian vessel, make it nearly impossible to fairly or thoroughly assess protection claims.<sup>139</sup>
124. Since OSB's commencement, lack of transparency has made it difficult to assess whether turnbacks are being conducted in accordance with Australia's international obligations, including the prohibition of *refoulement* and duty to guarantee safety of life at sea.
125. Between December 2013 and 31 December 2024, 59 boats carrying more than 1,281 people, including at least 141 children, have been intercepted and returned.<sup>140</sup> Asylum seekers intercepted at sea who are assessed as potentially engaging Australia's protection obligations are transferred to a third country for offshore processing of their claims. However, only a small number of people intercepted and assessed at sea are found to have potential protection claims, despite the fact that, historically, more than 80% of asylum seekers who arrived in Australia by boat over a 40-year period have been found to be refugees.<sup>141</sup>
126. The *Maritime Powers Act 2013* (MPA) grants the Minister and officers powers to detain vessels and people and take them to a destination outside Australia.<sup>142</sup> These powers may be exercised without consideration of Australia's international obligations and even if their exercise would be inconsistent with these obligations.<sup>143</sup> The rules of natural justice also do not apply to their exercise.<sup>144</sup> The High Court has, however, clarified that under the MPA, it would be unlawful for a maritime officer to require a person to disembark at a place outside Australia unless the officer is satisfied, on reasonable grounds, that it is safe for the person to be in that place.<sup>145</sup>
127. Asylum seekers travelling by boat who do manage to arrive and are not transferred to a third country for offshore processing are only eligible to apply for temporary protection.<sup>146</sup> However, a statutory bar prevents them from lodging such an application unless the Minister for Home Affairs personally lifts the bar.<sup>147</sup>

128. **Recommended issue 13: The Australian Government should provide information on steps taken to ensure refugee status determination and assessment of *refoulement* risks, including during interceptions and boat turnbacks, comply with its international obligations.**

### **Australia's role in shaping global asylum policy**

129. Australia has provided safety and a new life in peace and freedom for more than 950,000 refugees and others in humanitarian need since the end of World War II.<sup>148</sup> However, outsourcing and deterrence policies implemented by successive Australian Governments have caused significant harm to people seeking asylum by boat.
130. Other countries have sought to copy aspects of Australia's harmful policies.<sup>149</sup> Instead of fuelling a race to the bottom and contributing to the erosion of international protection norms, Australia should lead by example: protecting people fleeing violence and persecution, upholding our obligations under international law and encouraging other countries to follow suit.

### 3 OPCAT and adequate oversight

This section outlines several key issues related to OPCAT implementation and conditions in 'secondary' places of detention, including the:

- distinction between primary and secondary places of detention under OPCAT
- risk of arbitrary detention in institutional settings
- use of restrictive practices in mental health service settings and aged care facilities.

This section emphasises the need for monitoring of all places of detention, including aged care facilities, residential homes and disability group homes.

#### OPCAT and places of detention

131. The Commission welcomes the progress Australia has made in implementing OPCAT since ratification in 2017. OPCAT requires Australia to establish mechanisms to prevent torture and inhumane treatment in places of detention, which is also an obligation under Article 7 of the ICCPR.
132. However, progress has been too slow. The multi-body Australian National Preventive Mechanism (NPM) currently consists of 12 members across 6 Australian jurisdictions, with the Commonwealth Ombudsman designated as the NPM Coordinator. New South Wales, Queensland and Victoria have yet to designate their NPMs. On 20 January 2023, Australia missed its extended deadline to fully implement its obligations under OPCAT.<sup>150</sup> In 2022, the Commission published a *Road Map to OPCAT Compliance*, outlining the immediate steps Australian governments need to take to fully implement OPCAT.<sup>151</sup>
133. **Recommended issue 14: The Australian Government should report on the timeline for ensuring that all National Preventive Mechanisms (NPMs) are fully operational and adequately funded. It should also provide information on the implementation of recommendations outlined in the Commission's Road Map to OPCAT Compliance report.**
134. Another key concern relates to the distinction between 'primary' and 'secondary' places of detention. This is a distinction that CAT has expressly stated 'runs counter to the provisions of article 4 of the Optional Protocol'.<sup>152</sup>
135. Fundamental to the implementation of OPCAT is the definition or scope of places of detention, because this determines where NPM bodies and the UN Subcommittee on the Prevention of Torture (SPT) will carry out their monitoring visits. The term 'place of detention' is not defined by OPCAT; however, the treaty states that it applies to places where 'people are deprived of their liberty', in a place that falls within the jurisdiction and control of the state, and where the

