



Australian
Human Rights
Commission

Follow Up Procedures to Australia's Sixth Periodic Review Submission to the Committee Against Torture

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1 Introduction

1. The United Nations Committee Against Torture (UN CAT), requested in its Concluding Observations¹ that Australia provide follow-up information regarding the Committee's recommendations relating to three areas of concern: mandatory immigration detention;² conditions of detention;³ and juvenile justice.⁴ This submission provides relevant updates to these three areas of concern as well as an update regarding Australia's compliance with the Optional Protocol to the Convention Against Torture (OPCAT).
2. The Australian Human Rights Commission (Commission) welcomes the opportunity to provide this submission to the UN CAT. The Commission is Australia's National Human Rights Institution, with recognised independent status and roles in United Nations human rights fora. The Commission's purpose is to promote and protect human rights and fundamental freedoms in Australia and internationally.

3. 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. From the outset, the Commission would like to highlight the absence of available information about implementation of the Concluding Observations as a concern in and of itself. The Commission recommends greater transparency and accountability being needed on the part of Australian governments, particularly regarding the issues raised by the UN CAT as being of significant concern.
5. The Commission also expresses concern that the report of the United Nations Subcommittee for Prevention of Torture's (UN SPT) terminated visit to Australia;⁵ provided to the Australian Government on 19 June 2023, has not been published. While reports are transmitted in confidence, the UN SPT actively encourages States to publish their reports noting '[t]his is the spirit of prevention in action'.⁶ The Commission recommends the Australian Government 'commit to publishing that report in full in the interests of transparency and accountability'.⁷

2 Mandatory Immigration Detention

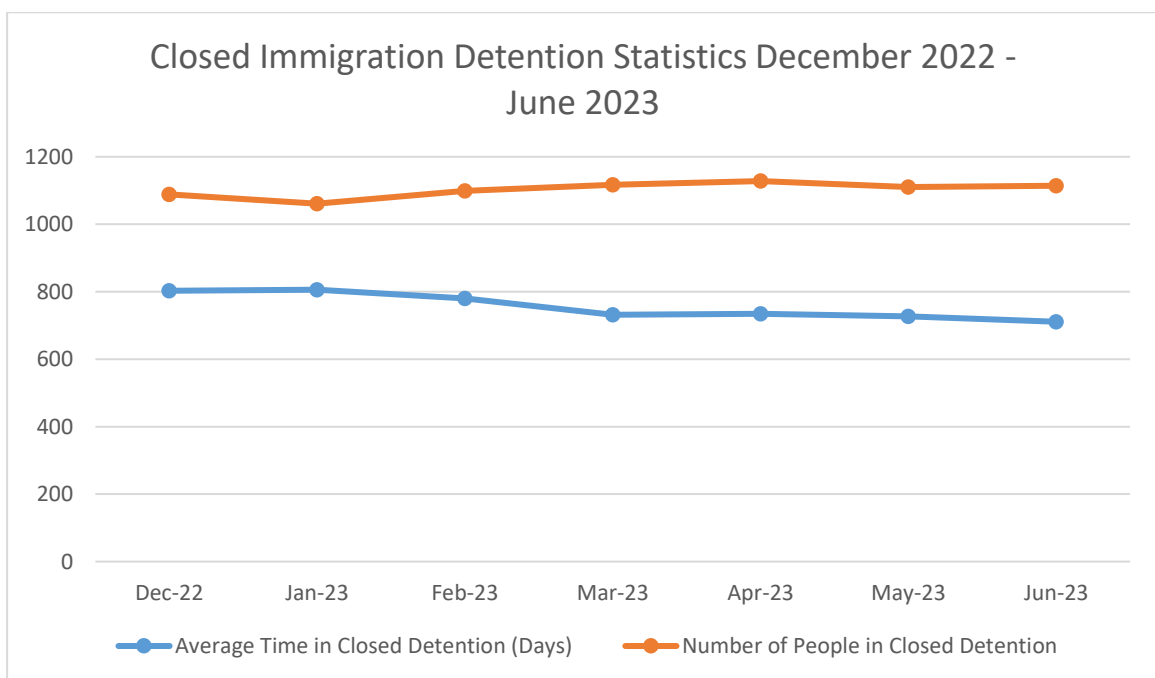
6. Since 1992, Australia has had a system of mandatory immigration detention. Under the *Migration Act 1958* (Cth), any non-citizen who is in Australia without a valid visa must be detained.⁸ Those detained may only be released from closed immigration detention if they are granted a visa or removed from the country.⁹
7. The detention of an unlawful non-citizen is not based on an individual assessment of the need for detention. 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 and the necessity for continued immigration detention is periodically assessed by a court or tribunal up to a maximum time limit.¹⁰

2.1 Average time in immigration detention

8. As of 31 January 2023, the average period in closed immigration detention reached 806 days – which is the highest ever recorded; and 1,061 people were detained.¹¹ As of 31 March 2023, the longest length of time for an

individual held in an immigration detention facility was 5,766 days (15.8 years).¹²

9. The Commission acknowledges that the average period in closed detention has since declined, however, the number of people in closed immigration detention has increased. As of 30 June 2023, the average period was 711 days and 1,114 people were detained.¹³
10. 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 was 15.7 days between 1 January and 31 March, 2023.¹⁴ In the United Kingdom in 2022, 48% of all people who left immigration detention had been detained for 7 days or fewer.¹⁵



