

# Australian National Preventive Mechanism (NPM) Members' Joint Submission to Australian Human Rights Commission's Consultation on Youth Justice and Child Wellbeing Reform across Australia

June 2023

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**We acknowledge the traditional custodians of the lands where we work and live, and Elders both past and present. We recognise Aboriginal and Torres Strait Islander Peoples' ongoing connection to Country and Culture.**

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## 1. Members of the Australian National Preventive Mechanism (NPM)

In 2017, Australia ratified the UN [Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment \(OPCAT\)](#). The coordinating body for the Australian National Preventive Mechanism (NPM) is the [Commonwealth Ombudsman](#), and a number of bodies have been designated members of the NPM by Federal, State and Territory Governments. Not all governments have nominated or established bodies as an NPM member.

We welcome the opportunity to make a submission to the Australian Human Rights Commission's Consultation on Youth Justice and Child Wellbeing Reform across Australia.

The UN Subcommittee on the Prevention of Torture's (SPT) [Analytical Assessment Tool for National Preventive Mechanisms](#) states that

[i]n addition to conducting visits, the mandate of a national preventive mechanism should include the following activities...

Submitting proposals and observations concerning existing or draft legislation and relevant human rights action plans, and submitting to the Government, the parliament and any other competent body on an advisory basis, either at the request of the authorities concerned or through the exercise of the mechanism's powers under the Optional Protocol, opinions, recommendations, proposals and reports on any matters concerning the situation of detainees and any other issues within the mandate of the mechanism...

Following up on the process of implementation of recommendations made by United Nations and regional bodies to the States parties with regard to torture and related issues, providing advice at the national level and providing the recommending bodies with information, as appropriate.

We take this opportunity to highlight the expert recommendations, yet to be implemented, made by some UN Committees to Australia. Our submission also emphasises the crucial and unique safeguard that would be available for children and young people deprived of their liberty, if OPCAT were properly implemented in Australia, and there was a fully operational NPM across all Commonwealth, State and Territory jurisdictions.

**This submission has been prepared and endorsed by the following NPM members:**

- Northern Territory (NT) Office of the Children's Commissioner
- South Australia (SA) Training Centre Visitor

## 2. Summary of recommendations

**Recommendation 1:** Governments and non-government organisations should acknowledge and address systemic racism in the youth justice system, as well as addressing racist behaviour of individuals working within the system.

**Recommendation 2:** Governments should raise the minimum age of criminal responsibility to at least 14 years old, with no exceptions or carveouts, as a matter of priority.

**Recommendation 3:** A national audit and review should be undertaken of the capacity of youth justice detention systems to address and respond to the criminogenic and broader rehabilitative needs of detained children and young people.

**Recommendation 4:** Governments should ensure that, in full compliance with the Optional Protocol to the Convention Against Torture (OPCAT):

- National Preventive Mechanism (NPM) bodies are designated across all Commonwealth, State and Territory jurisdictions;
- the NPM bodies have legislation prescribing their mandate, powers, privileges and immunities; and
- the NPM bodies have adequate, ongoing funding to fulfil their mandate.

**Recommendation 5:** Governments should recognise that an accurate interpretation of OPCAT requires that there be no 'hierarchy' of places of detention, such as "primary" or "secondary" places of detention, and it is for the NPM bodies to prioritise which places of deprivation of liberty they will visit, with what frequency, and for what length of time.

**Recommendation 6:** Governments should recognise the breadth of places that fall within the NPM's mandate, which includes, but is not limited to, police cells and vehicles, supported bail accommodation, remote 'boot camps' or youth camps, residential care for children in out-of-home-care, and schools.

**Recommendation 7:** Commonwealth, State and Territory legislation should criminalise torture, and allegations of torture of children, including those deprived of their liberty, should be properly investigated.

**Recommendation 8:** Detained children should be provided information on their rights, and have access to effective, independent, confidential and accessible complaint mechanisms and protection from any risk of reprisals.

**Recommendation 9:** Governments should ensure, in law and in practice, that all children, including those deprived of their liberty, who are victims of torture and ill-treatment obtain redress (including

an enforceable right to fair and adequate compensation and the means for as full rehabilitation as possible).

