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Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Comments of Australia on the recommendations and observations addressed to it in connection with the Subcommittee visit undertaken from 16 to 23 October 2022*, **

[Date received: 19 December 2023]

* The present document is being issued without formal editing.

** On 19 December 2023, the State party requested the Subcommittee to publish its comments, in accordance with article 16 (2) of the Optional Protocol.

I. Introduction

Reply to the recommendation contained in paragraph 11 of the report of the Subcommittee (CAT/OP/AUS/ROPS/1)

1. The Australian Government welcomes the report of the United Nations Subcommittee on Prevention of Torture (Subcommittee), following their visit in October 2022. The report has been distributed to relevant authorities as per the Subcommittee's recommendation. Australia requests publication of the present report together with this response in accordance with article 16(2) of the *Optional Protocol Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the *OPCAT*).

2. Australia takes its international human rights obligations seriously. This response demonstrates Australia's enduring commitment to prevent torture and other cruel, inhuman, or degrading treatment or punishment and continued progress towards full implementation of the *OPCAT*.

3. The numbered headings below align with the Subcommittee's report.

II. Facilitation of the Visit and Cooperation

Reply to the recommendation contained in paragraph 16 of the report of the Subcommittee

4. As a federation, the Australian Government and state and territory governments each have responsibility for places of detention within their jurisdiction and share responsibility for implementation of the *OPCAT*, including with respect to the Subcommittee's access to places of detention. Accordingly, there is not a single federal law to implement the *OPCAT* across Australia.

5. In consultation with state and territory governments, the Australian Government endeavoured to provide the Subcommittee all information requested to its highest ability to facilitate its visit. While appreciating the Subcommittee successfully visited almost all jurisdictions in Australia, it is regrettable that the Subcommittee was unable to access some places of detention.

6. Regarding the restrictions to closed disability forensic and psychiatric facilities in Queensland, while the legislation at the time of the Subcommittee's visit did not permit entry to the Forensic Disability Service (FDS) and authorised mental health services (AMHS), the Queensland Government via the Australian Government worked closely with the Subcommittee to provide alternatives to ensure the Subcommittee's mandate could be met as much as possible. This included an offer for the Subcommittee to interview staff of the Forensic Disability Service and AMHS and access client information with the consent of the client and their guardian. This offer was not taken up by the Subcommittee.

7. Since termination of the visit, the Australian Government has worked cooperatively with all states and territories to address the challenges that led to the termination.

8. Since the Subcommittee's visit, on 2 June 2023 the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2023* (Qld) commenced. The Act facilitates visits by the Subcommittee to places of detention in Queensland and removes the legislative barriers that restricted physical access by the Subcommittee to inpatient units of AMHS or the FDS in Queensland during its visit.

9. Australia looks forward to facilitating future visits of the Subcommittee and will continue to work cooperatively with all states and territories to ensure the Subcommittee is able to carry out its mandate.

III. National Preventive Mechanism and implementation of the OPCAT

Reply to the recommendation contained in paragraphs 21, 22, 24 and 26 of the report of the Subcommittee

10. As a federation, the Commonwealth Government and state and territory governments each have responsibility for places of detention within their jurisdiction. Consistent with the *OPCAT*, Australia's approach to implementation creates a cooperative network model of National Preventive Mechanisms (NPM) established by the Commonwealth Government and state and territory governments through legislation. Australia does not consider that the *OPCAT* requires overarching federal legislation to designate the NPM structure selected by that State Party. As the Subcommittee notes in its Report, the choice of an NPM and its configuration is at the full discretion of the State Party.

11. Australia has made significant progress towards full implementation of the *OPCAT*, with six out of nine jurisdictions having nominated an NPM. In 2022, Australia provided the Subcommittee with an updated list of nominations to accord with the Subcommittee's clarification of the criteria for establishment of an NPM (47th session, 7-17 June 2022).

12. The Australian Government continues to engage with the three jurisdictions that have yet to nominate NPM bodies, with the aim of facilitating the nomination of NPMs in these jurisdictions as soon as possible. Queensland has passed the *Inspector of Detention Services Act 2022* (Qld), which established the Inspector of Detention Services and has been designed to encompass key features of an NPM as outlined in the *OPCAT*. The Australian Capital Territory (ACT) Government has committed to amend the *Monitoring Places of Detention (Optional Protocol to the Convention against Torture) Act 2018* (ACT) to clearly set out the powers, privileges and immunities of the Australian Capital Territory NPM in accordance with the *OPCAT*. Australia's cooperative network model of NPM implementation recognises the expertise of each state and territory, and their existing oversight bodies, regarding places of detention within its jurisdiction.

13. As noted in the following paragraphs, Australia continues to work towards full implementation of the *OPCAT* to ensure NPM coverage of all places of detention under its jurisdiction and control. Noting the need for coordination, in 2018 the Commonwealth Ombudsman, the national NPM, was nominated as NPM Coordinator. The role includes collecting information, facilitating information sharing and collaboration, and preparing consolidated reports about NPM activities.

14. Australia recognises its obligations under the *OPCAT* extend to all places of detention under its jurisdiction and control, as defined in article 4 of the *OPCAT*. Australia has taken an incremental approach to the implementation of the *OPCAT*. The approach was guided by an assessment of the principal forms of detention in Australia in terms of frequency, duration and intensity of supervision and covers the main categories of administrative, civil and criminal detention. The scope of NPMs will be broadened over time, in consultation with affected stakeholders. It does not prevent jurisdictions from taking a broader approach as demonstrated by NPM legislation at the federal level and in the Northern Territory and Tasmania. Within their mandate, all NPMs are able to prioritise what type of place of detention to visit.

15. As far as practicable, staff attending to reactive and proactive functions in existing bodies nominated as NPMs will be kept separate. There are circumstances, for example in the Australian Capital Territory which has a population of 460,000 people and a size of merely 2,358 km², where other measures will be relied upon to ensure appropriate independence and separation of functions.

16. All Australian governments are continuing discussions on the implementation of NPMs, including allocation of sufficient funding to enable compliance with obligations under the *OPCAT*.

IV. Normative framework for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

A. Age of criminal responsibility

Reply to the recommendation contained in paragraph 28 of the report of the Subcommittee

17. The minimum age of criminal responsibility across almost all Australian jurisdictions is currently ten years of age, with the exception of the Northern Territory and the Australian Capital Territory where it is currently twelve years of age. In all jurisdictions there is a rebuttable presumption that a child aged between the minimum age of criminal responsibility and fourteen years of age is not criminally responsible.

18. The issue of the minimum age of criminal responsibility continues to be the subject of discussions between the Commonwealth and state and territory Attorneys-General through the Standing Council of Attorneys-General (SCAG), including how jurisdictions can support children diverted from the criminal justice system. On 1 December 2023, the SCAG released the Age of Criminal Responsibility Working Group Report 2023, putting forward a principles-based framework for jurisdictions to consider in raising the minimum age of criminal responsibility.

19. Several jurisdictions are taking steps to raise the minimum age of criminal responsibility:

- On 1 August 2023, the *Criminal Code Amendment (Age of Criminal Responsibility) Act 2022* (Northern Territory) commenced, raising the minimum age of criminal responsibility from ten years of age to 12 years of age in the Northern Territory. The Northern Territory (NT) Government has committed to review the legislation in two years' time, with a view to raising the minimum age of criminal responsibility to 14 years;
- On 22 November 2023, the *Justice (Age of Criminal Responsibility) Legislation Amendment Act 2023* (ACT) commenced. The Act increases the minimum age of responsibility in a staged approach from commencement, initially to 12 years of age from commencement, and then to 14 years of age by 1 July 2025;
- On 25 April 2023, the Victorian Government announced that it would raise the minimum age of criminal responsibility to 12 years of age without exceptions and then raise it to 14 years of age by 2027 – with exceptions for certain serious crimes, subject to the design and implementation of an alternative service model;
- The Tasmanian Government has committed to implementing all recommendations of the final report of the Commission of Inquiry into the Tasmanian Government's Response to Child Sexual Abuse in Institutional Settings, which includes a recommendation to introduce legislation to increase the minimum age of criminal responsibility to 14 years, by 1 July 2029. The recommendation also includes developing relevant community-based health, welfare and disability programs and services for children under 14 years engaging in anti-social behaviour, and working towards increasing the minimum age of detention (including remand) to 16 years by developing alternatives to detention for 14- and 15-year-old children found guilty of serious violent offences and who may be a danger to themselves or the community.

B. Legal regulation of restraint tools and spit hoods

Reply to the recommendation contained in paragraphs 31 and 32 of the report of the Subcommittee

Use of restraints

20. The majority of states and territories have legislation that limits the use of restraints on children to circumstances where there is risk that exists to people or the safe operations and order of the centre, and the likelihood of that risk becoming a reality. Such circumstances include where a child may attempt to escape, or may seriously harm themselves or another person, or seriously disrupt the order and security of the centre, and youth detention staff reasonably believe there is no other way to stop the young person from engaging in such behaviour. In these circumstances, youth justice staff are encouraged to use their training in verbal and non-contact de-escalation techniques to prevent incidents of violent behaviour where restraints may otherwise be required. Authorised restraint techniques are used as a last resort only, where other less restrictive interventions have failed to prevent harm or the risk of harm. The use of restraints is regularly monitored and scrutinised by a range of internal and external oversight functions and is subject to strict regulation.

Specific measures in states and territories

21. In the Australian Capital Territory (ACT), spit hoods and mechanical restraints are not used. The *Children and Young People Act 2008* (ACT) and the Children and Young People (Use of Force) Policy and Procedures 2022 (No 1) (ACT) both clearly outline the limited circumstances in which mechanical restraints may be used on young people in youth detention. Legislation and policy outline the requirements for health care following restraint and the internal and external reporting requirements. The use of spit hoods, spit guards, restraint chairs and chemical restraints are prohibited in youth detention centres in the Australian Capital Territory.

22. The Mental Health Act Amendment Bill 2023 (ACT) includes a new dictionary definition of ‘restraint’. The Bill is scheduled to commence in late 2023 or early 2024. The inclusion of a new definition of ‘restraint’ in the Dictionary clarifies that the use of spit hoods is not authorised under the Act. There is currently no specific provision relating to the use of spit hoods as a method of restraint, so this amendment intends to ensure that spit hoods are not to be used by persons exercising a power or performing a function under the Act. The amendment will specify that spit hoods are not considered a minimum or reasonable method of restraint for any purpose under the Act.

23. Adult corrections in the Australian Capital Territory do not use spit hoods and have clear policy, training and practice in line with the *Corrections Management Act 2007* (ACT) on the use of mechanical restraints. The Corrections Management (Use of Force and Restraints) Policy and associated operating procedures are publicly available and incidents involving a use of force must be recorded on CORIS (offender management system) and a review system is in place. Oversight is provided by Official Visitors, the Inspector of Correctional Services, the Australian Capital Territory Human Rights Commission, and the Australian Capital Territory Ombudsman (with the latter three making up the Australian Capital Territory’s NPM). The Corrections Management (Use of Force and Restraints) Policy does not list spit hoods, spit guards or any similar equipment as an approved instrument of restraint. Only approved instruments of restraint may be used in an ACT correctional centre.

24. In South Australia, the use of mechanical restraint on children and young people at South Australia’s only youth justice centre, Kurlana Tapa, is subject to requirements set out in the Youth Justice Administration Regulations 2016. Under the Regulations, mechanical restraint can only be used in prescribed circumstances and only ever as a last resort following a risk assessment. The type of mechanical restraint permitted must be approved by the Chief Executive of the Department of Human Services. The Regulations also prescribe a range of recording, monitoring and review requirements that must be followed when mechanical restraints are used, including that the children or young person must not be left unsupervised.