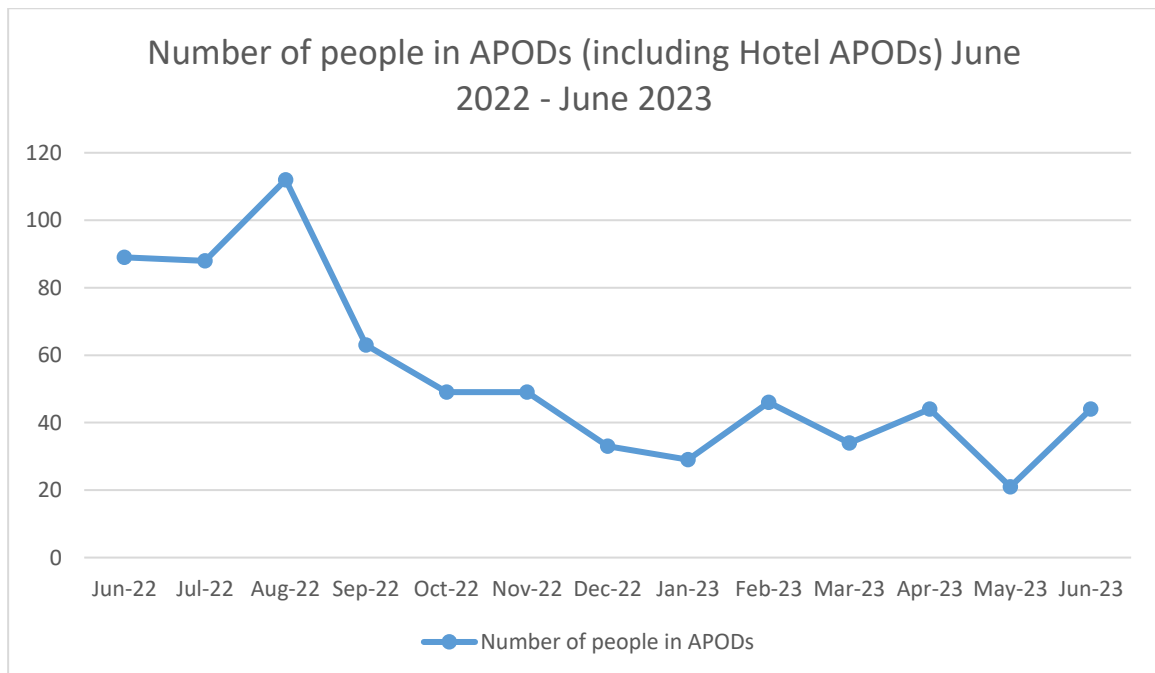
11. The Commission has previously observed that ‘almost every human rights problem in closed immigration detention is made worse the longer an individual is detained’.¹⁷ Individuals that were interviewed as part of the Commission’s most recent detention inspections consistently stated that the length of time spent in detention, and the continuing uncertainty of their situation, was contributing substantially to a worsening of both their physical and mental health.¹⁸
12. People towards whom Australia has *non-refoulement* obligations and people who are stateless are at particular risk of prolonged detention, as they cannot be readily returned to their country of origin. Unless they can meet the requirements for the grant of a Protection Visa (which include satisfying the character test), or there is another country in which they can be resettled, they face the prospect of prolonged and indefinite detention.

13. As of 31 March 2023, 39 people identified as stateless, were detained in closed immigration detention and the average cumulative length of detention for stateless people in held detention was 1,427 days (3.9 years).¹⁹

2.1 The use of hotels as Alternative Places of Detention

14. In addition to established immigration detention facilities, the Migration Act also provides for the Minister to approve (in writing) other places being used as detention facilities.²⁰ These Alternative Places of Detention (APODs) are intended to be used for people who have particular needs that cannot be met within existing detention centres, and may include hospitals, aged care facilities, or mental health facilities.

15. A practice has emerged for hotels to be used as APODs to house people where this does not stem from a specific need of the person being held, but for other reasons, such as relieving overcrowding in other immigration detention facilities.²¹ As of 31 March 2023, there were six hotels being used as APODs.²²



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16. As of 31 August 2022, there were 112 people detained in APODs.²⁴ In May 2023, that number reduced to 22,²⁵ and in June 2023 it increased to 44.²⁶ While there has been some fluctuation, the Commission acknowledges that the number of people detained in hotel APODs has reduced overall.

17. The Commission is nonetheless concerned about hotel APODs being unsuitable for lengthy periods of detention and has recommended that they should only ever be used in exceptional circumstances and for the shortest possible time.²⁷
18. In our most recent inspection report into the use of hotel APODs, we found that people detained were largely confined to their rooms, with social isolation and entrenched loneliness being significant problems.²⁸ Shared facilities and outdoor spaces were significantly more limited than in other immigration detention facilities,²⁹ and it is unlikely that all people detained in hotels would have had a genuine opportunity for daily fresh air access and outdoor exercise.³⁰
19. The lack of access to meaningful programs and activities in hotel APODs has a range of detrimental effects. These include contributing to the deterioration in the mental health of detainees, and fuelling boredom, frustration, and apathy.³¹
20. In July 2023, the Federal Court of Australia upheld the legality of hotels being used as Alternative Places of Detention (APODs) in *Azimitabar v Commonwealth of Australia* [2023] FCA 760. This decision was necessarily focused on assessing the technical legal arguments about powers under the Migration Act. Justice Murphy expressly noted that ‘the decision in this case does not turn on the humanity of the applicant’s detention’,³² and specifically questioned ‘the lack of thought, indeed lack of care and humanity’ in detaining a person under those conditions.³³ He expressed the view that ‘as a matter of ordinary human decency’ Azimitabar should not have been detained in hotels in the conditions that he was for such a long time.³⁴

2.3 Offshore Processing Arrangements

21. The Australian Government has committed to ‘an enduring regional processing capability’³⁵ in Nauru, though they have reportedly transferred all refugees and asylum seekers in Nauru to mainland Australia.³⁶
22. The Commission continues to hold serious concerns that those individuals remaining in Papua New Guinea may be subjected to arbitrary detention and inadequate living conditions.
23. Since the cessation the offshore processing arrangements on Papua New Guinea at the end of 2021, the Australian Government has argued that the ongoing management of individuals remaining in Papua New Guinea is that government’s ‘independent and sole responsibility’.³⁷