**Recommendation 10:** Governments should ensure that regular training is provided to detention staff on the absolute prohibition of torture, and that all relevant staff, including medical personnel, are specifically trained to identify cases of torture and ill-treatment, in accordance with the Istanbul Protocol.

**Recommendation 11:** Governments should raise the minimum age at which children can be detained to at least 16 years old.

**Recommendation 12:** Governments should legislate a presumption in favour of bail for all children (for all alleged offences), with the burden on prosecution to demonstrate that bail should not be granted.

**Recommendation 13:** Governments should monitor and report on the impact of being held for cumulative periods of detention, only or primarily, on remand, on detained children and young people. This should include the influence of factors such as drawn-out legal processes (and associated assessment requirements) or lack of access to other placement options.

**Recommendation 14:** Indefinite detention should be prohibited.

**Recommendation 15:** Solitary confinement of children should be prohibited.

**Recommendation 16:** A national standard should be established to define what constitutes 'isolation' for youth justice detention management and oversight purposes.

**Recommendation 17:** The Report on Government Services (17 Youth justice services) should include "time out-of-cells (average hours per day)". In determining what constitutes "time out-of-cells", relevant stakeholders such as NPM bodies should be consulted.

**Recommendation 18:** The use of spit hoods on children should be prohibited.

**Recommendation 19:** The use of restraint chairs on children should be prohibited.

**Recommendation 20:** The use of tasers on children should be prohibited.

**Recommendation 21:** Governments should ensure that the use of force and restraint (including chemical restraint):

- is a last resort, to prevent the imminent risk of harm to the individual or others;
- is never used as a means of coercion or disciplining children, or for behaviour modification.

**Recommendation 22:** Children should be detained separately to adults.

**Recommendation 23:** Healthcare, including mental health care, provided to children deprived of their liberty should be equivalent to that in the community.

**Recommendation 24:** Healthcare, including mental health care, provided to Aboriginal and/or Torres Strait Islander children deprived of their liberty must be culturally safe, free from racism.

### 3. What factors contribute to children's and young people's involvement in youth justice systems in Australia?

#### I. Systemic racism

The [Report on Government Services 2022](#) stated that, in 2020-2021, 337 of 640 detained children were Aboriginal and/or Torres Strait Islander people. As the [Royal Commission into Aboriginal Deaths in Custody](#) (RCIADIC) explained, more than 30 years ago:

When Aboriginal people say they lived with racism every day they are not meaning to say that all day every day they met non-Aboriginal people who insulted them and called them names (some of the time, of course, they did), but that every day the system of inequality put them down. They are talking about the laws, the systems that were put in place pursuant to the laws which operate every day whether the people who operate the system are well meaning and helpful or personally racist.

There has been an increasing awareness and understanding of the role of systemic racism in the overincarceration of Aboriginal and/or Torres Strait Islander children. For example, [Victoria's Police Commissioner](#) has formally and unreservedly apologised before Victoria's Yoorrook Truth Commission for "police actions that have caused or contributed to the trauma experienced by so many Aboriginal families in our jurisdiction", systemic racism and discriminatory action in the force had gone "undetected, unchecked and unpunished".

Additionally, in 2019, the [UN Committee on the Rights of the Child](#) was seriously concerned by reports that children in detention are frequently subjected to verbal abuse and racist remarks, which was echoed in the [UN Committee Against Torture's Concluding Observations on Australia](#) in 2022.

**Recommendation 1:** Governments and non-government organisations should acknowledge and address systemic racism in the youth justice system, as well as addressing racist behaviour of individuals working within the system.

#### II. The low age of criminal responsibility

For many years, the debate around raising the age of criminal responsibility has stalled this urgently needed reform. There is extensive, accepted research and evidence supporting raising Australia's low age of criminal responsibility, with no exceptions or carveouts for types of harmful behaviour/conduct, to at least 14 years old, which this submission will not canvass. However, we do highlight that in recent years, both the [UN Committee Against Torture's Concluding Observations on Australia](#) (2022) and the [UN Committee on the Rights of the Child's Concluding Observations on the combined fifth and sixth periodic reports of Australia](#) (2019) included recommendations to raise the age, "in accordance with international standards".