25. The *Mental Health Act 2009* (SA) includes a guiding principle regarding the use of restrictive practices and that they should only be used as a last resort for safety reasons (section 7). Further the use of restrictive practices is monitored by the Chief Psychiatrist (section 90(1)(b)). The use of spit hoods is prohibited under the *Mental Health Act 2009.*

26. In Queensland, the *Mental Health Act 2016* (Qld) makes provision for a range of safeguards and restrictions in relation to the use of physical and mechanical restraints in authorised mental health services (AHMS). When using physical and mechanical restraints, AMHS must maintain the safety, wellbeing and dignity of the patient and ensure that restraints are only used for the minimum period of time necessary, and that all staff actions are justifiable and in proportion to the patient's behaviour and broader clinical context. Use of physical and mechanical restraint is considered on a case-by-case basis and requires authorisation and approval.

27. Use of seclusion and restraint in Queensland Health's mental health inpatient units is reported under the Mental health Seclusion and Restraint National Best Endeavours Data Set (SECREST NBEDS) agreement. Data on use of seclusion and restraint is publicly available through the Australian Institute of Health and Welfare website.

28. In line with the *Human Rights Act 2019* (Qld), Queensland Youth Justice continues to explore and adopt safer and less restrictive practices to manage safety and security risks in youth detention centres.

29. In Victoria, as per the *Corrections Act 1986* (Vic), the use of force is applied for the minimum time necessary to resolve the reason for its use. Victoria's central use of force philosophy is that where force is used, it must be to ensure that no prisoner, officer, staff or member of the community is put at unnecessary risk. In every situation where force is used, a situational management approach should be employed to assess the tactical option used in order to minimise the risk of injury to all persons. Any instruments of restraint may only be applied where there is a belief on reasonable grounds that the use of restraints is necessary. They are to be used in an appropriate manner, for the minimum time necessary. Prisoners' human rights are limited only to the extent that it is reasonably and demonstrably justifiable. All staff must act compatibly with human rights and consider human rights when making decisions.

Spit hoods

30. Spit hoods and similar equipment are no longer used in federal justice settings or in immigration detention facilities. All states and territories do not allow the use of spit hoods on minors in youth justice or police detention. At its meeting on 22 September 2023, the Standing Council of Attorneys-General (SCAG) agreed to review any continuing use of spit hoods in detention settings – including reviewing the suitability of alternative protective measures.

Specific measures in states and territories

31. In the Northern Territory, the Northern Territory Police Force (NTPF) ceased the use of spit hoods on youths in custody in mid-2022. At that time the use of spit hoods on adults was also limited to be within NTPF custodial facilities only. The NTPF maintains the allowance to use Emergency Restraint Chairs for persons (youth and adults) in custody who are exhibiting serious self-harm behaviours. All spit guard and Emergency Restraint Chairs use events are subject to mandatory internal reporting requirements and each event undergoes both an operational and an independent review. Any issues that are identified are reported to the NTPF Professional Standards Command for further investigation. Correctional Services use spit hoods on adults if it is justified by the need to restrain and prevent a prisoner from engaging in misconduct or causing harm to others. The use of spit hoods in adult correctional facilities is done in accordance with relevant policies, manuals and guidelines.

32. In Queensland, spit hoods are not used in most places of detention and are not used, or authorised, in any Queensland youth detention centre or authorised mental health service.

33. In South Australia, the Department for Correctional Services (DCS) has rigorous policies that are applied in the event of restraint use, and in accordance with legislative

requirements. On 30 April 2021, DCS banned the use of spit hoods for use across all prisons in South Australia. The use of spit hoods in South Australian detention settings, including Kurlana Tapa Youth Justice Centre, was banned effective from 25 November 2021 by the *Statutes Amendment (Spit Hood Prohibition) Act 2021* (SA).

34. In Victoria, anti-spit masks are used as a last resort for maintaining the safety of both staff and people in custody. Where possible staff use Personal Protective Equipment in the first instance, and an anti-spit mask may also be used if required. Anti-spit masks are prohibited for people under the age of 18 in adult custody. The use of spit hoods is prohibited in the Victorian Youth Justice system.

35. In Western Australia, Department of Justice policy does not permit the use of spit hoods for juveniles in custody. Spit hoods are used infrequently, sparingly and for brief period of time with adults in custody where the prisoner's actions represent a significant safety risk regarding spitting or biting. Any use is tightly controlled, monitored and subject to review.

36. In NSW, spit hoods are not used in any place of detention. The NSW Government has introduced the Detention Legislation Amendment (Prohibition on Spit Hoods) Bill 2023. If passed, the Bill will implement a statutory prohibition on the use of spit hoods in places of detention.

C. Persons deprived of their liberty on remand

Reply to the recommendation contained in paragraph 34 of the report of the Subcommittee

Bail and remand

37. As noted in the Subcommittee's report, there is the potential for the cost and conditions of bail to have a disproportionate impact on First Nations peoples. Some states and territories have pursued programs to divert offenders away from remand. For example, in Western Australia, the Department of Justice has partnered with Aboriginal Legal Services and Legal Aid to establish Bail Support Services and Prison In-reach Legal Services. These services identify opportunities to overcome barriers to bail and reduce avoidable remand.

38. Decisions of bail or remand for Commonwealth offences follow state or territory bail procedures where the alleged offence is said to have been committed. Where a person is charged with a Commonwealth offence, in circumstances where there is required to be a deferred hearing, the court may determine to remand the defendant to a place of custody. Additionally, there are some Commonwealth offences where bail must not be granted except for in exceptional circumstances, such as for terrorism offences.

39. In September 2023, the Parliament passed amendments to Part IC of the *Crimes Act 1914* (Cth) to ensure that a person who commits a Commonwealth offence in one state, but is arrested in another, can be brought before 'bail authority', rather than a 'judicial officer', in the state where the offence occurred. This amendment mitigates the risk of arrested persons being subject to arbitrary detention by ensuring they are not held in detention for longer than is necessary awaiting to appear before a 'judicial officer'. This also ensures that a person's ability to be remanded on bail is not unduly impacted by where they were arrested, and where the offence was committed.

Specific measures in states and territories

40. In the Australian Capital Territory, the Australian Capital Territory Government is establishing a Law Reform and Sentencing Advisory Council. This body will advise the Government on areas of potential law reform and provide expert advice on sentencing and is expected to commence work shortly. On 29 August 2023, the Australian Capital Territory Government announced, via its response to the Australian Capital Territory Legislative Assembly's Justice and Community Safety Committee's Report on the Dangerous Driving

Inquiry, that the Australian Capital Territory Government would refer the Bail Act to the Council for review and advice.

41. There are a range of factors to be considered in relation to the Australian Capital Territory's bail framework, including its interaction with the human rights framework of this jurisdiction. These issues will be referred to the Council to be considered holistically, to ensure that the Australian Capital Territory's laws balance the rights of accused persons with the protection of the community.

42. The Australian Capital Territory Government also notes that it is undertaking a review of overrepresentation of First Nations people in the criminal justice system in the Australian Capital Territory. Matters relating to the application of bail laws to First Nations people will also be within the scope of this review.

43. The Australian Capital Territory has pursued several initiatives to ensure pre-trial detention is a matter of last resort:

- Ngurrambai Bail Support: Ngurrambai (Nuh-ram-buy) is a Ngunnawal word meaning 'perceive' (I see, I hear, I understand). The program provides a culturally appropriate operational model that includes court-based bail support, outreach bail support, Alexander Maconochie Centre support and after-hours bail support. It is designed to reduce the number of First Nations people on remand, and assist First Nations people to apply for, gain and stick to their bail conditions. Ngurrambai Bail Support is provided by the Aboriginal Legal Service (ALS) NSW/ACT;
- Front Up: Front Up is a support program for Aboriginal and Torres Strait Islander people who have an outstanding warrant(s) or have breached bail or a community-based sentence to assist them to present to Court and negotiate on their behalf to have the matter resolved, where possible, without a period of custody. Front Up is provided by the ALS NSW/ACT;
- Bail App: The Australian Capital Territory is in early discussions to create or license a bail app that would assist people under bail orders with calendar reminders for court and bail obligations, as well as an easily accessible copy of their bail conditions. The Australian National University has provided the Australian Capital Territory Government with a literature review of similar bail apps nationally and internationally, for consideration;
- Interview Friends: Aboriginal and Torres Strait Islander Interview Friends has been re-funded by the Australian Capital Territory Government, to begin operation by early 2024. Interview Friends provide independent, culturally appropriate support to Aboriginal and Torres Strait Islander people who have been detained by police for interviewing in relation to an offence. Interview Friends are trained and trusted members of the Australian Capital Territory's Aboriginal and Torres Strait Islander community. The Interview Friend's role is one of support, that ensures the rights of the detained person are upheld. Interview Friends is provided through the Aboriginal and Torres Strait Islander branch of Legal Aid;
- Galambany Circle Bail Court: The Galambany Circle Sentencing Court has been expanded not only to meet the increased demand for sentencing but also to establish a specialist bail list. The proposal to introduce a Galambany specialist bail court seeks to address the overrepresentation of Aboriginal and Torres Strait people among remandees and is consistent with recommendations made by the Australian Law Reform Commission in its report *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*.

44. The Northern Territory (NT) has established an Alternative to Custody Facility for women in Central Australia and is developing plans for other such facilities. The NT has also supported bail accommodation programs as an alternative to remand.

45. In Queensland, Queensland Youth Justice is committed to delivering community-driven responses that are culturally appropriate and community-led. Queensland legislation is clear that detention of children in the criminal justice system is a last resort, and

the Queensland Government invests heavily in bail support programs and in legal services for merits reviews of, and appeals from, bail refusals.

46. In South Australia, Section 10 of the South Australian *Bail Act 1985* (SA) provides a presumption in favour of bail, subject to a number of considerations including the seriousness of the alleged offence and whether or not the bail applicant might abscond, reoffend, interfere with evidence or hinder police inquiries. The presumption in favour of bail is removed in some cases, mostly relating to serious or violent crime, including murder and organised crime.

47. Under the *Bail Act 1985* (SA), children and young people in South Australia who are denied police bail are entitled to a telephone review by a Magistrate where a court is not readily available (for example on weekends or in remote areas), facilitated through access to on-call Magistrates. In 2023, the South Australian Government developed an Easy Read resource to assist children and young people in understanding the bail application process and ensuring their right to a telephone review is upheld.

48. The South Australian Child Diversion Program (CDP) provides short-term, culturally safe, supported accommodation and community-based support for Aboriginal children between the ages of 10-13 years who have been charged with a minor offence as an alternative to custody. The CDP model uses an evidence-informed approach, focusing on Aboriginal methodologies and culturally-centred approaches to engagement. These include Aboriginal Family-Led Decision Making, Relationship-Based Practice, Kinship and Family Mapping, which are complemented by Culturally Responsive Programs and Services provided by the Department of Human Services. The 2023-24 South Australian State Budget included $1 million over two years to continue the CDP.

49. In Victoria, amendments to the *Bail Act 1977* (Vic) received Royal Assent in October 2023, which aim to make the state's bail laws fairer for vulnerable and disadvantaged people, while continuing to take a tough approach to those who pose a serious risk to Victorians. The new Act, which will come into force in March 2024, will aim to reduce unnecessary remand for people accused of low-level offending.

Other related measures

50. South Australia is committed to ongoing review and reform of criminal laws where appropriate and necessary and has recently invested around $25 million over four years to deliver a multi-pronged initiative across agencies to support Aboriginal people and reduce incarceration rates. The suite of measures, which include community support programs, accommodation and support programs, the development of an Aboriginal Justice Agreement and a two-year trial of a specialist court for Aboriginal children and young people, respond directly to recommendations made by the Advisory Commission into the Incarceration Rates of Aboriginal Peoples in South Australia.

D. Migration

Reply to the recommendation contained in paragraphs 38 and 40 of the report of the Subcommittee

51. In advance of responding to the Subcommittee's recommendations, in relation to Annex I of the Subcommittee's report which contains a list of places of deprivation of liberty visited by the Subcommittee, the Australian Government seeks to correct that Villawood Immigration Detention Centre is located in New South Wales. Further, the Australian Government understands that the Subcommittee visited the outside of the Alternative Places of Detention (APODs), however did not go inside.