24. The Commission considers that transferring asylum seekers to third countries does not release Australia from its obligations under international human rights law. Australia must ensure adequate safeguards are in place to ensure that the human rights of the people transferred are upheld.
25. The Commission continues to express concern that there is still no independent monitoring body for third country processing arrangements in compliance with the 'cross-border detention arrangements' advice of the UN SPT.³⁸

3 Conditions of Detention

3.1 Adult Custodial Correction System

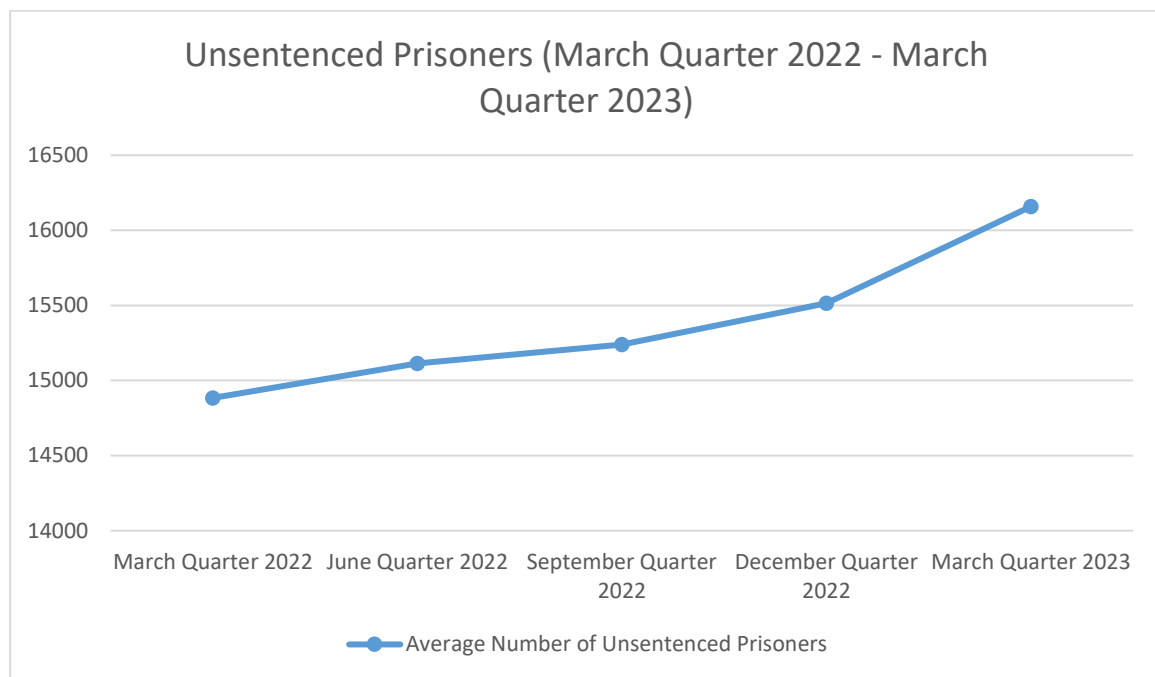
26. In December 2022 the *Cultural Review of the Adult Custodial Corrections System* (Victoria) reported that:

While much has changed in corrections environments in the last few decades, they remain, in part, places that are influenced by a punitive orientation and that can be devastatingly unsafe both for the staff who work there and the people in custody who live there.³⁹

27. The Commission supports this observation, adding that it is equally applicable in all other Australian jurisdictions. As previously noted in the Commission's *Wiyi Yani U Thangani (Women's Voices) Report*:

Prisons impose rigid rules and absolute obedience enforced by authority figures; allow only controlled and supervised access to family, services and support networks; and create environments in which criticism and belittling of prisoners is normalised.⁴⁰

28. The Commission remains concerned about the high numbers of people incarcerated in Australian prisons overall and, in particular, unsentenced prisoners. In the first quarter of 2023, the Australian Bureau of Statistics reported there were 41,833 persons in custody, up 2% from the final quarter of 2022.⁴¹ The rate of unsentenced prisoners also rose by 4% for the quarter to 16,158 (39% of the total prison population).⁴²