The [Final Report of the Council of Attorneys-General Age of Criminal Responsibility Working Group](#) notes that some stakeholders "have suggested that the minimum age of criminal responsibility should

be raised to 14 years, with a minimum age of detention of 16 or 18 years.” Of note, the UN Committee on the Rights of the Child’s [General comment No. 24 \(2019\) on children’s rights in the child justice system](#) states that “[t]he Committee recommends that no child be deprived of liberty, unless there are genuine public safety or public health concerns, and encourages State parties to fix an age limit below which children may not legally be deprived of their liberty, such as 16 years of age.”

**Recommendation 2:** Governments should raise the minimum age of criminal responsibility to at least 14 years old, with no exceptions or carveouts, as a matter of priority.

### III. The compromised rehabilitative objective of the youth justice system

State- and territory-based youth justice detention systems should have a core rehabilitative function. This currently is compromised in some jurisdictions, effectively denying core rights and undermining the potential for preventing recidivism.

In some jurisdictions, delivery of core child and youth focussed services and guaranteed access to appropriate socialisation and meaningful developmental and activity opportunities are not assured. This can be exacerbated by serious ongoing staffing problems in an environment characterised by the ongoing tension of seeking to meet trauma-informed rehabilitative (and therapeutic) goals within a risk-averse custodial model.

The impact on all detained children and young people takes on specific dimensions for groups within detainee populations: for example, children and young people from First Nations and other culturally diverse backgrounds, girls and gender diverse young people, and those with a range of disability or other psychosocial and neurodevelopmental needs.

Youth Justice detention can also serve as a fallback option, where youth justice detention is not a matter of last resort, but instead serves as a secure accommodation option for children and young people with a range of support or intervention needs that are not met in the community.

**Recommendation 3:** A national audit and review should be undertaken of the capacity of youth justice detention systems to address and respond to the criminogenic and broader rehabilitative needs of detained children and young people.



### 3. What needs to be changed so that youth justice and related systems protect the rights and wellbeing of children and young people? What are the barriers to change, and how can these be overcome?

#### I. Properly implement the Optional Protocol to the Convention Against Torture (OPCAT)

The [UN Committee Against Torture's Concluding Observations on Australia](#) recommended that Australia

Take all necessary measures to promptly establish its network of national preventive mechanisms across all states and territories and ensure that each of its member bodies has the necessary resources and functional and operational independence to fulfil its preventive mandate in accordance with the Optional Protocol, including access to all places of deprivation of liberty as prioritized by the bodies themselves.

**Recommendation 4:** Governments should ensure that, in full compliance with the Optional Protocol to the Convention Against Torture (OPCAT):

- National Preventive Mechanism (NPM) bodies are designated across all Commonwealth, State and Territory jurisdictions;
- the NPM bodies have legislation prescribing their mandate, powers, privileges and immunities; and
- the NPM bodies have adequate, ongoing funding to fulfil their mandate.

We welcomed the [UN Committee against Torture's Concluding Observations on Australia](#), in which the Committee noted “with concern that the State party has adopted a “primary versus secondary” approach to places of deprivation of liberty, which leaves several places in which persons are deprived of their liberty outside the scope and the mandate of the network of national preventive mechanisms, which runs counter to the provisions of article 4 of the Optional Protocol.”

**Recommendation 5:** Governments should recognise that an accurate interpretation of OPCAT requires that there be no ‘hierarchy’ of places of detention, such as “primary” or “secondary” places of detention, and it is for the NPM bodies to prioritise which places of deprivation of liberty they will visit, with what frequency, and for what length of time.

We draw your attention to the [UN SPT Draft General Comment No. 1 on Places of Deprivation of Liberty](#):

The [SPT is preparing a general comment](#) on article 4 of the OPCAT with the aim of clarifying and addressing questions that States parties, national preventive mechanisms and other relevant actors may have regarding the obligations of States parties to the Optional Protocol as they pertain to the definition of places of deprivation of liberty. The Subcommittee considers that this is a crucial issue because the

essential purpose of the Optional Protocol lies in the system of preventive visits by the Subcommittee and the national preventive mechanisms to all places of deprivation of liberty.