deprivation occurs by virtue of an order of a public authority, or with its consent.<sup>153</sup>

136. Accordingly, OPCAT has broad application to any place where an individual cannot leave of their own free will, and where that place of detention is linked, either directly or indirectly, to a public authority, as affirmed by the SPT in its general comment on places of deprivation of liberty.<sup>154</sup> OPCAT inspections therefore cover not only those settings where there is a locked door, but other settings where a person cannot leave at will, such as a person chemically restrained in a hospital emergency ward or certain residential settings.
137. The Australian Government has adopted a ‘progressive realisation’ approach to implementing OPCAT, whereby NPMs will prioritise monitoring activities in ‘primary’ places of detention, rather than all places where people may be deprived of their liberty. The government defines ‘primary places of detention’ as including:
- adult prisons
  - juvenile detention facilities (excluding residential secure facilities)
  - police lock-up or police station cells (where people are held for equal to, or greater than, 24hrs)
  - closed facilities or units where people may be involuntarily detained by law for mental health assessment or treatment (where people are held for equal to, or greater than, 24hrs)
  - closed forensic disability facilities or units where people may be involuntarily detained by law for care (where people are held for equal to, or greater than, 24hrs)
  - immigration detention centres
  - military detention facilities.<sup>155</sup>
138. As a result, there has been less focus on monitoring ‘secondary’ places of detention, such as aged care facilities, residential institutions and disability-specific settings. Recommendation 11.7 of the Disability Royal Commission recommended that the Australian Government and state and territory governments ‘enact legislation incorporating a broader definition of “places of detention” to enable all places where people with disability may be deprived of their liberty to be monitored’ by NPMs.
139. During consultations and a symposium on implementing OPCAT, numerous stakeholders indicated that these settings require immediate attention. They also identified specific restrictive practices requiring immediate oversight.<sup>156</sup> Restrictive practice means any practice or intervention that has the effect of restricting the rights or freedom of movement of a person with disability, including the use of restraint (such as physical, mechanical or chemical restraint) and seclusion.<sup>157</sup> In 2023–2024, Australian public hospital mental health care had

9,424 seclusion events of 6 hours average duration, 783 mechanical restraint events and 15,139 physical restraint events.<sup>158</sup>