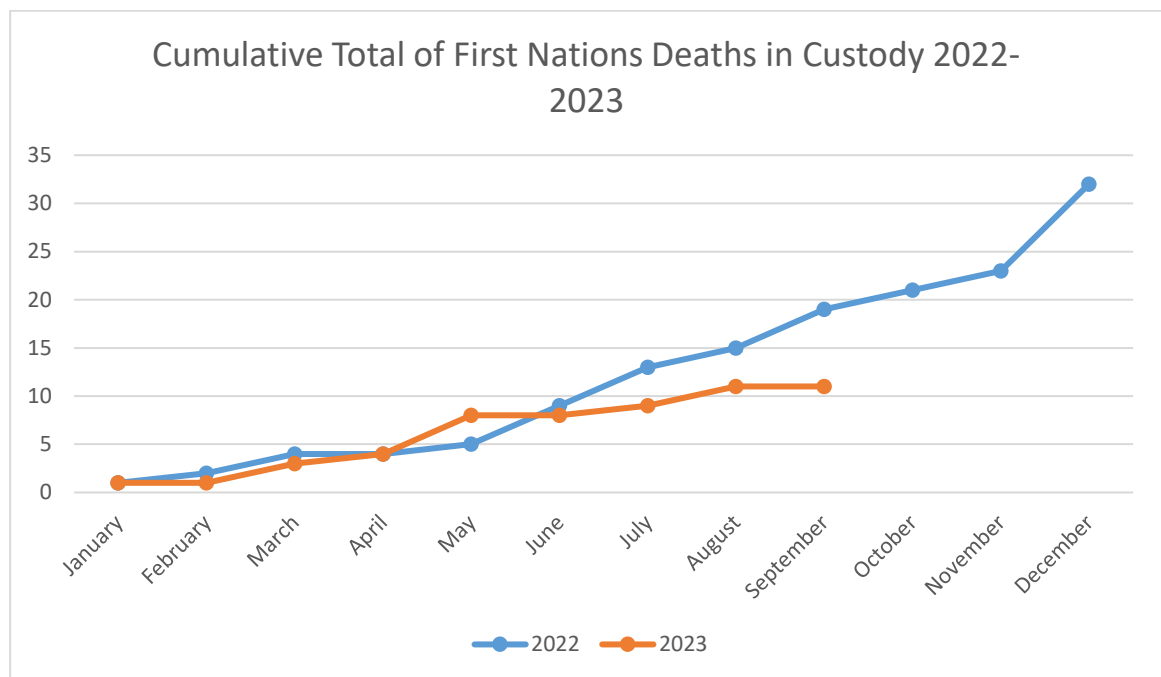
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29. First Nations people continue to be significantly overrepresented in prisons in Australia. The Productivity Commission has reported that First Nations people represented 31% of the daily average population over 2021-2022.⁴⁴ The Productivity Commission has also reported that the *Closing the Gap* target with respect to First Nations people's overincarceration is not on track to be met, with worsening metrics against the age-standardised rate in New South Wales, Queensland, South Australia, and the Northern Territory.⁴⁵
30. In August 2023, the *Yoorook Justice Report* (Victoria) found widespread failings in Victoria's prison system towards First Nations people, including over-imprisonment; deaths in custody; racism and discrimination; lack of knowledge and implementation of human and cultural rights, and widespread violations of those rights; disconnection of First Peoples prisoners from family, kin and culture; a strong and disproportionate emphasis on punishment rather than rehabilitation and healing; lack of independent oversight; and lack of support on release (often into homelessness) leading to reoffending.⁴⁶
31. The incarceration of First Nations people has been described in the *Yoorook Justice Report* (Victoria) as 'causing irreparable, lifelong harm to First Peoples'.⁴⁷ The *Advisory Commission into the Incarceration Rates of Aboriginal Peoples in South Australia* has additionally noted that '[p]rison has a symbolic significance in the lives of Aboriginal people as a reinforcement of the absolute power of the State. This contributes to feelings of vulnerability and powerlessness. Hope and the restoration of dignity is needed to change behaviours.'⁴⁸

32. The Commission echoes this sentiment and continues to advocate that 'sustainable investments must be made into resourcing and supporting [First Nations] communities to lead, design, implement and evaluate the solutions they know work instead of investments into additional punitive measures such as policing and prison systems'.⁴⁹
33. The Commission also remains concerned about the high number of people with disability in Australian prisons. As noted by the *Royal Commission into Violence, Abuse, Neglect & Exploitation of People with Disability* in October 2022, '[p]eople with intellectual, cognitive and psychosocial disabilities are overrepresented in the criminal justice system' and, 'are more likely to have difficulty coping with the prison environment and to experience a higher rate of comorbid mental health disorders and physical conditions ...increased risk of being disadvantaged and socially isolated... [and] also at higher risk of returning to custody'.⁵⁰

3.2 Deaths in Custody

34. The Australian Institute of Criminology reports that there have been 62 deaths in prison, police, and youth custody since January 1, 2023 (inclusive of 11 First Nations people).⁵¹
35. The number of First Nations deaths in custody since the *Royal Commission into Aboriginal Deaths in Custody* (RCADIC) currently totals 551.⁵² The Australian Institute of Criminology has noted that the rate of First Nations deaths in custody 'has consistently been lower in the most recent 10-year period compared with the previous two decades'.⁵³
36. Notwithstanding this trend, the Commission acknowledges that 'the regularity with which these [First Nations] deaths occur, and the publicity that attaches to them, especially when the death has been the result of misconduct, neglect or other egregious behaviours, breeds a deep fear of incarceration in the community'.⁵⁴
37. The Commission also acknowledges the observation of the *Yoorook Justice Report* (Victoria), that 'First Peoples are dying at higher rates in custody not because they are more likely to die once they are in custody, but because of the staggering rates at which governments are arresting and jailing Aboriginal people'.⁵⁵



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38. Moreover, the Commission remains significantly concerned at what the *Yoorook Justice Report* (Victoria) has described as ‘failures to implement recommendations made over many years and by many inquiries’.⁵⁷ As exemplified in a recent review of the Western Australian Inspector of Custodial Services into the implementation of Coronial recommendations:

it was hard not to form the view that in several cases the focus was more about closing the outstanding recommendation rather than implementing sustained change in a way that met the spirit and intent of the recommendation.⁵⁸

39. In January 2023, the Victorian Coroner released its findings into the Inquest into the death of Veronica Nelson, an Aboriginal woman held in custody at the Dame Phyllis Frost Centre, Victoria. The coroner commented that, ‘had the RCADIC recommendations been successfully implemented by the Government and its agencies, Veronica’s passing would have been prevented’.⁵⁹ The Coroner also noted that, to date, the implementation of the RCADIC recommendations has ‘achieved too much policy, and not enough change’.⁶⁰

40. The Victorian Government has announced legislative and policy changes in response to recommendations made by the Victorian Coroner including:

- The decision to cease out-sourcing medical services for female prisoners to private health-care providers⁶¹ – although the Commission notes that the Victorian Government has not decided to mirror this change in the men’s prison system.