52. The Australian Government's position is that arbitrary immigration detention is not acceptable. Since 2008, the Australian Government's policy has required that detention in an immigration detention centre be a last resort for the management of unlawful non-citizens. Immigration detention is administrative in nature and allows the Australian Government to investigate ways to resolve a person's immigration status. Assessments of a person's immigration status are completed as expeditiously as possible to facilitate the shortest

possible timeframe for detaining people in immigration detention facilities for administrative purposes. Administrative detention is only permitted in strictly limited circumstances, and judicial review of the lawfulness of the detention is available.

53. *The Migration Act 1958* (Cth) (the Migration Act) provides Home Affairs Portfolio Ministers with powers to grant a visa to a detainee under section 197A or to make a Residence Determination under section 197AB (commonly known as community detention).

54. The Australian Government is currently considering the High Court of Australia's orders in *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] HCA 37. On 28 November 2023, the High Court handed down written reasons for its decision on 8 November 2023. The High Court found that unlawful non-citizens cannot continue to be kept in immigration detention for the purpose of their removal from Australia once there is no real prospect of their removal becoming practicable in the reasonably foreseeable future.

55. To give effect to the High Court's decision, the Department has established a process for the continuous assessment of the detention cohort for the potential release of individuals who may be impacted by the judgment. This includes robust legal and quality assurance processes to ensure that decisions to release are lawful, appropriate and consistently documented.

56. Status Resolution Officers in the Department of Home Affairs regularly review the circumstances of a person's immigration detention. Where a detainee is assessed as low risk of harm to the community or where a detainee presents other compelling or compassionate circumstances, they may be referred to the Minister for consideration of the ministerial intervention powers.

57. Persons who are subject to residence determination are in a less restrictive form of immigration detention. They have freedom of movement within the community but must reside at a specified address (in a house or apartment in the Australian community) and abide by any specified conditions which may include conditions relating to work and study.

58. Persons who are subject to a residence determination are provided with support under the Status Resolution Support Services (SRSS) program which includes accommodation, payment of all utilities and a living allowance. They are provided health services through the Detention Health Services Provider and children under the age of 18 are provided education in mainstream schools.

59. The Department of Home Affairs has also established a program of Detention Status Resolution Review, which considers the referrals of detainees in identified cohorts, for ministerial intervention consideration under sections 195A or 197AB of the Migration Act. Identified cohorts include:

- Individuals who are subject to a residence determination for more than six months;
- Detainees who have been assessed as low risk of harm to the community;
- Detainees who engage Australia's protection obligations, have no ongoing immigration matters, and where it is not reasonably practicable to effect involuntary removal or identify third country options;
- Detainees who are confirmed to be stateless and with no rights to reside in another country;
- Detainees with complex care needs as identified by the Chief Medical Officer;
- Detainees held in immigration detention for over five years.

60. Only a Home Affairs Portfolio Minister or a delegate of the Minister can cancel a visa. Some of the grounds on which visas may be cancelled are if an individual is non-compliant with visa conditions, does not meet character requirements or false information was provided in the visa application.

61. Visa cancellation and consequent removal of a non-citizen from Australia is an administrative decision taken by Australia pursuant to its sovereign right to decide the circumstances in which a non-citizen is permitted to enter and remain within its jurisdiction.

62. People in immigration detention may seek judicial review (and, in most circumstances, merits review) of the decision to refuse or cancel a visa that has resulted in them becoming an unlawful non-citizen who is subject to being detained under the Migration Act.

63. More broadly, Australia's federal court system allows an individual to apply for judicial review of administrative decisions made by the Minister, a delegate of the Minister in the Department of Home Affairs or other Commonwealth bodies on behalf of the Minister. A federal court will consider whether the decision has been made consistently with the law. If an applicant has applied to have the decision of their migration case proceedings reviewed by a federal court, there are support services available on request. These services, which differ between the courts, include access to free legal aid, community legal services and pro bono legal assistance.

V. Fundamental Legal Safeguards

A. Detention prior to charges

Reply to the recommendation contained in paragraph 43 of the report of the Subcommittee

64. All jurisdictions apart from the Northern Territory do not permit pre-charge detention beyond 48 hours.

65. In 2017, all Australian governments (through the former 'Council of Australian Governments', an intergovernmental forum from 1992 to 2020 that included the Prime Minister, First Ministers from each state and territory, and the President of the Australian Local Government Association) agreed in-principle to enhance the Commonwealth pre-charge detention regime to support national consistency and interoperability. These reforms are likely to be complex and the Australian Government is working to identify key issues with the existing regimes and determine what the reforms should entail.

66. Commonwealth laws in relation to the detention of individuals prior to charge are in accordance with the Subcommittee's recommendation. Pre-charge detention under Part IC of the *Crimes Act 1914* (Cth) (Crimes Act) and under the preventative detention order (PDO) scheme under Division 105 of the *Criminal Code Act 1995* (Cth) (Criminal Code) are subject to a number of safeguards, including limitations on the duration of any detention prior to charge.

67. Part IC of the Crimes Act provides important safeguards to police powers to detain persons without charge. These include, but are not limited to, the right of the individual to communicate with a lawyer before being questioned and during questioning, inform a relative or friend of their whereabouts and be treated with humanity and with respect for human dignity. The time restriction on this form of detention is up to four hours for an initial investigation period for all persons, except Aboriginal or Torres Strait Islander persons or persons under the age of 18, for which the initial investigation period is two hours. For non-terrorism offences, a single extension can be granted by a magistrate for a period not exceeding eight hours. For terrorism offences, multiple extensions may be granted, but the total extension period must not exceed 20 hours.

68. The purpose of a PDO is to allow a person to be detained in custody for a short period of time in order to prevent the occurrence of an imminent terrorist attack, or to preserve evidence of, or relating to, a recent terrorist act. The PDO scheme is a preventative, rather than investigative, power. Accordingly, there is a prohibition on individuals being questioned under a PDO except for limited purposes, such as to ensure the safety and wellbeing of the detainee. The maximum period of detention allowable under a Commonwealth PDO is 48 hours. The Commonwealth PDO scheme has never been used, demonstrating the due care and consideration taken in relation to these powers.

Specific measures in states and territories

69. In the Australian Capital Territory (ACT), police services are provided by the Australian Federal Police (AFP) through ACT Policing. Under section 9 of the *Australian Federal Police Act 1979* (Cth) (AFP Act), a member of the AFP has the powers and duties conferred or imposed on a constable by both the laws of the Commonwealth and the Australian Capital Territory. Under sections 23DB and 23DC of the *Crimes Act 1914* (Cth), a person arrested for an offence may be detained for the purposes of investigating whether the person committed the offence or an offence the investigating official reasonably suspects the person has committed.

70. The investigation period begins when the person is arrested and ends at a time thereafter that is reasonable. The investigation period must not extend beyond two hours, if the person is or appears to be under 18 or is an Aboriginal or Torres Strait Islander person; or four hours in any other case. The period may be extended by application to a Magistrate pursuant to sections 23DA and 23DF but may not be extended for a period exceeding 8 hours and may only be extended once. These provisions apply to most summary and indictable Commonwealth and ACT offences pursuant to section 23A of the *Crimes Act 1914* (Cth) and section 187 of the *Crimes Act 1900* (ACT), with the exception of some summary road traffic offences which are largely dealt with through issuing infringement notices.

71. In addition to the establishment of a maximum detention period prior to charge, section 18 of the *Human Rights Act 2004* (ACT), provides that everyone in the Australian Capital Territory has the right to liberty and security of person.

72. In the Australian Capital Territory, anyone who is arrested or detained must be brought promptly before a judge or magistrate and has the right to be tried within a reasonable time or released. Anyone who is arrested must be promptly told of the reason for the arrest and any charges against them, and as a general rule, anyone awaiting trial must not be detained in custody. A detainee is entitled to apply to the court so that the court can decide, without delay, the lawfulness of the detention and order their release if the detention is unlawful.

73. In the Northern Territory, the Northern Territory Police Force under section 137 of the *Police Administration Act 1978* (PAA) have the right to hold a person without charge for a ‘reasonable period’. Every minute that the person is held in custody under Section 137 must be justified by one of the reasons detailed within section 138 of the PAA.

74. In Queensland, a person can initially be detained for a maximum of eight hours without charge. A police officer can apply to a Magistrate or Justice of the Peace for an extension to this period, but each extension cannot exceed eight hours. A terror suspect can be detained for a maximum of 14 days without charge.

75. In South Australia pursuant to section 78 of the *Summary Offences Act 1953* (SA), the police may, after arrest, detain anyone for up to 4 hours on suspicion of having committed a serious offence for the purpose of completing an investigation before charging them. A magistrate can grant police the power to detain someone for up to 8 hours before a charge is laid.

76. In Western Australia, the maximum detention period for arrested persons is contained in section 140 of the *Criminal Investigation Act 2006* (WA) (CIA). The limitations are:

- Detention must not exceed six hours from the time of arrest, unless a further period is authorised. Detention can only be for a reasonable time, giving consideration to factors in section 141 CIA, such as the number and complexity of the offences, the time required, etc.;
- A further six-hour period can be authorised by a Senior Officer and must only be approved for a reasonable time, giving consideration to the factors in section 141; and
- Further eight-hour periods of detention may be authorised by a Magistrate. This may be renewed.

B. Information on detainees' rights

Reply to the recommendation contained in paragraph 45 of the report of the Subcommittee

77. Australian states and territories have developed the Guiding Principles for Corrections in Australia (revised in 2018). These uniform principles represent a statement of national intent and are used by the states and territories in developing their own relevant legislative, policy and performance standards on correctional practice.

78. The Principles were informed by internationally accepted standards, such as the UN Standard Minimum Rules for the Treatment of Prisoners. From an immigration detention perspective, detainees are advised of their rights to consular access and their rights under section 256 of the Migration Act, including all reasonable facilities for making a statutory declaration for the purposes of the Migration Act or for obtaining legal advice or taking legal proceedings in relation to their immigration detention.

Specific measures in states and territories

79. In the Australian Capital Territory, all detained persons are fully informed of their rights as soon as they come into Australian Capital Territory Corrective Services' custody. Policy directs that detainees are provided with information at each stage of the reception, admission and induction process. Videos are played for detainees (one for males and one for females) during the reception, admission and induction process.

80. A detainee handbook is provided in hardcopy and electronic copy to all detainees. Easy English versions of key parts of the detainee handbook are in the process of development under the Australian Capital Territory Corrective Services Disability Action and Inclusion Plan. A case manager is assigned during the induction process to provide information, access to supports and continuity of care. The current admission and induction policies are being updated and a more comprehensive policy and procedures reflecting changes being introduced under the Integrated Offender Management Framework will be released shortly. Australian Capital Territory Corrective Services also utilise interpreting services for detainees with non-English skills or limited English skills.

81. Young people detained in the Australian Capital Territory's Bimberi Youth Justice Centre are advised of their rights during induction. This information is also provided to young people through an induction video, young person's handbook and on posters displayed throughout the Centre. A Charter of Rights for Young People in Bimberi Youth Justice Centre was developed in 2017. It provides clear, accessible information about the rights and responsibilities of young people in Bimberi, in areas such as healthcare, education and safety.

82. In the Northern Territory (NT), the Northern Territory Police Force (NTPF) ensure all persons detained by police are verbally provided their rights at the time they are taken into custody. Persons arrested are additionally informed of their right to notify a family member of their location at the time of lodgement at a police custodial facility.

83. The NTPF actively support the Custody Notification Service (CNS) which provides all Aboriginal and Torres Strait Islander persons arrested within the NT with access to 24-hour legal advice and support from lawyers from the Aboriginal legal service.

84. The Queensland Government provides fundamental rights to people in police detention. This includes the right to remain silent, and rights to communicate with a friend, relative or lawyer. A police officer is required to explain to the detainee each of their fundamental rights, and to make sure the person can understand the information being given and translate or arrange for an interpreter if the person does not understand English. Information is generally given in writing only if the person cannot hear adequately. There are specific guidelines outlining the rights and responsibilities of children detained at watchhouses. This includes the right to make a complaint, receive visitors and receive visits by legal representatives. Australian states and territories allow complaint agencies and non-government organisations to visit children in custody, providing children with the opportunity to raise a complaint about their treatment in police custody.