140. The Commission has previously highlighted the vital role of OPCAT in creating a proactive and formal safeguard to preventing violence, abuse, neglect and exploitation of people with disability in situations of deprivation of liberty. It has recommended that NPMs consider prioritising 'secondary' places of detention, not only for monitoring and inspections purposes, but also in support of efforts to end disability-based detention.<sup>159</sup>
141. **Recommended issue 15: The Australian Government should report on progress in adopting an inclusive approach to the interpretation of 'places of detention' under OPCAT, ensuring both 'primary' and 'secondary' places of detention are included within the scope of all NPMs.**
142. Agencies in Australia that work to protect the rights of vulnerable adults such as Public Advocates, Mental Health Commissions, Adult Safeguarding Units and Community Visitors who visit residential care settings play a crucial role in identifying facilities and settings where individuals may be at risk of arbitrary detention and/or ill-treatment.
143. There is need for a timely and coordinated response from all state and territory jurisdictions to action the adult safeguarding reforms presented in the Disability Royal Commission and the Australian Law Reform Commission's report, *Elder Abuse – A National Legal Response*, including the introduction in every state and territory of adult safeguarding laws and independent statutory bodies to administer safeguarding functions for vulnerable adults.<sup>160</sup> However, these currently only exist in 3 Australian jurisdictions, ACT, NSW and South Australia.<sup>161</sup>
144. **Recommended issue 16: The Australian Government should report on progress towards the introduction of adult safeguarding laws and independent statutory bodies to administer safeguarding functions in all states and territories.**
145. As evidenced by the Disability Royal Commission, people with disability in Australia continue to face breaches of their human rights including violence, abuse, neglect and exploitation, and discrimination, particularly in institutional or segregated settings.<sup>162</sup>
146. Australia has not implemented a nationally consistent supported decision-making framework and lacks legislation prohibiting the sterilisation of people with disability without consent.<sup>163</sup> The Commission remains deeply concerned that the non-therapeutic sterilisation of people with disability, particularly women and girls, continues to take place in Australia without their free, prior and informed consent.<sup>164</sup> The Commission is also concerned by the forced administration of contraceptives and abortion procedures.<sup>165</sup> Recommendation 6.41 of the Disability Royal Commission recommends that all jurisdictions

introduce a legislative prohibition on the non-therapeutic sterilisation of people with disability.

147. Involuntary treatment, administration of forced interventions and involuntary hospitalisation remain legally permitted on the basis of perceived or actual impairment. Police or other first responders' perception of 'mental disorder' is commonly the basis for civil detention.
148. Involuntary admissions and compulsory treatment are forms of deprivation of liberty that occur without the person's consent being given (including overriding a person's refusal to consent). Both can be lawfully mandated under state and territory legal and regulatory frameworks and approved under certain conditions. Involuntary treatment is used in Australian mental health services for about 15% of community care contacts, 18% of residential care episodes, 46% of hospitalisations in acute units and 27% of hospitalisations in non-acute units.<sup>166</sup>
149. State-based inquiries and reporting have shone a light on these and other areas of concern. The *Royal Commission into Victoria's Mental Health System* found that people are having their human rights breached through the excessive use of compulsory treatment and the use of seclusion and restraint, and that the use of these practices was on the rise.<sup>4</sup> The Victorian Community Visitors Program, coordinated by the Office of the Public Advocate, monitors data on consumers who are detained or reside in mental health units for extended periods of time, at times due to the dearth of less restrictive, community based options.<sup>167</sup>
150. The Queensland Office of the Public Advocate (OPA) has reported on the state's locked mental health ward policy for all acute public inpatient mental health wards, including for voluntary patients.<sup>168</sup> According to media reports, Queensland has since ended its blanket locked doors policy, instead moving to a discretionary policy from 1 July 2024; this approach remains problematic.<sup>169</sup>
151. Australia's *Royal Commission into Aged Care Quality and Safety* recognised the excessive use in the aged care system of physical or chemical restraints, which impact the liberty and dignity of people receiving aged care and can result in serious physical and psychological harm, increased health complications and in some cases death. It called for urgent reforms to protect older people from unnecessary, and potentially harmful, physical and chemical restraints.<sup>170</sup>
152. The Commission is concerned that people with disability in institutional or congregate settings may be subjected to restrictive practices to 'manage' behaviour, including physical, mechanical and chemical restraints, as well as solitary confinement.<sup>171</sup>
153. As highlighted in the criminal justice section, there is no nationally consistent approach to eliminating the use of restrictive practices across all settings, including care settings for older persons and people with disability.<sup>172</sup> NPMs are

well-positioned by way of having cross-sector visibility of these practices being used and to make substantial contributions to reduce and eliminate the use of restrictive practices in all settings where they are used, including disability, mental health and aged care settings.<sup>173</sup>