In the [Australian National Preventive Mechanism \(NPM\) Members' Joint Submission on the UN SPT Draft General Comment No. 1 on Places of Deprivation of Liberty \(Article 4\) \(April 2023\)](#), the NPM highlighted a number of places of deprivation of liberty that would fall within the NPM's mandate, including:

- while police cells are frequently cited as places of deprivation of liberty, police stations could also be included (e.g. when children who have absconded from residential care are arrested by police under safe custody warrants<sup>i</sup>);
- restraint and seclusion in schools generally, not just boarding or religious schools,<sup>ii</sup> including safe transportation of children with disabilities;<sup>iii</sup>
- supported bail accommodation for children in contact with the criminal legal system;<sup>iv</sup>
- remote 'boot camps' or youth camps;<sup>v</sup>
- residential care for children in out-of-home-care;<sup>vi</sup>
- protective custody regimes, whereby individuals are detained for being intoxicated in a public place;<sup>vii</sup>
- mandatory alcohol rehabilitation centres, which previously existed in the NT;<sup>viii</sup>
- detention in private homes under guardianship legislation;<sup>ix</sup>
- respite care.<sup>x</sup>

**Recommendation 6:** Governments should recognise the breadth of places that fall within the NPM's mandate, which includes, but is not limited to, police cells and vehicles, supported bail accommodation, remote 'boot camps' or youth camps, residential care for children in out-of-home-care, and schools.

## II. Legislate a prohibition of torture and ill-treatment in detention, ensure proper investigation and redress for torture and ill-treatment

This year, the UN Special Rapporteur on Torture published a report focusing on [Good practices in national criminalization, investigation, prosecution and sentencing for offences of torture](#), highlighting the following:

The 'duty to investigate' every act of torture and other cruel, inhuman or degrading treatment or punishment starts with foundational legislation establishing that all acts of torture are offences under national law, and continues through stages of complaint and investigation, and concludes with either the prosecution, final judgment and sentencing of alleged offenders or the dismissal of the case based on sound judicial reasoning; or extradition of the accused to be tried in another jurisdiction...The duty is closely connected to the right of victims and survivors to a remedy and reparation. Prompt, impartial and transparent investigations also have a deterrent and preventive character, helping to improve officer behavior and build or restore confidence in public administration.

States parties to the UN Convention against torture and other cruel, inhuman or degrading treatment or punishment (hereinafter Convention against torture or UNCAT) have explicit treaty duties to establish all acts of torture as offences under domestic law (art. 4), to exercise jurisdiction over said offences (art. 5), to receive complaints and examine them promptly and impartially (art. 13), and to investigate those

allegations, also promptly and impartially (art. 12)... Victims are to be protected from reprisals or intimidation during said investigations (art. 13) and they have an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible (art. 14).

The [UN Committee against Torture](#) stated that Australia should

ensure, in law and in practice, that all victims of torture and ill-treatment obtain redress, including an enforceable right to fair and adequate compensation and the means for as full rehabilitation as possible. It should also ensure that victims may, inter alia, seek and obtain prompt, fair and adequate compensation, including in cases in which the civil liability of the State party is involved, in accordance with the Committee's general comment No. 3 (2012)...

Further develop mandatory initial and in-service training programmes to ensure that all public officials, in particular law enforcement officials, military personnel, prison staff and medical personnel employed in prisons, are well acquainted with the provisions of the Convention, especially the absolute prohibition of torture, and that they are fully aware that violations will not be tolerated and will be investigated and that those responsible will be prosecuted and, on conviction, appropriately punished;

Ensure that all relevant staff, including medical personnel, are specifically trained to identify cases of torture and ill-treatment, in accordance with the Istanbul Protocol (as revised);

Develop and apply a methodology for assessing the effectiveness of educational and training programmes in reducing the number of cases of torture and ill-treatment and in ensuring the identification, documentation and investigation of such acts, as well as the prosecution of those responsible.