85. In Queensland, adult prisoners must be informed of their entitlements upon entry to a corrective services facility (section 11 of the *Corrective Services Act* 2006 (Qld)). Reasonable steps must be taken to ensure that prisoners who do not understand English or who are illiterate are able to understand this information (section 11(2) of the *Corrective Services Act* 2006 (Qld)).

86. When young people are detained in Queensland youth detention centres, they receive an induction as part of the admission process in accordance with the *Youth Justice Act 1992* (Qld) and the Youth Justice Regulation 2016 (Qld). Children are provided with an 'easy English' induction booklet which details information about rights, responsibilities, youth detention services, facilities and available supports. A detention centre staff member must read and explain the booklet to the young person to ensure they understand. As part of this process, young people are informed about youth detention complaints processes and how to make a complaint. An animated induction video (created in English and Creole language) is also shown and is specifically designed to maximise understanding of the youth detention centre environment and the services available.

87. Under the *Mental Health Act 2016* (Qld), all public sector mental health services have appointed Independent Patient Rights Advisers. The role of these advisers is to ensure that consumers, their families, carers and other support persons understand their rights, to communicate their views, wishes and preferences with treating teams, to make a complaint or seek a second opinion on treatment and care, to educate about the role and processes of the Mental Health Review Tribunal (MHRT) and to assist consumers to seek legal advocacy for review of orders at the MHRT and appeals of decisions to the Mental Health Court.

88. Section 277 of the *Mental Health Act 2016* (Qld) requires the Chief Psychiatrist to prepare a statement of rights on the rights of patients, nominated support persons, family, carers and other support persons, and the rights of patients to make a complaint. The statement of rights must be explained to the patient on admission, and a copy of the statement of rights provided (if requested) to the patient, nominated support persons, family, carers and other support persons. Posters are displayed within inpatient units, and the Office of the Chief Psychiatrist has a series of videos, fact sheets and guides available publicly.

89. In South Australia (SA), police personnel provide all detainees rights as contained in section 79(A) of the *Summary Offences Act 1953* (SA). This includes, as soon as reasonably practicable after the apprehension of a person, informing them of their rights such as a telephone call, access to a solicitor and if English is to the person's native language, assistance in an interrogation by an interpreter.

90. All South Australian adult correctional facilities are visited on a regular basis by an Official Visitor as per section 20 of the *Correctional Services Act 1982* (SA). All prisoners participate in an induction upon admission in which access to amenities and services along with expectations are explained to them. Prisoners have free access to contact a number of external agencies via the Prisoner Telephone System such as complaints lines and oversight agencies. On the Prisoner Education Network, volumes of legislation, regulations and other legal material has been uploaded. Interpreting and translating services are also available and engaged where language barriers exist.

91. In South Australia, every child and young person admitted to Kurlana Tapa Youth Justice Centre is given a copy of the Charter of Rights for Youths Detained in Training Centres as required under the *Youth Justice Administration Act 2016* (SA). Children and young people in custody also have their rights under the Charter explained to them verbally as a part of the admissions process, and it is displayed in accommodation units. This also aligns with the Australasian Youth Justice Administrators (AYJA) Standards, which require that children and young people are provided with information about their rights in various formats that they can understand and access.

92. The *Mental Health Act 2009* (SA) provides that copies of treatment orders and statements of rights be provided to patients as soon as practicable (sections 12 and 23) upon the making of an order.

93. In Western Australia, section 138(2) of the *Criminal Investigation Act 2006* (WA) (CIA) provides that, in addition to the rights in section 137 (which provides the right, upon

arrest to, medical treatment, privacy, to obtain an interpreter or to communicate with a friend or relative), an arrested suspect is entitled:

- To be informed of the offence for which he or she has been arrested and any other offences that he or she is suspected of having committed;
- To be cautioned before being interviewed as a suspect;
- To a reasonable opportunity to communicate or to attempt to communicate with a lawyer, and
- If he or she is for any reason unable to understand or communicate in spoken English sufficiently, not to be interviewed until the services of an interpreter or other qualified person are available.

C. Access to a lawyer

Reply to the recommendation contained in paragraph 47 of the report of the Subcommittee

94. Australia recognises that access to legal assistance is an important element in ensuring equality of justice access and outcomes.

95. There are a range of services that can help people requiring assistance with legal matters. These services are delivered by legal assistance providers. The Australian and state and territory governments provide funding for organisations to help people resolve their legal problems by providing legal information, advice and representation.

96. The Australian Government also funds seven Aboriginal and Torres Strait Islander Legal Services (ATSILS) to deliver culturally-appropriate legal assistance services across numerous permanent sites, court circuits and outreach locations in urban, rural and remote areas. This includes an investment of more than $440 million over five years from 2020-25 for the delivery of First Nations legal assistance services under the National Legal Assistance Partnership.

Specific measures in states and territories

97. In the Australian Capital Territory, the Australian Capital Territory Government acknowledges the vital role legal assistance plays in ensuring equitable access to the justice system, which is fundamental to our democratic society and the rule of law. Not only does legal assistance facilitate improved outcomes for individuals, it also generates broader benefits to society.

98. The Australian Capital Territory Government currently provides funding to the Australian Capital Territory legal assistance providers to deliver legal assistance services to the Canberra community – including for vulnerable people who may be socially or economically disadvantaged. In the Australian Capital Territory, these providers include Legal Aid ACT, Canberra Community Law, Women's Legal Centre, Aboriginal Legal Service (NSW/ACT), CARE Financial and Environmental Defenders Office.

99. In particular, Legal Aid ACT supports access to justice through education, one-off legal advice and ongoing legal representation through its Criminal Law Practice. It provides:

- Free duty lawyer services which are available at the Australian Capital Territory Magistrates Court – this service is free and can be accessed by those who require immediate legal assistance representation services, but do not have their own lawyer;
- On-going assistance and representation may be available for people who are eligible for a grant of legal assistance;
- Detainees at the Alexander Maconochie Centre are able to call Legal Aid ACT through the free call service at the AMC.

100. Aboriginal Legal Service (NSW/ACT) assists Aboriginal and Torres Strait Islander people across the Australian Capital Territory, providing legal advice representation, as well as assistance and referrals in courts and from prisons.

101. In the Northern Territory, the Northern Territory Police Force ensure all persons arrested or apprehended by police are verbally made aware of their rights to access legal representatives.

102. In Queensland, prisoners are able to access legal services from prison, including via phone, video conferencing where available and by receiving visits. In relation to the Queensland Forensic Disability Service, clients have access to their lawyer via visits or phone. All clients have their lawyer attend on their behalf at Mental Health Review Tribunal hearings. As part of the Queensland youth detention centre admission and induction processes, young people are provided with information about how to access legal representation and are supported in line with the *Youth Justice Act 1992* (Qld), Youth Justice Regulation 2016 (Qld) and the *Human Rights Act 2019* (Qld). Persons who are receiving mental health services with Queensland Health who require legal information are supported in these endeavours through Independent Patient Rights Advisors. In addition, the *Mental Health Act 2016* (Qld) mandates that free legal representation must be available for particular Mental Health Review Tribunals, including for forensic patients.

103. In South Australia (SA), section 79A of the *Summary Offences Act 1953* (SA) sets out the rights of a person on arrest. Where a person is apprehended on suspicion of committing an offence the person is entitled to have a solicitor, relative or friend (in the case of a minor the relative or friend must be an adult) present during any interrogation or investigation to which the persons is subjected while in custody.

104. The Legal Services Commission in South Australia is an independent statutory authority providing legal assistance to people throughout the state. The Commission provides a Duty Solicitor service to Magistrates and Youth Courts in metropolitan and regional South Australia. The Duty Solicitor is available to advise or represent people who have been arrested overnight, or who have not been able to obtain legal help beforehand. The Commission also provides ongoing legal representation to those most in need, principally in the areas of criminal law and family law.

105. The Aboriginal Legal Rights Movement (ALRM) is an Aboriginal Community Controlled Organisation and not-for-profit organisation which provides culturally appropriate and accessible legal assistance and advocacy services to Aboriginal and Torres Strait Islander people in South Australia. Services include representation and advice for Aboriginal people who have come into contact with the Police or the Courts. Aboriginal Legal Rights Movement also run the Custody Notification Service in South Australia. Part 5A of the Summary Offences Regulations 2016 (SA) requires police to notify ALRM that they have an Aboriginal or Torres Strait Islander person in custody.

D. Access to medical care

Reply to the recommendation contained in paragraph 49 of the report of the Subcommittee

Access to Medical Care – General

106. All jurisdictions aim to ensure that, at a minimum, health services provided in places of detention align with the same healthcare standards as those provided through Australia's public health system. An adequate standard of health care is also provided to detainees in immigration detention facilities, with the Department of Home Affairs maintaining a suite of health care policies to ensure that the health needs of a detainee are met during their time in an immigration detention facility.

107. Policies provide that all detainees undergo an initial physical and mental health assessment as soon as practicable following admission to a youth justice or correctional facility (typically within 24 hours), and any ongoing risks and needs are addressed in the

detainee's case management plan. States and territories provide a team of doctors, nurses, mental health and addiction specialists, and visiting specialists including psychiatrists, dentists and allied health specialists to provide health services to detainees. The Federal Government provides the same in relation to immigration detainees, as well as access to Torture and Trauma services.

108. The Australian Charter of Healthcare Rights applies to all people in detention and requires for detainees to be treated with respect; receive safe and high-quality health services provided with professional care and competence; and have their health information protected and treated appropriately.

Specific measures in states and territories

109. In the Australian Capital Territory (ACT), ACT Policing maintains a partnership with the Australian Capital Territory Health Clinical Forensic Medical Service (CFMS) for assessment/triage of detainees. Emergency qualified nurses work on certain high demand shifts and are on-call 24/7. The CFMS will assist with minor medical matters such as: administration of medication or taking of blood samples etc. Detainees presenting with injuries or illness requiring greater levels of medical care are transferred to hospital via ambulance. In this instance, detainees will be released or transferred to hospital under police guard and remain under guard until medically cleared or a bedside hearing takes place depending on the severity of the charge.

110. In New South Wales (NSW) youth justice centres, the NSW Justice Health and Mental Health Network (Justice Health NSW) and Youth Justice NSW psychologists provide physical, psychiatric and mental health care and services for young people including health assessment and diagnostics on admission and treatment, surgical services, care coordination, discharge planning and health promotion.

111. In the Northern Territory, all persons taken into custody by the Northern Territory Police Force complete a health questionnaire upon arrival and, where a need is indicated, are provided with medical services via an onsite medical professional or externally at a medical facility.

112. In Queensland, when receiving a person in a police watchhouse, the receiving officer is required to complete a risk assessment regarding the person's health and observation of injuries. If a reasonable degree of suspicion exists about the person's health, the officer is required to contact a professional healthcare provider. People in custody at watchhouses in Queensland also have access to medical services through onsite nurses, the Queensland Ambulance Service, or a medical practitioner, in person or via telehealth. The mechanism depends on the location of the watchhouse and the services offered locally. Under Queensland Police Service operational procedures, it is the responsibility of each officer to continually reassess the healthcare needs of persons in custody and to contact a professional healthcare provided accordingly.

113. Further, in Queensland, prisoner health services are delivered in accordance with the National Safety and Quality in Health Service Standards, the Mandela Rules and the Bangkok Rules.

114. In South Australia, adult detainees are assessed by health staff upon admission and have access to both medical and mental health care as required at custodial facilities, or may be transferred to an approved healthcare facility for medical or mental health treatment if the specific requirement is unavailable at the facility.

115. In Victoria, the Government has a duty of care under the *United Nations Standard Minimum Rules for the Treatment of Prisoners* ('Nelson Mandela Rules') to provide people in custody with access to the same standards of health care equivalent to that provided in the community.

116. In Victorian Youth Justice, during the admission process young people are asked about any injuries and any alleged mistreatment that may have occurred during their arrest and prior to their arrival in custody. Within 24 hours of admission (or 12 hours if the young person is Aboriginal) all young people are assessed for their primary and mental health needs and any necessary health alerts and instructions for immediate treatment or management

identified – including mental health and self-harm risks. Primary health and mental health services operate 24-hours a day, seven-days a week with additional specialist mental health services providing specialist multi-disciplinary mental health treatment also on-site.