154. **Recommended issue 17: The Australian Government should report on progress towards adopting uniform legislation across all states and territories that prohibits forced sterilisation and abortions without the free, prior and informed consent of the person concerned.**
155. **Recommended issue 18: The Australian Government should report on progress in developing a national framework to monitor, regulate, reduce and eliminate the use of restrictive practices in all settings and contexts where they are used.**

## Endnotes

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- <sup>2</sup> *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023); *Royal Commission into Defence and Veteran Suicide* (Final Report, September 2024).
- <sup>3</sup> Australian Bureau of Statistics (ABS), [4517.0 - Prisoners in Australia, 2016, Aboriginal and Torres Strait Islander Prisoner Characteristics](#), ABS, Australian Government, 2016, accessed 25 August 2025.
- <sup>4</sup> Australian Institute of Health and Welfare (AIHW), [Youth justice in Australia 2023-2024](#), AIHW, Australian Government, 2025, accessed 25 August 2025.
- <sup>5</sup> Disability Royal Commission.
- <sup>6</sup> ABS, [Prisoners on remand up 13% in 2024](#) [media release], ABS, 19 December 2024, accessed 9 October 2025.
- <sup>7</sup> See, e.g. *Criminal Code 1899*, (Qld) s 305; *Crimes Act 1900*, (NSW) s19B; *Criminal Code Act Compilation Act 1913*, (WA) ss 297, 318, 401; *Sentencing Act 1991*, (Vic) s 5(2G), pt 3 div 2; *Penalties and Sentences Act 1992*, (Qld) s 161E; *Sentencing Act 1995*, (NT) div 6A; *Sentencing Act 1995* (WA) ss 9D, 85.
- <sup>8</sup> AHRC, 'Australian Human Rights Commission Submissions Seeking Leave to Appear as Amicus Curiae', Submission in *Magaming v The Queen*, S114/2013, 5 August 2013; Law Council of Australia, [The Justice Project Final Report – Part 1 – People with Disability](#), Law Council of Australia, 2018, accessed 25 August 2025; Australian Law Reform Commission (ALRC), [Pathways to Justice—An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples](#), ALRC, Australian Government, 2018, accessed 25 August 2025.
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- <sup>10</sup> AIC, *Deaths in Custody*.
- <sup>11</sup> *Royal Commission into Aboriginal Deaths in Custody* (Final Report, April 1991).
- <sup>12</sup> AHRC, [Social Justice and Native Title Report 2016](#), AHRC, 2016, accessed 29 September 2025, 24.
- <sup>13</sup> Productivity Commission, [Socio-economic outcome area 11: Aboriginal and Torres Strait Islander young people are not overrepresented in the criminal justice system](#), Productivity Commission website, n.d., accessed 25 August 2025.

- <sup>14</sup> See AHRC, *Imprisonment rates of Indigenous women a national shame* [media release], AHRC, 2 May 2018; ALRC, *Pathways to justice*, ch 3; ABS, *Corrective Services, Australia*, ABS website, 12 June 2025, accessed 25 August 2025.
- <sup>15</sup> AHRC, *Submission to Senate Legal and Constitutional Affairs Committee, Inquiry into Australia's youth justice and incarceration system* (10 October 2024) 13.
- <sup>16</sup> Department of Prime Minister and Cabinet (PM&C), *Closing the Gap Report 2019*, PM&C, Australian Government, 2019, accessed 3 October 2025, ch 3.
- <sup>17</sup> Productivity Commission, *Dashboard*, Productivity Commission website, n.d., accessed 25 August 2025.
- <sup>18</sup> AHRC, *The National Anti-Racism Framework: A roadmap to eliminating racism in Australia*, AHRC, 2024, accessed 25 August 2025, 29-32.
- <sup>19</sup> AHRC, *National Anti-Racism Framework*, 29.
- <sup>20</sup> AHRC, *National Anti-Racism Framework*, 12, 20-21.
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