It also recommended that “children in conflict with the law [are provided] with information about their rights... have access to effective, independent, confidential and accessible complaint mechanisms and protect[ion]... from any risk of reprisals.”

**Recommendation 7:** Commonwealth, State and Territory legislation should criminalise torture, and allegations of torture of children, including those deprived of their liberty, should be properly investigated.

**Recommendation 8:** Detained children should be provided information on their rights, and have access to effective, independent, confidential and accessible complaint mechanisms and protection from any risk of reprisals.

**Recommendation 9:** Governments should ensure, in law and in practice, that all children, including those deprived of their liberty, who are victims of torture and ill-treatment obtain redress (including an enforceable right to fair and adequate compensation and the means for as full rehabilitation as possible).

**Recommendation 10:** Governments should ensure that regular training is provided to detention staff on the absolute prohibition of torture, and that all relevant staff, including medical personnel,

are specifically trained to identify cases of torture and ill-treatment, in accordance with the [Istanbul Protocol](#).

### III. Increase the low age of detention

The [Final Report of the Council of Attorneys-General Age of Criminal Responsibility Working Group](#) notes that some stakeholders “have suggested that the minimum age of criminal responsibility should be raised to 14 years, with a minimum age of detention of 16 or 18 years.” Of note, the UN Committee on the Rights of the Child’s [General comment No. 24 \(2019\) on children’s rights in the child justice system](#) states that “[t]he Committee recommends that no child be deprived of liberty, unless there are genuine public safety or public health concerns, and encourages State parties to fix an age limit below which children may not legally be deprived of their liberty, such as 16 years of age.”

**Recommendation 11:** Governments should raise the minimum age at which children can be detained to at least 16 years old.

### IV. Legislate a presumption in favour of bail - Detention as a last resort

Article 37(b) of the Convention on the Rights of the Child provides that detention of children is to be a last resort:

No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.

For this right to be realised, children must be remanded as a last resort, which, in turn, requires the legislative presumption to be in favour of bail.

The [UN Committee Against Torture’s Concluding Observations on Australia](#) recommended that Australia

should ensure that the regulations governing pretrial detention are scrupulously respected and that such detention is *resorted to only in exceptional circumstances and for limited periods, taking into account the principles of necessity and proportionality*. It should also intensify efforts to significantly reduce the number of pretrial detainees by making more use of alternatives to detention, in particular with regard to Aboriginal and Torres Strait Islander adults and children, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules). (emphasis added)

**Recommendation 12:** Governments should legislate a presumption in favour of bail for all children (for all alleged offences), with the burden on prosecution to demonstrate that bail should not be granted.

## V. Detention on remand

A characteristic of youth justice detention is that children and young people can be held for long and potentially multiple periods of custody only, or primarily, on remand.

For some, this reflects broader systemic failings. For example, a lack of appropriate child protection placement options in the community or the impact of drawn-out legal processes (and associated assessment requirements).

**Recommendation 13:** Governments should monitor and report on the impact of being held for cumulative periods of detention, only or primarily, on remand, on detained children and young people. This should include the influence of factors such as drawn-out legal processes (and associated assessment requirements) or lack of access to other placement options.

## VI. Prohibit indefinite detention

The [UN Committee against Torture](#) recommended that Australia

Stop committing persons with intellectual or psychosocial disabilities who are considered unfit to stand trial or not guilty due to “cognitive or mental health impairment” to custody and for indefinite terms or for terms longer than those imposed in criminal convictions...

Take all necessary measures to reduce the incarceration rate of indigenous children and ensure that children with disabilities are not detained indefinitely without conviction and that their detention undergoes regular judicial review.

**Recommendation 14:** Indefinite detention should be prohibited.

## VII. Prohibit solitary confinement of children and young people

Under Rule 44 of the [UN Standard Minimum Rules for the Treatment of Prisoners](#) (“**Nelson Mandela Rules**”), solitary confinement is defined as confinement that is “22 hours or more a day without meaningful human contact”. The [UN Committee against Torture](#) recommended an immediate end to the practice of solitary confinement for children across all Australian jurisdictions.