117. In Western Australia, an arrested person is entitled to any necessary medical treatment (see section 138(3)(a) *Criminal Investigation Act 2006* (WA)). If an arrested person has any injuries or is suffering or complains of injury or illness, they are taken to a hospital or medical centre for examination prior to being detained at a Police Station or in a Police Lock-up. Upon arrest, all detainees are assessed through a series of questions which includes questions relating to their health and wellbeing.

First Nations Access to Medical Care, including Deaths in Custody

118. Australia considers every death in custody to be a tragedy. While considerable effort has been made, more needs to be done collectively with all governments to address the drivers that increase First Nations people's risk of contact with the criminal justice system. Timely and regular reporting and investigation (including coronial inquests) of deaths in custody enables greater transparency and accountability of actions by police and corrections services as well as identification of ways to improve the health and safety of prisoners.

119. In response to recommendations from the 1987 Royal Commission into Aboriginal Deaths in Custody, which recommended that police should notify Aboriginal and Torres Strait Islander legal services, or equivalent service, whenever an Indigenous person is taken into custody for any reason, including protective custody, the federal government offered to fund the establishment of a Custody Notification Service (CNS) in each state and territory, contingent on jurisdictions introducing legislation mandating its use by police. A CNS provides a culturally appropriate health and wellbeing check and provides basic legal information for Indigenous people taken into police custody to reduce the likelihood of Aboriginal and Torres Strait Islander deaths in custody. Federally funded CNS are operational in New South Wales, the Australian Capital Territory, the Northern Territory, Victoria, Western Australia and South Australia. Tasmania has a manual notification scheme in place, and is due to strengthen this scheme with new information technology systems which are due to become operable in early 2024, and will automatically advise (with the prisoner's consent) the Tasmanian Aboriginal Legal Service and the Aboriginal Community Controlled Organisation with whom they are most aligned. Queensland has legislated requirements for the notification of the Aboriginal and Torres Strait Islander Legal Service.

120. The federal government is also currently conducting an independent review of access to and effectiveness of health care services for First Nations people in prison. The review, due to be considered by Health Ministers in mid-2024, will improve understanding of current state and territory approaches to delivering prison health care and provide recommendations for what needs to be done by all Australian governments to improve health outcomes for First Nations people in prison. Concurrently, the federal government is co-designing strategies to build the evidence base and strengthen Aboriginal Community Controlled Health Sector-led models of prisoner health care. Multiple coronial investigations into First Nations deaths in custody have noted that improving access to effective health services for First Nations people in prison is an important way to prevent deaths in custody and achieve better health outcomes long term, as well as contributing to rehabilitation and reducing incarceration.

E. Registers

Reply to the recommendation contained in paragraph 51 of the report of the Subcommittee

121. All jurisdictions maintain systems of record keeping.

Specific measures in states and territories

122. In the Australian Capital Territory (ACT), ACT Policing maintains a system that thoroughly records the initial intake of a detainee, every interaction or event whilst in police

custody and their departure. Currently this takes place in the Apprehensions and Cell Management modules of the Police Real-time Online Management Information System (PROMIS).

123. ACT Corrective Services implemented a new electronic offender management system in June 2022 which allows centralisation of detainee records, including recording of detainee movement and wellbeing. Detainees and offenders are registered onto the system as a part of reception. ACT Corrective Services has various quality assurance processes in place to identify, remedy and address record-keeping issues in a timely manner. The Inspector of Correctional Services has access to this electronic offender management system, and other NPM members are also able to be given access to the system as a part of their legislated oversight responsibilities and in compliance with privacy legislation in the Australian Capital Territory.

124. In 2021, Bimberi Youth Justice Centre introduced the Children and Young People Information and Record System (CYRIS). CYRIS includes the register of young detainees, transfer directions and other registers required to be held by the Director-General under the Children and Young People Act 2008 (ACT). These registers are accessible to multiple oversight agencies upon request and must be reviewed by the Australian Capital Territory Public Advocate.

125. In New South Wales (NSW), Youth Justice NSW's Clients Information Management System (CIMS) is comprehensive and accurate. It is kept up to date and movements of young people are accurately and immediately recorded. It is inspected by external oversight agencies on a regular basis.

126. Thorough records are maintained by Corrective Services NSW staff in a variety of databases including the Offender Integrated Management System, warrant files and case management files. Health information relating to inmates is kept by the Justice Health & Forensic Mental Health Network.

127. In the Northern Territory (NT), Northern Territory Correctional Services (NTCS) undertakes regular reviews of information management processes and practices to ensure compliance with privacy and confidentiality principles. This also includes consideration, research and development of technological enhancements to support improved record keeping.

128. The Northern Territory Police Force maintains a register of all significant custody incidents (including medical events, use of force events, etc.). Each event undergoes separate reporting via a Custody Illness and Incident Report and undergoes independent review and assessment. CCTV and/or body worn video associated with these events is maintained with the register.

129. In Queensland, and in line with legislative requirements for record keeping, adult prisoner records are managed through the Integrated Offender Management System (IOMS), allowing a prisoner's records to be easily tracked. Family members are also able to locate adult prisoners by using an online search tool to confirm which corrective services facility a prisoner is located at. This tool is updated every 24 hours.

130. The Queensland Police Service uses integrated case management software on a digital storage platform to manage an arrested person's entire custody record, which can be provided in a single document.

131. Queensland youth detention centres must record comprehensive information about young people's management in youth detention, as required by the *Youth Justice Act 1992* (Qld) and the Youth Justice Regulation 2016 (Qld). Multiple oversight agencies have powers to request these records, including the Inspector of Detention Services, which has direct access to the information system where this information is recorded.

132. In relation to the Forensic Disability Service in Queensland, the Keeping of Records at the Forensic Disability Service (FDS) Policy outlines the relevant recordkeeping provisions of the *Forensic Disability Act 2011* (FDA) to ensure that the Director of Forensic Disability can monitor and audit compliance with the FDA. The policy applies to the FDS and all Forensic Disability Service staff. The policy also addresses the FDA Information

System (FDAIS) which is an electronic information management system where all persons detained to the FDS are registered and all transfers are recorded on this system. It is a requirement of FDS staff to document and case note in FDAIS regarding all clients detained to the FDS.

133. All records created or received by Queensland Health are governed by the *Public Records Act 2022* (Qld) and the Consumer Integrated Mental Health and Addictions (CIMHA) application is the designated patient record for the purposes of the Mental Health Act 2016. CIMHA is a state-wide consumer-centric clinical information system designed to support clinicians in the provision of mental health, alcohol and other drug services in Queensland.

134. In South Australia, Police utilise the Shield Custody Management System to record all detainee information from arrival at the custodial facility until release. All bail, medical, detainee movements and mandated checks are digitally recorded on the system. Procedures for detainee transfers from police custody to external agencies are outlined in the South Australian Prisoner Management and an In-Court Management (SAPMICM) contract and agreed documentation is supplied between parties i.e. Police, correctional services, human services, Health department and contractor Ventia.

135. Record-keeping at Kurlana Tapa Youth Justice Centre captures personal information about children and young people and all operational matters and, events, in line with requirements set out in legislation. Information is currently captured both in paper records and through electronically maintained client management and operational recording systems. The South Australian Government is continually reviewing and improving record-keeping processes, and strengthening reporting capabilities to support effective monitoring and oversight. All records at Kurlana Tapa Youth Justice Centre are made available to the Training Centre Visitor, an independent statutory body responsible for the oversight of the Centre.

136. In South Australia, the Department for Correctional Services records and information is managed in accordance with relevant legislation and standards including, but not limited to, the *State Records Act 1997* (SA), *Correctional Services Act 1982* (SA), *Freedom of Information Act 1991* (SA), *Public Sector Act 2009* (SA), *Public Sector Data Sharing Act 2016* (SA) and the Adequate Records Management Standard Australian Standard ISO: 15489-2002.

137. In Victoria, Victorian Youth Justice records young people's information in an electronic file which aligns to and records details of the young person's case management and care during their involvement with Youth Justice. Additionally, incidents, use of force and use of isolation are reviewed and reported daily including to the Commission for Children and Young People to ensure high level visibility and scrutiny of these practices to ensure alignment with legislative and policy provisions across the system. Registers are available to be reviewed by oversight bodies.

138. Apart from health record information, which is electronic only, Victoria's record-keeping across the adult correctional system comprises both manual and electronic processes. Record-keeping systems are governed by a set of sound principles, with hardcopy files subject to auditing processes to ensure quality and compliance.

139. In Western Australia (WA), all detainees in Police custody are managed through the Custodial Management Application which is a system where all interactions throughout the custody episode are logged such as medical assessments, meals, cell checks, searches etc.

140. The WA Department of Justice maintains a live database, the Total Offender Management Solution, into which information on adult prisoners and detained young people is entered including movements, locations and up-to-date At-Risk Management System (ARMS) information. Reports can be run to provide current and historical information on the above for provision to authorised third parties, in accordance with legislation. In addition, each prison and the Banksia Hill Detention Centre maintains hard copy Movement Registers which can be viewed by authorised parties. Information on an individual's wellbeing includes psychological and medical information, in addition to the abovementioned ARMS information, which is confidential and available only to authorised parties (whether internal or external to the Department) on request, where permitted by legislation. It is not appropriate

to maintain this information in a register due to its volume and highly confidential nature. Should a records management or privacy breach occur, this can be referred to Professional Standards for investigation.

F. Complaints mechanisms

Reply to the recommendation contained in paragraph 53 of the report of the Subcommittee

141. A comprehensive suite of complaints mechanisms exists in Australia, available to both adults and young detainees. These avenues include internal complaint mechanisms; external entities including official visitors, Ombudsman or Human Rights Commission services; anti-corruption entities; advocacy services; and law enforcement where there are allegations of criminality.

142. Complaints mechanisms are promoted within places of detention at detainee inductions and on an ongoing basis through the prominent display of materials at all times such as posters, pamphlets and free, confidential phone call services. In immigration detention facilities, interpreter services are available to all detainees to facilitate access to complaints mechanisms.

143. Each state and territory's Ombudsman office, or other appointed officials, are able to receive complaints from detainees.

144. The Guiding principles for Corrections in Australia represent a statement of national intent that each Australian state and territory jurisdiction have:

- Effective systems that provide prisoners/offenders with opportunities to make requests or complaints and access appropriate information;
- External review and oversight supported through engagement with Official Visitors, including their free and unfettered access to all prisoners, staff and all areas of the prison, subject to any security and operational concerns;
- Complaints mechanisms that are promptly actioned and governed by a review framework that is fair, transparent and equitable.

145. Australia recognises the competence of the Committee Against Torture to receive and consider Communications from or on behalf of individuals, subject to its jurisdiction, who claim to be victims of a violation by a State Party of the provisions of the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

Specific measures in states and territories

146. In the Australian Capital Territory, children and young people in Bimberi Youth Justice Centre are notified of their right to make a complaint as part of the 'Charter of Rights for Young People in Bimberi'.

147. Complaints and requests are provided for under the Corrections Management (Detainee Requests and Complaints) Policy 2019 (ACT). This policy confirms that detainees are entitled to make complaints or raise concerns about all aspects of their custody and must not be prevented from doing so or adversely affected by having made a complaint. Internal complaints are made by the detainee completing a detainee complaints form, and complaints received must be recorded in a Complaints Register. The policy provides a timeframe for response and an appeals process.

148. The Official Visitor for Corrections and Aboriginal and Torres Strait Islander Official Visitor for Corrections visit the Alexander Maconochie Centre regularly and can assist detainees to raise and resolve complaints. There are also external avenues for complaints to be made by detainees to the Australian Capital Territory Ombudsman and the Australian Capital Territory Human Rights Commission.

149. In New South Wales, complaints about custodial services can be made to the New South Wales Ombudsman. Under a program managed by the Inspector of Custodial Services, Official Visitors attend adult and youth custodial centres fortnightly or monthly and can assist in making a complaint to the New South Wales Ombudsman.