- Legislative reform to loosen requirements for bail in Victoria – although these reforms may be delayed for 12 months despite the coroner's recommendation for urgent change, and it is unclear whether the Victorian Government will fully implement the recommended reforms.⁶²

41. In July 2023, the Western Australian Coroner released its findings into the Inquest into the death of Stanly John Inman, an Aboriginal man held in custody at the Acacia Prison, Western Australia. The coroner commented that 'the overall quality of Mr Inman's supervision, treatment and care was of a lower standard than it should have been because his level of risk was not properly understood'⁶³ and that, 'had ... culturally safe care ... been available at Acacia, Mr Inman's life journey may well have been different'.⁶⁴

3.3 Detention Practices

3.3.1 Spit Hoods

42. The Commission considers the use of spit hoods 'to be inherently dehumanising and to pose significant risks of injury and even death' and 'recommends that Australia bans spit hoods by law, for all people of all ages and in all settings'⁶⁵
43. On 14 April 2023, the Australian Federal Police (and Australian Capital Territory Police) announced they would no longer use spit hoods 'after an internal review found the 'risk of using spithoods outweighed the benefits of their use, given they are ineffective in protecting against transmissible diseases.'⁶⁶
44. The Commission welcomes this operational ban, which other Australian policing forces have similarly enacted (apart from Western Australia).⁶⁷ However, as noted by the Northern Territory Ombudsman in their most recent investigation:
- An administrative policy change sends a strong message to members about the direction the organisation currently wishes to take. However, the disadvantage with this approach is that subsequent social pressures or changes in key leadership roles have the potential to result in rapid reversal.⁶⁸
45. The Commission also remains concerned about continuing rhetoric that reinforces misinformation about disease transmissibility as a reason not to legislate against spit hoods.⁶⁹ While not discounting the concern that officers may have after being bitten or spat at, as noted by the

Commission and more recently by the Northern Territory Ombudsman, 'educating members on the scientific evidence regarding the very low risk of transmission may assist to alleviate these psychological consequences'.⁷⁰

46. The Commission equally recognises that 'police officers themselves deserve protection, and have the right to a safe workplace'.⁷¹ However, there is mounting evidence that 'there are a range of alternative measures already adopted in other jurisdictions that can reasonably be utilised such that the absence of spit hoods does not create an increased risk for officers'.⁷²
47. The Commission notes the Standing Council of Attorneys-Generals agreed on the 28 April 2023 to 'work together to consider the feasibility of nationally co-ordinated action(s) (including legislative prohibition) to prohibit the use of "spit hoods"'.⁷³

3.3.2 Routine Strip Searching

48. The Commission is concerned about the inappropriate and routine use of strip searching in Australian prisons. The ineffectiveness of strip searching as a means of contraband detection is well evidenced. For example, a review into strip searching conducted by the Western Australian Inspector of Custodial Services found that between 2014 and 2019, only 571 items were found from almost 900,000 strip searches.⁷⁴ This equates to finding contraband in just 0.06% of occasions or less than once in every 1,500 strip searches.
49. In January 2020, 578 strip-searches of women in custody at Dame Phyllis Frost Centre in Victoria were conducted and contraband was found in only two cases – a 0.3% 'hit rate'.⁷⁵
50. The New South Wales Inspector of Custodial Services has also highlighted in several reports⁷⁶ that the routine use of strip searching on women is both 'inconsistent with trauma-informed principles and with the logic of individualised and specific assessment of risk'.⁷⁷ This observation is also echoed in the Commission's *Wiyi Yani U Thangani (Women's Voices) Report*, which notes that, '[g]iven the significantly high rate of women in prison having experienced sexual violence, the routine use of strip searches in prisons can contribute to the retraumatisation of women'.⁷⁸
51. The Australian Capital Territory Inspector of Correctional Services has additionally reported that First Nations people are over-represented regarding use of the practice; finding that of the 4,077 strip searches conducted in the Australian Capital Territory between 2021-2022, 30%

were undertaken on First Nations males and 58% on First Nations women.⁷⁹

52. Several reviews have evidenced the inefficiency and harms of strip searching to both prisoners and staff alike, and have noted that 'there are less invasive, intelligence-based approaches that would mitigate the risks involved in routine strip-searching and be more in step with contemporary custodial practice'.⁸⁰
53. Despite several jurisdictions adopting these less intrusive search methods and technologies, there remains evidence that 'strip-searching continues to be a default response in circumstances where there is no identified risk'.⁸¹ As noted by the *Yoorook Justice Report* (Victoria), the fact that routine strip searching continues to be performed is unacceptable.⁸²
54. The Commission additionally notes the correlation made by the *Cultural Review of the Adult Custodial Corrections System* (Victoria) that inappropriate strip searching 'often occur[s] alongside other integrity concerns such as threats, verbal abuse or physical assault',⁸³ and 'may also be symptomatic of a more pervasive culture of disrespect'.⁸⁴

3.3.3 Solitary Confinement

55. The use of solitary confinement or solitary confinement-like practices in Australian prisons remains a significant concern of the Commission. The Commission notes that '[solitary confinement] can increase or exacerbate trauma, contribute to the deterioration of mental health and limit participation in rehabilitative programs, all of which increase the likelihood of prisoners struggling in prison and on their release. These effects are particularly felt by those that are vulnerable or have mental illnesses or cognitive disabilities'.⁸⁵
56. In October 2022, the Western Australian Inspector of Custodial Services reviewed the use of confinement and management regimes in that State and found, with respect to separate confinement, that:
- a. prisoners in separate confinement are provided with few opportunities to engage meaningfully with other people;⁸⁶
 - b. the yards available to prisoners in confinement are not always conducive to providing access to open air and exercise;⁸⁷
 - c. prisoners placed in separate confinement are provided with very few cell-based activities and stimulation;⁸⁸ and

- d. prisoners are often held in their cells for 20–23 hours a day with little sensory or mental stimulation.⁸⁹

57. Following the public hearing into conditions in detention in the criminal justice system in September and October 2022, Counsel Assisting the *Royal Commission into Violence, Abuse, Neglect & Exploitation of People with Disability* submitted that, ‘safety and security were the overriding consideration’⁹⁰ regarding decisions to place people with disability into solitary confinement. It also acknowledged that the practice had ‘the capacity to result in significant harm and to exacerbate safety issues’.⁹¹ Counsel Assisting proposed a recommendation that:

All States and Territory Government should legislate to prohibit solitary confinement and for use of restrictive practices including isolation to be used as a last resort. Legislation authorising isolation (to the extent jurisdictions do not already) should at a minimum provide the following protections:

- meaningful human contact and a minimum number of out of cell hours per week
- access to the community equivalence standard of health care including mental health services during the period of isolation
- adequate record keeping and data be kept of all prisoners in restrictive practices including isolation and should be made available to the Inspector of Custodial Services.⁹²

58. In responding to the recommendation, the Western Australian Government supported it in principle, with suggestions for improved accuracy and implementation.⁹³ The New South Wales Government noted it had been given ‘insufficient time to undertake the detailed consideration and scoping required for the State to reach a final determination on this recommendation’.⁹⁴ So far as the Commission is aware, no other State or Territory provided a response to the recommendation.

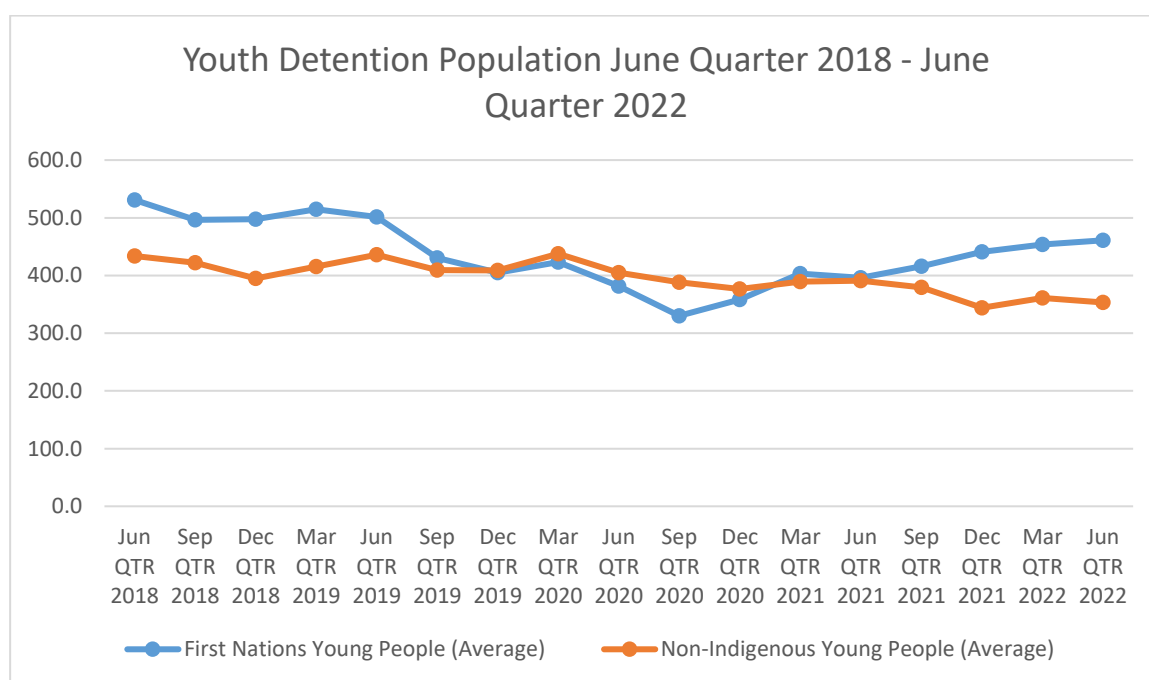
59. The Commission has in past called for ‘concerted efforts’⁹⁵ to ensure the implementation the Committee on the Rights of Persons with Disabilities (CRPD) recommendation that ‘persons with disabilities cannot be held in solitary confinement’⁹⁶ across Australia. We endorse the recommendation made by Council Assisting that this prohibition should be extended to all people.

60. The *Yoorook Justice Report* (Victoria) has also recommended that ‘the Mandela Rules prohibition on prolonged solitary confinement for adults, and a complete prohibition for children, should be established in legislation’.⁹⁷

4 Juvenile Justice

61. The Commission holds grave concerns about the state of Australia’s youth justice systems and has repeatedly called ‘on all Australian governments to urgently address the national crisis in youth justice to prevent further harm to children in detention, and to reduce youth offending through effective systems of support’.⁹⁸ The Australian National Preventive Mechanism has likewise encouraged ‘all governments to address the deeper issues pervading youth justice as a matter of urgency’.⁹⁹

62. The Australian Institute of Health and Welfare reports that, on an average day in 2021–22, 18% (822) of young people aged 10 and over who were under youth justice supervision were in detention and almost 3 in 4 were unsentenced (76%). More than half (452 or 55%) of the young people in detention on an average day in 2021–22 were First Nations young people.¹⁰⁰



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63. The National Children’s Commissioner is currently conducting a project that investigates opportunities for reform of youth justice and related systems across Australia, based on evidence and the protection of human rights. The project will explore ways to reduce children’s involvement in crime, including through prevention and early intervention.

