**Opening Statement to the UN Committee Against Torture**

**Lorraine Finlay (Human Rights Commissioner, Australian Human Rights Commission)**

**(11:00 am – noon, Monday 14 November 2022)**

Good morning Chair and Committee Members.

Thank you for the opportunity to speak with you today. I am pleased to join you as Australia’s Human Rights Commissioner, representing the Australian Human Rights Commission.

The Commission has previously provided a written submission to this Committee, which covers the full range of issues that we would like to bring to your attention.

The key point that I would like to emphasise this morning is that while Australia is, overall, a country that respects human rights and can point to progress having been made across a number of areas with respect to our obligations under the Convention Against Torture, there remain significant areas towards which urgent attention is needed. Of particular concern is that many of these issues are not new, and have not been sufficiently addressed since Australia’s last appearance before this Committee.

There are four specific issues to which I would like to draw your particular attention today, namely:

* The need to ensure compliance with obligations under OPCAT;
* The inhumane treatment of children and young people in youth detention centres;
* The continued use of spit hoods in Australia; and
* Continued concerns over Australia’s immigration policies.

*OPCAT Compliance*

As you would be aware, Australia ratified OPCAT in 2017, and earlier this year was granted by this Committee an extension until 20 January 2023 for full compliance. We have serious concerns about the longstanding delays in implementing OPCAT, and whether Australia will be in a position to meet this extended compliance deadline.

To date, not all jurisdictions have designated their NPMs and funding arrangements are yet to be settled. The Commission recently published a *Road Map to OPCAT Compliance* that highlighted the significant work that remains to be done.

The recent suspension of the visit to Australia by the UN Subcommittee on the Prevention of Torture underscores these concerns. In suspending their visit, the SPT cited a ‘limited understanding of the SPT’s mandate and the lack of cooperation stemming from internal disagreements’.[[1]](#footnote-1) The suspension of this visit was highly regrettable, and we would urge the Australian Government to assure this Committee that these issues can be resolved so that the visit may be recommenced.

The suspension is particularly concerning given recent examples that have highlighted specific shortcomings in Australia’s places of detention. This includes the recent admission by the Commissioner of Corrective Services NSW before a parliamentary committee that there are at least five correctional centres in NSW that do not meet minimum standards and are inadequate facilities.[[2]](#footnote-2)

A second example is the continued refusal of the State Government in Western Australia to provide air conditioning in Roebourne Regional Prison, where temperatures in summer can reach more than 50 degrees Celsius. This prison houses around 200 prisoners, with the overwhelming majority being indigenous.[[3]](#footnote-3) The WA Office of the Inspector of Custodial Services found back in 2015 that the temperatures at Roebourne were not just uncomfortable but posed a significant risk to prisoner health.[[4]](#footnote-4) These concerns have not been adequately addressed. While air conditioning has now been installed in the staff toilets, it has still not been installed in all prisoner cells posing a continuing risk to prisoner health and safety.

*Youth Detention Centres*

However, possibly the most urgent example is Australia’s treatment of young offenders, which is the second specific issue that we would like to draw to your attention. Examples of mistreatment in youth detention centres have been highlighted over recent years, and are continuing to this day. There is an urgent need for reform.

I will refer specifically to three examples – the Don Dale Youth Detention Centre in the Northern Territory, the Ashley Youth Detention Centre in Tasmania, and the Banksia Hill Youth Detention Centre in Western Australia.

It is almost five years to the day since the final report for the Don Dale Royal Commission was provided to the Australian Parliament. That Royal Commission found that young people detained in the Northern Territory were frequently subjected to verbal abuse and racist remarks; deliberately denied access to basic human needs, including water and food; restrained in ways that were potentially dangerous; and subjected to isolation, excessively and punitively.

Key recommendations of the Royal Commission remain unimplemented five years later. Despite the Royal Commission recommending the closure of the Don Dale Youth Detention Centre, it remains open. There were 54 incidents of self-harm between July and December 2021 inside Don Dale, which is a more than 500% increase from the corresponding period in 2020.[[5]](#footnote-5) Not enough has been done to address the serious issues that were highlighted by the Royal Commission.