150. In the Northern Territory, the Northern Territory Ombudsman provides independent oversight of all complaints against police. Persons are also able to lodge a complaint directly with the agency in person, through online reporting, or in writing.

151. In Queensland, Community Visitors (an oversight role) from the Office of the Public Guardian visit all youth detention centres on a weekly basis to talk directly to young people and receive complaints as relevant. All young people have access to a range of complaints mechanisms from their accommodation unit phones and all youth detention staff have been trained in how to receive a complaint.

152. The Forensic Disability Service in Queensland has an internal complaints process with oversight by the Director of Forensic Disability. The Director of Forensic Disability is an independent statutory appointment established to protect the rights, interests and wellbeing of people in the Forensic Disability Service. The Director of Forensic Disability also ensures the proper administration, monitoring and compliance with the *Forensic Disability Act 2011*. Complaints can be made externally to the office of the Director of Forensic Disability, the Queensland Public Guardian, the Queensland Ombudsman or the Queensland Human Rights Commissioner.

153. Under the *Mental Health Act 2016* (Qld) the Chief Psychiatrist is responsible for protecting the rights of consumers within Authorised Mental Health Services (AMHS). If a complaint is made by a patient or an 'interested person' for the patient, about the patient's treatment and care, and the AMHS has been unable to resolve the complaint, they have a right to a second opinion. To support this function, the matter may be escalated to the Chief Psychiatrist if the provision of a second opinion and the AMHS response does not resolve the patient's or interested person's concerns. Reporting on human rights complaints is also a mandatory legislative requirement for all AMHS under section 97 of the *Human Rights Act* 2019 (Qld).

154. In South Australia, all prisoners participate in an induction upon admission in which access to amenities and services along with expectations are explained to them. Prisoners have free access to contact a number of external agencies via the Prisoner telephone System such as a complaints lines and external oversight agencies.

155. Children and young people in Kurlana Tapa Youth Justice Centre can provide feedback or raise complaints through multiple avenues. A dedicated phone-line to Centre management through the resident phone system is currently being implemented in response to feedback from residents that they prefer to make complaints verbally. Policies and procedures are in place to guide the management of complaints, including requirements around response timeframes and escalation processes where a child or young person is dissatisfied with the outcome of their feedback. Children and young people are also provided with information about how to contact, and can access confidentially via the resident phone system, external independent oversight bodies such as the South Australia Ombudsman and the Training Centre Visitor if they are uncomfortable making a complaint internally. The Health Complaints Commission is also able to receive and action complaints from prisoners about healthcare delivery.

156. In Victoria, Victorian Youth Justice provides a range of mechanisms and opportunities for young people to complain about their treatment including direct phone lines to oversight bodies, and an Independent Visitor Program managed by the Commission for Children and Young People. The Victorian Child Safe Standards provides clear expectations of complaints processes for children and young people including being culturally safe, child focussed, and the complaints process being understood by children, young people and their families.

157. In Victorian adult custodial correctional facilities, all prisoners can make a request or complaint. Policies stipulate that during reception and orientation all prisoners will be advised of their rights under the Corrections Act. A number of materials and posters are

accessible in prisons including easy English versions and all requests and complaints should be recorded.

158. Prisoners are advised of their right to contact Corrections Victoria, the Victorian Ombudsman, an Independent Prison Visitor, the Health Complaints Commissioner, the Mental Health Complaints Commissioner, the Office of the Victorian Information Commissioner, Independent Broad-based Anti-corruption Commission, the Victorian Inspectorate (oversight body in Victoria's integrity system), Victorian Equal Opportunity and Human Rights Commissioner, the Australian Human Rights Commission and the Child Support Agency, as well as free call numbers, including to the Victorian Ombudsman, Victoria Legal Aid (in the pilot prison sites) and the Mental Health Complaints Commissioner. Prisoners in Victoria can write to a number of external professional bodies under exempt mail provisions, meaning that the mail cannot be opened by prison staff. Prisoners can also access free calls to exempt bodies via the prisoner telephone system.

159. In Victoria, Independent Prison Visitors attend prison locations at regular intervals. All complaints raised by an Independent Prison Visitor to the Prison General Manager must be responded to in writing.

160. In Western Australia (WA), the Western Australia Police Force has a business unit that manages all complaints and conducts an independent review of all complaint investigations, including those made by detainees in their custody. All complaints are recorded in an electronic system and allocated for investigation.

161. State Custody Standard Operating Procedures (SOPs) have also been developed in WA. These SOPs cover all aspects of custodial care required to be undertaken by Police and to ensure compliance with legislation. In addition, all Police Lock-ups have posters displayed outlining "Rights In Custody" and the Custody Notification Service. There are also pamphlets at Police Station front counters and in Lock-ups detailing how to make a complaint. Police Officers and Custody Police Auxiliary Officers undergo extensive training with respect to legislative and procedural requirements to ensure consistency and the best level of custodial care is delivered.

VI. Situation of persons deprived of their liberty

A. Overarching issues

1. Over-securitisation

Reply to the recommendation contained in paragraph 55 of the report of the Subcommittee

162. Australia has been reducing prisoner populations by investing in new fit for purpose prisons, rehabilitation and reintegration programs to reduce recidivism, diversionary programs and non-custodial measures to reduce prison populations, and programs to reduce the over-representation of First Nations people in prisons.

163. Detainees in immigration detention facilities are afforded as much privacy as practicable and are permitted to attend to their personal hygiene in a private and unobserved manner.

Specific measures in states and territories: Privacy Matters

164. In the Australian Capital Territory (ACT), safety is the priority for detainees and as such every cell has CCTV to monitor detainees at all times. Experience is that any blind spot in a cell may lead to a detainee harming themselves or damaging property. The Australian Capital Territory Corrective Services actively works to balance the individual's right to privacy with the security and good order of ACT correctional centres. Surveillance and searching are managed in accordance with the Corrections Management Act 2007 (ACT) and relevant policy. There is no fixed surveillance in shower / ablutions facilities (fitted in each

cell) and where dynamic security is used, the use is based solely on an assessment of personal safety, security and good order. Young people detained in Bimberi Youth Justice Centre are all accommodated in individual rooms, with individual bathrooms.

165. In New South Wales, equipment in correctional centres, which may affect the privacy of detainees, is used only where reasonably necessary to safeguard centre security and staff and detainee safety.

166. In Queensland, the safety and security for all people in custody is a priority. Direct and in-direct surveillance within detention facilities allows for monitoring of the person's wellbeing and ensuring the person receives prompt medical attention where necessary.

167. In Queensland, surveillance devices are generally not used in adult prisoner cells, allowing prisoners an adequate amount of privacy within their cell to attend to their personal hygiene. Some prisoners may be subject to increased observations where they are at heightened risks, such as where a prisoner may be at increased risk of suicide or self-harm.

168. The Youth Justice Principles enshrined in the *Youth Justice Act 1992* (Qld) require technology, such as CCTV and body-worn cameras to be used with high regard for privacy and dignity considerations to achieve an appropriate balance with safety considerations. The use of these technologies is clearly explained on admission.

169. In South Australia, the Department for Correctional Services provide rehabilitation for offenders within a context of managing risk and protecting the safety of the community. Services are delivered within a humane framework, and correctional agencies strive to meet community equivalent standards within institutions and in management of prisoners.

170. South Australia Police detainees are placed in single cells unless meeting recommendations from the Royal Commission into Aboriginal Deaths in Custody for dual celling of Aboriginal or Torres Strait Islander detainees.

171. Children and young people in youth justice custody in South Australia have individual rooms with a private bathroom. Children and young people are provided with privacy curtains that cover both the shower and toilet area, as well as window covering for use when attending to personal hygiene. Children and young people can also request that CCTV be obscured whilst attending to personal hygiene. This is assessed against any risks to personal safety, such as self-harm.

172. In Tasmania, CCTV surveillance also has the purpose of protecting against wrongdoing, and allowing the investigation of incidents that have compromised the safety of the people living and working in the prisons. This also applies to staff reading mail, listening to phone calls and a suite of security practices.

173. In Victoria, adult corrections system cameras are only used for observation purposes where necessitated by security and safety concerns e.g. in high-security management units and observation cells designed to protect individuals at risk of suicide and self-harm. In all other cases, the privacy of people in custody is respected, and they are afforded the necessary space and conditions to maintain their personal hygiene in private.

174. There is a need to balance the privacy of young people with the need for safety and security. Bedrooms are not under surveillance in the Victorian Youth Justice system, however where young people are at high risk of harm they may be moved to safe spaces where they are constantly under observation by staff.

Searches

Reply to the recommendation contained in paragraph 57 of the report of the Subcommittee

175. Whilst procedures for searches vary between jurisdictions, any search of a person, including a child or young person, must be carried out in strict compliance with the requirements of the relevant jurisdiction's legislation. The procedures include a range of

measures to safeguard the prisoner's dignity and self-respect, including processes to maintain privacy.

176. In all jurisdictions, registers on searches must be kept and be able to be inspected by independent monitoring bodies.

Specific measures in states and territories

177. In the Australian Capital Territory (ACT), the *Corrections Management Act 2007* (ACT) *(CMA)* requires all searches to be based on reasonable suspicion or prudence in relation to the safety of an individual or the security or good order of an Australian Capital Territory correctional centre while minimising as much as possible the infringement of the human right to privacy. Section 108 of the CMA requires that each search conducted is the least intrusive search that can achieve the objective and the search is undertaken in the least obtrusive way. Searches are recorded in the electronic offender management system and on a separate excel spreadsheet to allow for data reporting.

178. In New South Wales, corrective Services records certain searches in its OIMS database, including searches after visits, contraband detentions during searches; any use of force during a search, targeted searches, and searches by the Immediate Action Team. The Custodial Operations Policies and Procedures Manual states that strip searches must generally be supervised by a Senior Correctional Officer.

179. In South Australia, searches authorities and procedure recording requirements are legislated in *Summary Offences Act 1953* (SA) (ss 81(3)) and (6)).

Strip searches – adult correctional facilities

180. All jurisdictions regulate the use of strip or unclothed searches to ensure they are conducted by a properly authorised person; are supervised; are conducted in a place away from public view; are carried out by a person of the same sex or gender as the person detained; and have due regard to the dignity and respect of the person. In most jurisdictions, authorisation to conduct strip searches must be obtained in writing.

Specific measures in states and territories

181. In the Australian Capital Territory (ACT), strip searches are regulated under the section 227 of the *Crimes Act 1900* (ACT) and section 3ZH of the *Crimes Act 1914* (Cth). The legislation states Superintendents or above are required to authorise the search however the approval can be obtained via telephone, fax or other electronic means. The constable conducting the search is required to make a record of the approval or refusal to conduct the search. Section 228 of the *Crimes Act 1900* (ACT) and section 3ZI of the *Crimes Act 1914* (Cth) outline the rules for conducting a strip search which include searches by the same sex, privacy and age limits.

182. In the Australian Capital Territory, all strip searches must be conducted in accordance with the requirements of the *Corrections Management Act 2007* (ACT) and the Searching Policy, relevant procedures and the Searching Program (all public documents). All strip searches are required to be undertaken in private with two officers of the same gender and provisions for reasonable adjustments for physical or mental health requirements, religious or gender identity requirements must be addressed. Section 108 of the CMA requires that each search conducted is the least intrusive search that can achieve the objective and the search is undertaken in the least obtrusive way. As a result, strip searches are undertaken in a way that does not require the individual being searched to be fully naked at any time. ACT Corrective Services introduced x-ray body scanners in April 2023 and these have reduced the number of strip searches occurring. Sections 67 and 70 of the CMA require a strip search on admission for all detainees in order to identify any immediate physical or mental health, or safety or security, risks and needs.

183. In New South Wales correctional centres, the Crimes (Administration of Sentences) Regulation 2014 (NSW) guides the conduct of searches including strip searches. Under the Custodial Operations Policies and Procedures Manual, correctional officers must not pat search, strip search or body-scan inmates of the opposite sex, except in exceptional

circumstances or emergencies. Approval must be sought from the Governor or delegated officer if this is to occur.