**Recommendation 15:** Solitary confinement of children should be prohibited.

A national standard should be prepared to define what constitutes ‘isolation’ in youth detention and other relevant facilities for youth justice detention management and oversight purposes.

**Recommendation 16:** A national standard should be established to define what constitutes 'isolation' for youth justice detention management and oversight purposes.

We note that currently the [Report on Government Services 2022 \(8 Corrective services\)](#) includes information on "time out-of-cells (average hours per day)". However, similar information is not reported with regards to [youth detention centres](#).

**Recommendation 17:** The Report on Government Services (17 Youth justice services) should include "time out-of-cells (average hours per day)". In determining what constitutes "time out-of-cells", relevant stakeholders such as NPM bodies should be consulted.

## VIII. Prohibit the use of spit hoods on children and young people

The [UN Committee against Torture](#) recommended that Australia "take all necessary measures to end the use of spit hoods in all circumstances across all jurisdictions and to provide adequate and regular training for those involved in detention activities on legal safeguards and monitor compliance and penalize any failure on the part of officials to comply."

We note that the most recent [Standing Council of Attorneys-General communiqué \(April 2023\)](#) advised that "[p]articipants agreed to work together to consider the feasibility of nationally co-ordinated action(s) (including legislative prohibition) to prohibit the use of 'spit hoods'," and that the "[Australian Federal Police](#) , which includes [Australian Capital Territory] Policing, has stopped its controversial use of spit hoods, conceding its own review had found the practice posed unjustifiable risks."

**Recommendation 18:** The use of spit hoods on children should be prohibited.

## IX. Prohibit the use of restraint chairs on children and young people

The [UN Committee Against Torture](#) has recommended that the use of restraint chairs as a method of restraining people in custody be abolished, as their use "almost invariably leads to breaches of article 16 of the Convention".

**Recommendation 19:** The use of restraint chairs on children should be prohibited.

## X. Prohibit the use of tasers on children and young people

The [UN Committee against Torture](#) recommended that Australia adopt the necessary measures to effectively ensure that, in all jurisdictions, the use of electrical discharge weapons (tasers) is strictly compliant with the principles of necessity, subsidiarity, proportionality, advance warning (where feasible) and precaution and that they are used exclusively in

extreme and limited situations – in which there is a real and immediate threat to life or risk of serious injury – as a substitute for lethal weapons and by trained law enforcement personnel only. In that respect, the State party *should expressly prohibit their use on children* and pregnant women. In addition, the State party should ensure that all allegations of excessive or inappropriate use of these weapons are promptly, impartially and thoroughly investigated. (emphasis added)

**Recommendation 20:** The use of tasers on children should be prohibited.

## XI. Ensure that use of force/restraint is a last resort in detention

The [UN Committee against Torture](#) recommended that Australia

Explicitly prohibit force, including physical restraints, as a means of coercion or disciplining children under supervision, promptly investigate all cases of abuse and ill-treatment of children in detention and adequately sanction the perpetrators...

Establish a nationally consistent legislative and policy framework for the protection of all persons with disabilities, including children, from the use of psychotropic medications, physical restraints and seclusion under the guise of “behaviour modification” and the elimination of restrictive practices against persons with disabilities, including children...

Ensure that means of restraint are used only as a last resort to prevent the risk of harm to the individual or others and only when all other reasonable options would fail to satisfactorily contain the risk.

**Recommendation 21:** Governments should ensure that the use of force and restraint (including chemical restraint):

- is a last resort, to prevent the imminent risk of harm to the individual or others;
- is never used as a means of coercion or disciplining children, or for behaviour modification.

## XII. Keep children separate to adults in detention

The [UN Committee on the Rights of the Child](#) was concerned, in 2019, that children in detention were not being separated from adults. In 2022, the [UN Committee against Torture](#) recommended that Australia “in cases in which detention is unavoidable, that children are detained in separate facilities.”