A Commission of Inquiry into the Tasmanian Government’s Responses to Child Sexual Abuse in Institutional Settings is currently underway, and has heard horrific evidence about a historical culture of violence and sexual abuse at the Ashley Youth Detention Centre, which is the only youth detention facility in Tasmania. While the recent announcement by the Tasmanian Government that they will close the Ashley Youth Detention Centre by the end of 2024 is to be commended, in our view it does not address the immediate need to ensure the safety and wellbeing of those currently detained.

We are concerned, for example, about the continued use of lockdowns at the Centre to address staffing shortages. In July 2022 staffing shortages led to a two-week lockdown being instituted that forced youth detainees to be shut in their rooms for up to 23 hours a day, and only let out on a rotational 40-minute basis.[[6]](#footnote-6) Further lockdowns have occurred since.

The use of lockdowns and solitary confinement is also a significant concern at the Banksia Hill Detention Centre in Western Australia. The WA Supreme Court has recently ruled that the solitary confinement of a 15 year old indigenous boy was unlawful, after hearing evidence that between January and June this year he had been confined to his cell for more than 20 hours each day over 26 days. Since that ruling, rolling lockdowns and solitary confinements exceeding 20 hours per day have continued to be used. In remarks made only last week the President of the Children’s Court accused the Department of Corrective Services of ‘deliberately flouting the law’ and described the conditions that the teenager who was before the Court had been held under as being ‘arbitrarily punitive, cruel and a form of child abuse’.

The conditions at the Banksia Hill Detention Centre are of extreme concern. The current Inspector of Custodial Services describes ‘a centre in deep crisis’[[7]](#footnote-7) and concluded in March this year that it ‘is not fit for purpose as a youth detention centre’.[[8]](#footnote-8) Since then, in July 2022, a group of 17 predominately First Nations children were transferred from Banksia Hill to the adult, maximum security Casuarina Prison, where they are being detained in an area called Unit 18 that is separate from the adult prisoners. This is not a safe or suitable option for young people.

And just yesterday, disturbing video footage was released through the media that shows a 14-year-old indigenous boy in his cell being pinned to the ground for over two minutes by at least three guards, while three others watch. It is reported that he had allegedly tried to take his life the night before, and had self-harmed on several occasions while detained.[[9]](#footnote-9)

In the past week alone, two former Inspectors of Custodial Services of WA, a former President of the Children’s Court of WA, and a former WA Police Commissioner have all publicly called for an independent review into the management of Banksia Hill, and for the Centre to be closed. The treatment of young offenders at Banksia Hill is inhumane and shows a complete disregard for human rights. It is reflective of a youth justice system in Western Australia that needs fundamental reform.

*Spit Hoods*

The continued use of spit hoods by police forces and in places of detention in some jurisdictions is another concern. We consider the use of spit hoods to be inherently dehumanising and to pose significant risks of injury and even death.

The death in custody in September 2016 of Wayne Fella Morrison in South Australia is a stark illustration. He was restrained by up to 14 corrections officers with a spit hood, and placed in the prone position in the back of a transport van. His family were forced to turn off his life support machine three days later. Wayne’s family and community worked with the Parliament of South Australia to ban spit hoods for all people of all ages for the first time anywhere in Australia.

Sadly, since then, more people have been restrained with spit hoods, with indigenous people being disproportionately affected. A coronial inquest is due to be held shortly in Queensland into another death in custody where a spit hood was used during a prolonged period of physical restraint.

The Commission recommends that Australia bans spit hoods by law, for all people of all ages and in all settings.

*Immigration Detention*

Finally, we would like to make some brief remarks about continuing issues surrounding Australia’s immigration detention settings. In particular, we have highlighted in our written submission concerns about potential breaches of the principle of *non-refoulement* and that immigration detention remains mandatory for all unlawful non-citizens in Australia. The Commission has long recommended that the *Migration Act* be amended to ensure that closed immigration detention is only used in circumstances where it is strictly necessary to manage unacceptable risks to the community.

The most recent statistics that are publicly available show that as at 30 June 2022 there were 1,398 people in immigration detention facilities in Australia. The average period of time for people held in detention facilities was 742 days, with 144 people having been detained for more than five years. The length of time in immigration detention is far higher in Australia than in comparable jurisdictions.