184. In the Northern Territory, all searches that involve the removal of clothing are carried out as per section 48 of the *Correctional Services Act 2014* (NT). This requires that the search be carried out by a correctional officer of the same sex as the prisoner; by an appropriate health practitioner authorised by the General Manager of the facility; or, if neither of those are available, a person of the same sex as the prisoner who has been authorised by the General Manager.

185. In South Australia, section 81 of the *Summary Offences Act 1953* allows for an intimate or intrusive search to be conducted on a person who has been taken into lawful custody. While there is no legislative requirement to obtain written permission to conduct an intimate or intrusive search, the legislation requires that any procedure must be carried out humanely and with care, and to avoid offending genuinely held cultural values or religious beliefs, as well as to avoid inflicting unnecessary harm, humiliation or embarrassment.

186. In Victoria, in the adult corrections system, while this type of search is a critical strategy to protect the safety and wellbeing of prisoners by limiting entry of contraband into Victorian prisons, the practice is only used when there are reasonable grounds for it to be considered necessary. Front end prison locations have x-ray scanning technology to minimise the need for strip searching and there are policies in place to ensure that any non-routine strip search must needs to be approved by a prison Supervisor or above. Searches must be conducted by a person of the same sex as the prisoner being searched.

187. In Victoria's adult corrections system, strip searching policies promote alternatives to strip searching, reduce the frequency of strip searching and to limit impacts on the human rights of prisoners. For example, there has been a standard strip search procedure in women's prisons since 2003 and in the wider prison system since December 2020. This method requires the person to remove the top part of their clothing first, while keeping the bottom half on and reversing the procedure, so that the search is never undertaken completely unclothed. Additional changes include:

- Removing the requirement to part the buttocks during a strip search;
- Prisoners will not be strip searched after professional visits unless specific safety concerns are identified;
- The introduction of body scanning technology after contact visits;
- Random drug testing is via saliva sample, rather than urinalysis testing; and
- Strip searching for the purposes of urine analysis will be limited to prisoners with a history of tampering with samples or concealing contraband on their person.

188. These reforms have been accompanied by staff training to ensure that strip searching and drug testing are sensitive to the rights of prisoners and maximise the use of alternative search procedures. New body scanning technology and updated policies about strip searching have significantly reduced this practice in Victorian prisons, particularly in the women's system (by over 30,000 since 2018). Victoria is also currently conducting trials at minimum-security prisons to help transition away from routine strip searches and move instead towards a risk-based approach, whereby permission to conduct such searches is sought based on intelligence or security risk.

189. In Western Australia (WA), legislation enables the use of strip searches and searches of visitors where there are circumstances giving rise to a reasonable suspicion that the detainee or prisoner may be in possession of an item that could jeopardise the safety, good order or security of the prison or detention centre; or be used for self-harm.

190. The WA policy and procedures permit searches as a preventative mechanism to locate and remote anything posing an adverse risk to safety and security whilst ensuring the dignity, self-respect and privacy of persons and property being searched. Search procedures are based on assessment of risk and adopt the least intrusive method possible to minimise the possibility of any re-traumatisation and/or negative impact on a person; without compromising the

effectiveness of the search. Searching is governed by rigorous recording and reporting procedures providing transparency and accountability.

Strip searches – youth justice facilities

Reply to the recommendation contained in paragraph 59 of the report of the Subcommittee

191. In the majority of jurisdictions, there has been an end to routine or systematic fully unclothed strip searches, with an increased reliance on body scanning technology.

Specific measures in states and territories

192. In the Australian Capital Territory (ACT), the *Children and Young People Act 2008* (ACT) and the Children and Young People (Search and Seizure) Policy and Procedures 2018 (No 1) (ACT) meet the minimum requirements for strip searches outlined in the preceding section.

193. In New South Wales (NSW), strip searching is not authorised in Youth Justice detention centres. Instead, NSW uses X-Ray body scanners to undertake searches where required. Partially clothed body searches (which are different to strip searches in that the young person is never completely naked) are permitted but used infrequently and only where reasonably necessary to protect for the purposes of security and staff and detainee safety. Pat down searches and wand searches are also permitted.

194. Victorian Youth Justice has ceased routine or systematic use of unclothed searches. Body Scanning technology is in place at all Victorian Youth Justice precincts. The progression to an unclothed search must be based on reasonable suspicion after less intrusive search measures have been applied and approved at Director level. Data on unclothed searches is publicly released on the department's website. All searches of young people are recorded in dedicated registers which are available for review by oversight bodies.

195. In Western Australia, routine strip searching is not authorised as a practice in youth custodial centres.

Scanners

196. Australia is continuing to resource places of detention to search detained persons in less intrusive ways, and in ways that have less of an impact on the dignity of the person searched, such as through the use of full-body scanners. A number of jurisdictions have obtained full-body scanners to alleviate the use of strip searches. For example, all youth justice facilities in New South Wales have full-body scanners.

Specific measures in states and territories

197. In the Australian Capital Territory, Bimberi Youth Justice Centre does not have body scanning technology.

198. Northern Territory Correctional Services is currently reviewing strip search methodology and the feasibility of x-ray technology to minimise the potential impacts upon prisons, with an expected completion by 2024, subject to funding.

199. In Queensland, this technology is being actively explored for youth detention centres. The first trial of x-ray body scanners for adult prisoners is set to commence in 2024.

200. In South Australia, correctional facilities are governed by a Standard Operating Procedure that prescribes the legislative requirements and procedures for searching prisoners, prisoner property and any vehicles on the premises of, as well as all areas within institutions.

201. In South Australia, searches of children and young people at Kurlana Tapa are undertaken in accordance with operational procedure, including requirements around recording. In all circumstances, the least intrusive search is utilised to ensure safety and security. Since the introduction of millimetre wave body scanners and wand scans technology

in August 2020, there has been no semi-naked searches of children and young people at Kurlana Tapa Youth Justice Centre.

202. In Tasmania, five scanners have been purchased, with four of the scanners expected to be operational by the end of 2023.

203. In Victoria, Corrections Victoria is exploring further investment in technology to ensure that where routine searching is required, body scanners are available and strip searching is minimised where possible.

Measures relating to COVID-19

Reply to the recommendation contained in paragraph 61 of the report of the Subcommittee

204. Australia is progressively rolling back COVID-19 pandemic measures that were in place nationally and in states and territories during the pandemic, as guided by public health advice.

205. National guidelines are in place in Australia for COVID-19 outbreaks in correctional and immigration detention facilities. Those guidelines note that any control measures should protect the physical and mental health of persons in detention.

Specific measures in states and territories

206. In the Australian Capital Territory (ACT), all specific COVID-19 measures that can be rolled back have been. The Australian Capital Territory Corrective Services follows a set of initial assessment and quarantine measures in alignment with ACT Health recommendations to protect as far as possible the vulnerable population in ACT correctional centres. Measures are reviewed regularly with every ACT Health announcement and as detainee population demographics change (i.e. immunisation rates increase, population density etc). The minimum requirements able to be in effect to manage this health risk are used.

207. In Queensland, procedures enacted around the management of COVID-19 have been removed from police watchhouses and COVID-19 is treated the same as other communicable diseases. The Forensic Disability Service has a process in place for working with COVID-19 positive clients. Youth detention centres in Queensland are guided by health advice and roll back the measures implemented during COVID-19 as directed, and all COVID-19 measures have now been repealed. Queensland Health staff providing treatment to people in prison who have COVID-19 are guided by the same restrictions as are required in the general community. Measures introduced during the COVID-19 pandemic relating to lockdowns and isolation have now been repealed.

208. In South Australia, the infection control measures that were employed at Kurlana Tapa Youth Justice Centre during the COVID-19 pandemic have been rolled back in line with advice from the Communicable Disease Control Branch of the South Australian Department of Health and Wellbeing. Remaining measures such as COVID-19 testing on admission now form part of general management of infectious disease at the Centre and do not routinely restrict movement or mixing of children and young people in custody. In adult facilities, the Department for Correctional Services' (DCS) highest priority remains the health of all staff and prisoners and the safe operation of the correctional system. DCS, like the community, is now in a phase of living with COVID-19 with controls previously in place lifted, however the agency will continue to review these in line with any updated South Australia Health advice.

209. In Victoria, the department has continually reviewed its COVID-19 settings in adult custodial settings in response to health advice and changing community circumstances. Measures have only been in place for as long as required where justified on the grounds of risk. During the pandemic when protective quarantine was required, Corrections Victoria established the Protective Quarantine Service, a team of clinicians who provided

psychological support to people in custody in insolation or quarantine. Due to the current circumstances in Victoria minimal measures remain.

Access to mental health, social, educational and vocational services

Reply to the recommendation contained in paragraph 63 of the report of the Subcommittee

210. A range of strategies are in place across jurisdictions to ensure mental health support is available to all persons deprived of their liberty. This includes a physical and mental health assessment upon admission, as well as subsequent regular checks and access to psychologists as required.

211. Corrective services across Australian jurisdictions provide prisoners with employment and education programs. Work programs provide participating prisoners with skills and positive work experiences that enhance their prospects for reintegration into the community. Education programs improve employment opportunities on release, and prisoners are encouraged to participate in vocational education and training programs.

212. The Australian Government takes the care and wellbeing of people in immigration detention seriously and recognises some detainees may be in more vulnerable circumstances than others. This includes people who are frail or elderly; people who have complex health needs including mental health; those with a history of torture, trauma or people who have been subject to people trafficking; or domestic or family violence. Any detainee who discloses a history of torture and/or trauma is offered referral to specialist torture and trauma counselling.

213. All people in immigration detention have access to health and welfare services and programs and activities, including educational programs, cultural, recreational and sporting activities aimed at achieving positive detainee outcomes while in immigration detention. Programs and activities provide opportunities for detainees to maintain a level of self-agency and offer opportunities that will assist in the future integration and participation of detainees in society, irrespective of a detainee's immigration pathway.

Specific measures in states and territories

214. In the Australian Capital Territory, ACT Corrective Services (ACS) continually assess and balance the securitisation requirements to enable the security and good order of Australian Capital Territory correctional centres with the right to privacy for individuals.

215. Oversight of mental health services is provided by the Detainee Health and Wellbeing Oversight Committee. ACS has established and documented shared care arrangements for detainees with mental health conditions in the Services and Interventions Unit Model of Care. Justice Health Services have a complementary Model of Care and the division of services is agreed between the two agencies. Social, educational and vocational services are provided to detainees who wish to participate. In 2023, ACS increased the number of dedicated Activities Officers from one to three and introduced an Education Officer to support the provision of these types of programs and services to detainees.

216. The Australian Capital Territory Community Services Directorate works with Canberra Health Services, the Australian Capital Territory Education Directorate and community service providers to ensure young people in Bimberi Youth Justice Centre have access to mental health, social, educational, and vocational services.

217. In the Northern Territory, Northern Territory Correctional Services continues to invest in programs, education and employment to improve re-integration potential and minimise the risk of re-offending. This is being managed in the context of rising prisoner numbers.

218. In Queensland youth detention centres, access to a number of allied health professions are available as required. In Queensland youth detention centres, schools operated by the Department of Education run for 48 weeks a year. Young people also have access to a range of vocational training and employment opportunities that can be facilitated onsite or

externally to the youth detention centre. Comprehensive primary and mental health screening of all young people occurs as part of the admission and induction process, which is facilitated by onsite allied health teams staffed by both Queensland Health and Queensland Youth Justice. Young people are also provided access to a suite of programs and therapeutic interventions to support their wellbeing while in custody. These interventions are tailored to the needs of each young person.

219. In South Australia, all adult prisoners are assessed carefully upon admission by Department for Correctional Services and health staff for any mental health and/or health needs. A prisoner's Independent Development Plan (IDP) considers what programs and services would be beneficial to a prisoner, including education and vocational training and post-release opportunities. Prisoners are involved in the creation of their IDP.