**Recommendation 22:** Children should be detained separately to adults.

## XIII. Ensure equivalency and appropriateness of health care in detention

The right of children to equivalent, appropriate healthcare can be found in the following:

- The [Nelson Mandela Rules](#) state that “prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary healthcare services free of charge, without discrimination on the grounds of their legal status.”

- The [International Covenant on Economic, Social and Cultural Rights](#) provides for “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”

In its [Concluding Observations on Australia](#), the UN Committee against Torture recommended Australia “improve the provision of gender- and age-specific medical services to all persons deprived of their liberty, particularly those with intellectual or psychosocial disabilities.”

**Recommendation 23:** Healthcare, including mental health care, provided to children deprived of their liberty should be equivalent to that in the community.

The [Australian Health Practitioner Regulation Authority](#) has defined cultural safety as follows:

Cultural safety is determined by Aboriginal and Torres Strait Islander individuals, families and communities. Culturally safe practise is the ongoing critical reflection of health practitioner knowledge, skills, attitudes, practising behaviours and power differentials in delivering safe, accessible and responsive healthcare free of racism.

**Recommendation 24:** Healthcare, including mental health care, provided to Aboriginal and/or Torres Strait Islander children deprived of their liberty must be culturally safe, free from racism.

<sup>i</sup> Victorian Commission for Children and Young People, ‘Urgent action needed as Victoria’s most vulnerable children and young people go absent or missing from residential care at alarming rates’ (June 2021), available [here](#): “In the 18 months to 31 March 2020, 388 warrants were granted each month on average authorising police to take absent or missing children into ‘safe custody’”. Children are arrested under s598(1)(b) *Children, Youth and Families Act 2005* (Vic), available [here](#): “If a magistrate is satisfied by evidence on oath or by affirmation or by affidavit by the Secretary or by a police officer that a child is absent without lawful authority or excuse from the place in which the child had been placed under an interim accommodation order or by the Secretary under section 173 or from the lawful custody of a police officer or other person the magistrate may issue a search warrant for the purpose of having the child placed in emergency Care.”

<sup>ii</sup> Victorian Government, School Operations: Restraint and Seclusion, available [here](#).

<sup>iii</sup> Victorian Government, School Operations: Restraint and Seclusion, available [here](#).

<sup>iv</sup> Northern Territory Office of the Children’s Commissioner, Saltbush Social Enterprises Monitoring Visits – Final Report (2021) available [here](#).

<sup>v</sup> Northern Territory Government, Youth Camp Programs, available [here](#).

<sup>vi</sup> Both secure and general residential care (e.g. *Children, Youth and Families Act 2005* (Vic), Division 8—Secure welfare services— security measures, available [here](#)).

<sup>vii</sup> E.g. s128 *Police Administration Act* (Northern Territory), available [here](#).

Circumstances in which a person may be apprehended

(1) A member may, without warrant, apprehend a person and take the person into custody if the member has reasonable grounds for believing:

(a) the person is intoxicated; and

(b) the person is in a public place or trespassing on private property; and

(c) because of the person's intoxication, the person:

(i) is unable to adequately care for himself or herself and it is not practicable at that time for the person to be cared for by someone else; or

(ii) may cause harm to himself or herself or someone else; or

(iii) may intimidate, alarm or cause substantial annoyance to people; or

(iv) is likely to commit an offence.

<sup>viii</sup> s12 *Alcohol Mandatory Treatment Act 2013* (Northern Territory) Mandatory residential treatment order, available [here](#): “A mandatory residential treatment order is an order in relation to a person that: (a) authorises the admission of the person to, and the detention of the person at, a specified treatment centre.”

<sup>ix</sup> Australian Senate Standing Committees on Community Affairs, Disability, Guardianship and Aged-care Detention, Indefinite Detention of People with Cognitive and Psychiatric Impairment in Australia, available [here](#): “detention that occurs from



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provisions within disability or guardianship legislation can occur in a range of locations from large hospitals or disability-specific therapeutic facilities, through to smaller disability accommodation units, aged care facilities or even in private homes.”

\* Including respite for children in statutory home-based out-of-home care (e.g. see [here](#)); and respite for aged care (e.g. see [here](#)).