We also remain concerned with the continued use of Alternative Places of Detention (APODs) for extended periods of time. A practice has emerged in recent years for hotels to be used as APODs, which raises particular concerns given that they are not designed for long-term detention and do not provide adequate access to fresh air, exercise and other programs and activities. As at 31 July 2022 the average length of time current individuals in detention have been accommodate in hotel APODs is 69 days. The longest continuous period of time an individual has been detained at a hotel APOD is 634 days. While we welcome the release of a number of asylum seekers from hotel APODs earlier this year, we continue to hold concerns about the serious human rights and health impacts of hotel detention. It remains our view that hotels should only be used as alternative places of detention in exceptional circumstances and for very short periods of time.

*Conclusion*

We have sought in our opening remarks this morning to highlight our concerns about a number of key issues – namely, OPCAT compliance; youth detention centres; the use of spit hoods; and immigration detention. There are a range of other issues discussed in our written submission, and I would emphasise that the fact they have not been specifically raised in our opening remarks does not diminish their importance.

In conclusion, I would return to the statement I made at the beginning of my remarks. There are many positive things that Australia can point to in terms of our overall human rights record, and more specifically our progress with respect to the Convention. However, the issues we have highlighted this morning require urgent attention, and demonstrate that Australia needs to do more to uphold the commitments that it made under the Convention.

1. United Nations Office of the High Commissioner of Human Rights, *UN torture prevention body suspends visit to Australia citing lack of co-operation* (Press Release), 23 October 2022. [↑](#footnote-ref-1)
2. Kevin Corcoran, *Budget Estimates Transcripts (Portfolio Committee No. 5 – Regional NSW and Stronger Communities),* NSW Legislative Council, 24 October 2022, 10. <[Transcript - PC 5 - Corrections - 24 October 2022 - UNCORRECTED.pdf (nsw.gov.au)](https://www.parliament.nsw.gov.au/lcdocs/transcripts/3063/Transcript%20-%20PC%205%20-%20Corrections%20-%2024%20October%202022%20-%20UNCORRECTED.pdf)> [↑](#footnote-ref-2)
3. The most recent inspection by the Office of the Inspector of Custodial Services was in May 2019, and reported that 79% of prisoners at Roebourne Regional Prison were Aboriginal. See Office of the Inspector of Custodial Services, *2019 Inspection of Roebourne Regional Prison* (Report 128), March 2020, 50. [↑](#footnote-ref-3)
4. Ibid, 2, 23-24. [↑](#footnote-ref-4)
5. Steve Vivian, ‘Self-harm incidents inside Don Dale spark intervention of NT Children’s Commissioner’, *ABC News* (Online) 10 June 2022. [↑](#footnote-ref-5)
6. Damian McIntyre, ‘Ashley Youth Detention Centre ends lockdown that kept detainees in rooms amid staff shortage’, *ABC News* (Online) 14 July 2022. [↑](#footnote-ref-6)
7. Eamon Ryan, ‘It’s time to fact fact Banksia Hill has failed’*, The West Australian*, 13 November 2022. [↑](#footnote-ref-7)
8. Office of the Inspector of Custodial Services (WA), *2021 Inspection of the Intensive Support Unit at Banksia Hill Detention Centre* (Report 141), March 2022, iv. < [Inspection-of-Banksia-Hill-Detention-Centre-ISU-CORRECTED.pdf (oics.wa.gov.au)](https://www.oics.wa.gov.au/wp-content/uploads/2022/04/Inspection-of-Banksia-Hill-Detention-Centre-ISU-CORRECTED.pdf)> [↑](#footnote-ref-8)
9. Daryna Zadvirna, ‘Banksia Hill guards seen pinning down young Indigenous boy in confronting CCTV footage’, *The West Australian* (13 November 2022). <[Banksia Hill guards seen pinning down young Indigenous boy in confronting CCTV footage | The West Australian](https://thewest.com.au/news/social/banksia-hill-guards-seen-pinning-down-young-indigenous-boy-in-confronting-cctv-footage--c-8844164)>. [↑](#footnote-ref-9)