64. The project’s findings and recommendations will be reported to the Commonwealth Attorney-General through a National Children’s

4.1 Criminal Age of Responsibility

65. The Commission considers the minimum age of criminal responsibility in Australia, of 10 years, to be too low. While offending by young children should not go unaddressed, criminalising children for their behaviour at such a young age is ineffective at preventing future offending behaviour while also running counter to human rights.
66. Raising the age of criminal responsibility alone will not solve the problem of youth offending. However, it is hoped that raising the age will open the door to a new approach to dealing with the younger cohort of offenders, one that focuses on their welfare, and which aims to prevent future offending and reduce recidivism. As has been noted by the Australian and New Zealand Children's Commissioners and Guardians, what is required in Australia is for 'all jurisdictions to prioritise the twin actions of legislating to raise the age of criminal responsibility and implementing holistic systems of early intervention and diversion'.¹⁰²
67. In March 2022, the Queensland Legislative Assembly's Community Support and Services Committee examined the *Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021*, which seeks to raise the age of criminal responsibility from 10 to 14. The Committee did not recommend the Bill be passed; but recommended the Queensland Government continue to work on raising the minimum age of criminal responsibility to 12.¹⁰³ The bill subsequently failed to pass in August 2022.
68. In June 2022, the Tasmanian Government committed to raising the age of detention from 10 to 14 by the end of 2024.¹⁰⁴ In July 2023, the Commissioner for Children and Young People (Tasmania) released a Memorandum of Advice to the Tasmanian Government to assist the transition of raising the age and better promote the wellbeing of children.¹⁰⁵
69. In November 2022, the Northern Territory Legislative Assembly passed the *Criminal Code Amendment Act 2022*, that raised the age of criminal responsibility from 10 to 12, coming into effect on 1 August 2023.¹⁰⁶ The amendment also expunges the criminal record of children under 12 years old who have a previous criminal history.¹⁰⁷
70. In November 2022, in response to Counsel Assisting the *Royal Commission into Violence, Abuse, Neglect & Exploitation of People with Disability*

recommending raising the age, the Western Australian Government noted the recommendation 'appears to be unnecessary given that this reform is being considered already by various jurisdictions, including Western Australia, via the Standing Council of Attorneys General'.¹⁰⁸ In the same month, the then Premier of Western Australia stated he did not 'support raising it to 14 under any circumstances'.¹⁰⁹

71. In December 2022, in response to Counsel Assisting the *Royal Commission into Violence, Abuse, Neglect & Exploitation of People with Disability* recommending raising the age, the New South Wales Government noted it would await the report of the Age of Criminal Responsibility Working Group (Working Group).¹¹⁰
72. In February 2023, the *Advisory Commission into the Incarceration Rates of Aboriginal Peoples in South Australia* recommended the South Australian Government raise the minimum age of responsibility to 14.¹¹¹ In April 2023, the South Australian Government was quoted as stating it 'continues to consider its position' regarding raising the age of criminal responsibility.¹¹²
73. In April 2023, the Standing Council of Attorneys-Generals noted it would consider the forthcoming report of the Age of Criminal Responsibility Working Group (Working Group) which will focus on how jurisdictions may support children diverted from the criminal justice system, particularly First Nations children.¹¹³
74. In April 2023, the Victorian Government announced plans to raise the age of criminal responsibility to 12 in late 2024, and then to 14 by 2027.¹¹⁴ The Victorian Government signalled it would introduce legislation for the first stage of reform later this year.¹¹⁵ The *Yoorook Justice Report* (Victoria) has however recommended the amendments be made more urgently and without exceptions; and to prohibit the detention of children under 16 years.¹¹⁶
75. In May 2023, the ACT Government tabled the *Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023*, that would see the age of criminal responsibility raised from 10 to 12 years old, and eventually to 14 years by 2025.¹¹⁷ In July 2023, the Standing Committee on Justice and Community Safety recommended the Bill be passed.¹¹⁸

4.2 Solitary Confinement in Youth Detention

76. The Commission remains seriously concerned about the use of solitary confinement practices in youth detention in Australia. While the term

'solitary confinement' is generally not used in Australian legislation; many young people are subjected to these conditions, as 'segregation', 'isolation', 'lockdown' or 'separate confinement'.

77. Multiple studies confirm that the use of solitary confinement in institutional settings is often harmful. There is 'unequivocal evidence' that solitary confinement has a profound impact on health and wellbeing, and that children and young people are particularly susceptible.¹¹⁹ A vast body of research confirms that young people, until around 25 years, are still developing physically, mentally, neurologically and socially, and as a result, solitary confinement poses a serious risk of long-term harm.
78. The Commission is currently conducting a project to review the use of solitary confinement in youth detention across all Australian jurisdictions. The Commission intends to produce a paper to further highlight the issue with Australian governments, particularly in the Commission's advocacy with the Commonwealth Attorney-General and the Standing Council of Attorneys-General.
79. In October 2022, the New South Wales Ombudsman revealed it had received 1,876 separation and segregation notifications (exceeding 24 hours) in youth detention for the 2021–2022 period, a 7% and 46% increase from the 2020-2021 period.¹²⁰
80. In February 2023, the Queensland Children's Court published evidence that a 13-year-old boy with Foetal Alcohol Syndrome and Attention Deficit Hyperactivity Disorder, was subjected to solitary confinement.¹²¹ Of the last 87 days he spent in detention at the Cleveland Youth Detention Centre, he had been confined to his cell for 20 hours or more per day for 78 days. For ten of those days, he was confined to his cell for 24 hours per day.
81. In July 2023, the Western Australian Supreme Court ruled that three detainees were unlawfully subjected to 'solitary confinement [in their cells] on a frequent basis' at the Banksia Hill Youth Detention Centre and Unit 18 of Casuarina Prison.¹²² Justice Tottle noted in his judgement that
- The causes of the systemic failure are an endemic shortage of suitably qualified staff, inadequate infrastructure and a consequent inability to manage detainees with difficult behavioural problems.¹²³
82. In July 2023, the Commissioner for Children and Young People (Tasmania) urged the Tasmanian National Preventive Mechanism to consider the use of isolation practices, including the use of lockdowns and restrictive practices for operational reasons at Ashley Youth Detention Centre, as a

'matter of priority', emphasising that '[c]hildren's rights are repeatedly trumped due to chronic staff shortages and/or workplace health and safety considerations'.¹²⁴

83. On 10 August 2023, the Commissioner for Children and Young People (Tasmania) also gave evidence before the *Inquiry into Tasmanian Adult Prison and Youth Detention Matters*, that between 15 February 2023 and 5 August 2023, 236 advocacy requests were made about the 'use of lockdowns, unit-bound practices, isolation of young people, and restricted movements around the [Ashley Youth Detention] centre'.¹²⁵
84. In August 2023, the *Yoorook Justice Report* (Victoria) noted that, during a detention centre visit, Commissioners were 'disturbed to hear' from young people about conditions in the centre, including violence by staff and prolonged confinement in cells due to staff shortages.¹²⁶ Commissioners were told that 'children and young people in one side of the detention centre they visited had, in the previous two months, only 30 minutes out of their room each day'.¹²⁷
85. The *Yoorook Justice Report* (Victoria) recommended the Victorian Government take 'all legislative, administrative and other steps to implement the United Nations Standard Minimum Rules for the Treatment of Prisoners ... including an express prohibition on the use of solitary confinement on children'.¹²⁸ It also recommended that 'youth justice centres are adequately funded and properly operated so that the common practice of locking down prisoners in their cells for prolonged periods for administrative or management reasons in violation of their human and cultural rights is ended'.¹²⁹

4.3 Children and Young People in Queensland Police Watch Houses

86. On 24 August, the Queensland Parliament legislated retrospectively to permit the indefinite detention of children and young people in police watch houses by suspending the application of aspects of the Queensland's *Human Rights Act 2019*.¹³⁰ The changes came after the Queensland Government received advice from the state's Solicitor-General suggesting young people may have been illegally detained for years.¹³¹
87. In August 2023, the Queensland Family and Child Commission reported that there had been 8,030 admissions of children and young people into police watchhouses or stations in 2021–22.¹³² The Queensland Human Rights Commission additionally noted that,

Between 15 August 2022 and 15 February 2023, they were used to detain approximately 23 newly remanded children and young people per day, 32% of whom spent more than 24 hours in the watch house, and 8% of whom (or 332 individuals over a 6-month period) spent more than 7 days. There were 10 cases of young persons being detained in watchhouses for more than a month.¹³³

88. On 6 September, members of the Australian National Preventive Mechanism issued a statement saying:

Police watch houses are not designed for long-term detention, and neither watch houses nor adult correctional facilities are designed for children. We are gravely concerned about the long-term and indefinite detention of children in Queensland in these highly unsuitable environments, noting reports of extended periods in solitary confinement, no access to necessary child-appropriate facilities, and limited natural light, fresh air, exercise, and activity opportunities. Given the significant rates of incarceration of First Nations peoples of all ages, including in Queensland, we are also concerned the Queensland Government's actions will have a disproportionate impact on First Nations children, who already face other sustained, compounded challenges.¹³⁴

89. The Commission urges the Queensland Government to repeal the legislation. Children should never be detained in police watch houses or other adult detention environments.

5 Optional Protocol to the Convention Against Torture

90. The Commission remains greatly concerned about Australia's continued non-compliance with its obligations under OPCAT. To date, the states of New South Wales, Queensland, and Victoria are yet to designate a National Preventive Mechanism (NPM).

91. In December 2022, the *Cultural Review of the Adult Custodial Corrections System* (Victoria) recommended that the Victorian Government take priority action to designate an NPM.¹³⁵ This recommendation was again repeated in the *Yoorook Justice Report* (Victoria) in August 2023.¹³⁶

92. On 23 May 2023, the Queensland Attorney-General stated that

the Queensland government continues to work with the Commonwealth government to ensure there is ongoing and sufficient funding for NPMs to function effectively. Resourcing is important for effective NPM implementation ... I note that funding for NPMs remains an outstanding

issue for most jurisdictions and that Victoria and New South Wales are also yet to nominate NPMs.¹³⁷

93. In September 2023, the Australian National Preventive Mechanism urged the Queensland Government 'to nominate an NPM to support Australia to meet its international obligations, and help fulfil the domestic element of the visit system created by OPCAT'.¹³⁸

94. In July 2023, the Australian Government stated that it is continuing to engage with New South Wales, Queensland and Victoria, and 'also continuing to work transparently and cooperatively with the Subcommittee to meet Australia's OPCAT obligations'.¹³⁹ In the same month, the Australian National Preventive Mechanism stated that

funding issues remain a key barrier to most Australian NPM bodies properly performing their functions. Some Australian governments have suggested that it is the Australian Government's responsibility to fully fund NPM bodies and that those states yet to nominate an NPM will not do so without full funding from the Australian Government.¹⁴⁰

95. The Commission urges Australian governments to fully implement OPCAT. This includes implementing the recommendations of the Commission's *Road Map to OPCAT Compliance Report*¹⁴¹ and the recommendations contained in the Commission's submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *National Preventive Mechanisms: a formal safeguard for people with disability*.¹⁴²

¹ United Nations Committee Against Torture, Concluding observations on the sixth periodic report of Australia (CAT/C/AUS/CO/6) (5 December 2022).

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³ United Nations Committee Against Torture, Concluding observations on the sixth periodic report of Australia (CAT/C/AUS/CO/6) (5 December 2022) [32].

⁴ United Nations Committee Against Torture, Concluding observations on the sixth periodic report of Australia (CAT/C/AUS/CO/6) (5 December 2022) [38].

⁵ United Nations Office of the High Commissioner for Human Rights, UN torture prevention body terminates visit to Australia, confirms missions to South Africa, Kazakhstan, Madagascar, Croatia, Georgia, Guatemala, Palestine, and the Philippines (20 February 2023) <<https://www.ohchr.org/en/press-releases/2023/02/un-torture-prevention-body-terminates-visit-australia-confirms->

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- ⁶ Statement by Sir Malcolm Evans, Chairperson, Subcommittee on Prevention of Torture and other cruel, inhuman or degrading treatment or punishment. 72nd session of the General Assembly, Third Committee - Item # 69 (a) (13 October 2017) <<https://www.ohchr.org/en/statements/2017/10/chairpersons-statement-72nd-ga-session-13-october-2017>>.
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