220. Access to education is prioritised in South Australia's Kurlana Tapa Youth Justice Centre. The on-site Youth Education Centre is a fully accredited secondary school and South Australian Certificate of Education (SACE) institution, engaging children and young people in individualised education and training opportunities. A range of programs and activities are also provided to children and young people at Kurlana Tapa, designed to support their cultural, social, emotional and developmental needs, and contribute to successful community re-integration.

221. Children and young people have access to a range of mental health supports delivered by Child and Adolescent Mental Health Services, a key partner agency. The South Australian Government is also strengthening therapeutic services delivered at Kurlana Tapa Youth Justice Centre to improve outcomes for children and young people. Youth Justice Therapeutic Services includes multi-disciplinary allied health teams who provide a range of specialist assessment and interventions for children and young people both in custody and in the community. This includes the Enhanced Support Team (EST) work with operational staff within Kurlana Tapa to better understand and respond to young people with complex and disability-related needs. Staff within EST also work directly with young people to assist them in developing strategies such as emotional regulation, distress tolerance and prosocial communication.

222. In Victoria, people in custody in adult prisons have access to a range of programs and services that contribute to their rehabilitation and reduce the risk of reoffending. Rehabilitation services in the Victorian prison system include drug and alcohol programs specialised mental health services; family violence and offending behaviour change programs; cultural programs, family engagement and parenting programs; pre- and post-release transition services; and case management to connect prisoners with activities to reduce reoffending.

223. Transitional and reintegration programs in the Victorian prison system include employment, housing and some drug and alcohol programs. They are available to remand and sentenced prisoners alike, and are based on an assessment of reintegration needs.

224. All people in prison in Victoria are encouraged to participate in Vocational Education and Training programs. There are also a range of employment initiatives in operation across the corrections system, which leverage off employment support programs, relationships with commercial customers and vocational training courses. They each open different employment options and are selected because of their ability to meet labour market force needs. The skills and experience gained in prison industries as well as education and training courses while in prison results in people leaving prison with a job or gaining employment shortly after release while still engaged in employment support programs in the community.

225. In Victoria 93.2% of eligible people in custody are engaged in employment and 30.3% in education. (2021-22 BP3 measures).

226. In Western Australia (WA), prisoners are supported to change their behaviours through participation in targeted programs and services which address criminogenic and wellbeing needs and support their transition to the community. In recent years, the Department of Justice has introduced:

- Mallee Rehabilitation Centre within Casuarina Prison to provide targeted alcohol and other drug treatment programs to break the cycle of addiction;

- Bindi, the first dedicated specialist mental health unit of its kind in a WA prison which provides much-needed healing vulnerable women in custody;
- Other treatment programs provided to break the cycle of offending behaviour, for example, the Pathways Program, Stopping Family Violence program, and the Prisoner Employment Program.

227. The WA Department of Justice prepares a treatment assessment report for each prisoner to identify the program needs.

2. Labelling and revolving-door justice

Reply to the recommendation contained in paragraph 67 of the report of the Subcommittee

228. All Australian governments are investing in rehabilitation and reintegration programs to reduce recidivism. State and territory corrective services provide a range of programs aimed at reducing recidivism, including drug and alcohol support services, wellbeing programs, and offence-specific programs aimed at addressing offending behaviour.

229. Australia recognises that stereotyping and profiling has a disproportionately high impact on Aboriginal and Torres Strait Islander individuals, which has been recognised by Victoria's Yoorrook Justice Commission, and the Australian Law Reform Commission's 2017 report '*Pathways to Justice – An Inquiry into the Incarceration of Aboriginal and Torres Strait Islander Peoples*'.

230. Australia's focus is on investing in activities at the local level that will prevent crime, reduce victimisation, and reduce offending and re-offending by tackling the drivers of crime (such as alcohol and drug misuse, poor educational outcomes and unemployment) in order to reduce incarceration and improve community safety. All Australian governments employ a range of police and court-based diversion programs and mechanisms, co-responder models and specialised courts that facilitate access to health, social and welfare resources as an alternative to criminal charges, convictions and/or imprisonment. These interventions target minority and vulnerable suspects and defendants including young people, First Nations people, people with mental health and/ or cognitive impairment needs, problematic substance use issues and other forms of criminogenic social disadvantage. These interventions are designed and delivered in consultation with cross- and community sector agencies to ensure policies and strategies are informed by expert and lived experience perspectives.

231. Australia recognises that persistent disadvantage in childhood, left unaddressed, has significant and long-lasting impacts on individuals, families and communities, and that prevention and early intervention to support positive child and family outcomes is more impactful and cost effective than remedial responses.

232. Australia provides and/or funds a number of services that assist children in difficult circumstances, including support through the social security system, housing, health, education, family supports and legal assistance services. Further, all jurisdictions also provide variety of programs and supports to children and young people in contact with, or at risk of contact with, the justice system, and their families where possible, including specialised mental health services; cultural programs; family engagement and parenting programs; pre- and post-release transition services; vocational education and training programs; and case management to connect prisoners and young people with activities to reduce reoffending.

233. States and territories have a number of measures to tackle recidivism.

Specific measures in states and territories

234. In the Australian Capital Territory, there are several programs aimed at reducing recidivism, establishing justice reinvestment and supporting diversion from the justice system:

- The Blueprint for Youth Justice in the Australian Capital Territory 2012-2022 aimed to reduce youth offending, divert young people from (or help them to exit) the youth justice system, and promote community safety. During the 10 years of the Blueprint's operation, a range of indicators such as the rate of youth offending, number of young people in detention, and the overrepresentation of Aboriginal and Torres Strait Islander young people all improved. The Australian Capital Territory Government is currently developing the next steps that will build on this progress;
- The Reducing Recidivism by 25% by 2025 Plan (RR25by25) has set a target to reduce recidivism in the Australian Capital Territory by 25% by 2025. The plan builds on the Australian Capital Territory's justice reinvestment approach that seeks to prevent repeated contact with the criminal justice system by investing in a range of programs intended to address the causes of offending;
- In 2018, The Australian Capital Territory Government established the Justice Reinvestment program, 'Building Communities, Not Prisons', which included actions such as:
    - Prioritising reducing recidivism by funding programs to assist detainees and vulnerable community members to try to remove the need to expand the high security campus at the Alexander Maconochie Centre (AMC);
    - Enhancing the rehabilitation framework at the AMC, including the construction of a purpose-built reintegration centre – delivering up to 80 beds, and increasing the range of rehabilitation programs available to detainees;
    - Providing more supported housing options for people on bail and exiting detention;
    - Providing early support for people living with a mental illness or disability;
    - Providing more pathways for safe and sustainable bail, and
    - Enhancing community building capabilities.

235. This led to the Australian Capital Territory Government investing more than $132 million in 2020 to develop and implement evidence-based programs focused on rehabilitation and reintegration, addressing the root causes of recidivism. The Australian Capital Territory's Reducing Recidivism Plan (the Plan) sets out the first three years of work towards a goal of reducing recidivism in the Australian Capital Territory by twenty-five percent by 2025. Achieving a 25% reduction in the recidivism rate by 2025 would mean 146 fewer detainees returning to custody, or a reduction from 42.4% to 31.7% of adults released from prison who are re sentenced and returned to prison within two years. The plan includes specific actions to target First Nations offenders:

- Empowerment Yarning Circles: Empowering Yarning Circles is a series of yarning circles that focus on enabling ex-detainees to stay in the community and rebuild their lives. The program supports re-stablishing links to community and culture, restoring relationships with family, friends and peers and supporting and enabling clients to manage their own lives. Yarning Circles are weekly and engage First Nations participants to build capacity to manage daily life and reconnect to Community by reducing the risk of recidivism through integrated case management and community support. Yarning Circles are provided as flexible sessions and can be for men or women only, with the support of Elders and community services. The Circles will focus on different areas of a person's life, such as trauma informed support and personal skills, motivation and leadership, self-awareness, and relapse prevention. Empowerment Yarning Circles are provided both inside and outside the Alexander Maconochie Centre by Yeddung Mura;
- Yarrabi Bamirr: Yarrabi Bamirr is Ngunnawal language meaning 'walk tall'. Yarrabi Bamirr is designed to provide a family-centric model of support for Aboriginal and Torres Strait Islander families to reduce or prevent contact with the justice system and as a consequence, improve life outcomes. The criteria for families to be accepted into the program are that they have children, high and complex needs and contact with the justice system. The program creates a Family Plan with long, medium- and short-term

goals supplemented by family brokerage funding. Yarrabi Bamirr is provided by provided by Clybucca Dreaming; Yeddung Mura and Winnunga Nimmityjah Aboriginal Health and Community Services. Yarrabi Bamirr is delivered by Winnunga Nimmityjah Aboriginal Health and Community Services under the name Justice Reinvestment);

- Galambany Court Support Program: Provides support to people appearing before the Galambany Circle Sentencing Court. This Court gives eligible First Nations adults who have committed an offence a culturally relevant sentencing option, in consultation with local Elders. The Court Support program offers transport to and from court as well as to any recommended or court-appointed appointments or programs. Galambany Court Support is provided by Yeddung Mura;
- Throughcare: Throughcare is a client-centred program designed to enable Aboriginal and/or Torres Strait Islander clients to succeed on their journey from prison to living sustainably back in the community. The program operates in collaboration with the Australian Capital Territory Corrective Services Throughcare Unit to provide individualised and intensive case management and trauma informed support. Throughcare assists a detainee's transition back to living in community through provision needs such as mobile phones, medicine, identification documents and assistance with services such as housing, Centrelink and other providers and programs. Throughcare is provided by Yeddung Mura, in collaboration with the Australian Capital Territory Corrective Services Throughcare Unit;
- Yurwan Ghuda: Yurwan Ghuda is Ngunnawal for 'Strong Child/ren'. The program aims to reduce offending rates of at-risk Aboriginal and Torres Strait Islander youth by connecting them with culture and country to address underlying factors and provide better pathways outside of the justice system. The program will achieve this by taking participants out once a week over a three-month period, with respected Elders and community leaders to learn about Aboriginal land management, local sacred sites, traditional trade routes, bush medicine and tucker, art, music and storytelling, embedded with educational components. Yurwan Ghuda is aimed at young people aged 10-14 who are identified as being at risk of engaging with the criminal justice system. Yurwan Ghuda will support the newly passed Minimum Age of Criminal Responsibility legislation, which raises the minimum age of criminal responsibility to 14.

236. In South Australia, the Child and Family Support System, led by the Department of Human Services, provides a range of evidence-based supports to children and young people at risk of harm, neglect and family violence, and their families, to ensure that more children can remain safe and well at home with family, in community and culture. Services are provided by government, non-government and Aboriginal Community Controlled Organisations to support an across-government and state-wide response to child safety and wellbeing.

237. The South Australia Department of Human Services (DHS) also supports communities experiencing vulnerability or disadvantage, with the aim of improving community participation, wellbeing and quality of life for South Australians. For example, the DHS Youth Support and Development Program funds a range of non-government services across South Australia to establish positive trajectories for at-risk and vulnerable young people by improving their participation in education, employment, training, volunteering and connections to positive social, cultural and/or community opportunities.

238. In addition, the key strategic priority for the Department for Correctional Services in recent years has been the reduce the rate of reoffending 10% by 2020. At the end of the target time-frame, in 2022 South Australia had the lowest rate of recidivism in the nation with the rate of 39.3%, an achievement of which we are immensely proud. Correctional Services now works to a new Government strategy and target to reduce reoffending 20% by 2026 ('20by26'). A key component of the strategy will include additional initiatives under Closing the Gap, and to bring downward pressure to the incarceration of South Australian Aboriginal men and women.

3. Use of force and restraint

Reply to the recommendation contained in paragraph 69 of the report of the Subcommittee

Electronic discharge weapons

239. In all jurisdictions except Tasmania and Western Australia, youth justice or corrective service officers are not permitted to use or carry conducted energy weapons.

- In Tasmania, conducted energy devices are approved physical force equipment in prison facilities, for use only by trained and qualified members of the Tactical Response Group. Such equipment may only be deployed where its deployment will cease or reduce the likelihood of death, serious injury, escape or significant property damage, and may only be deployed after other means of lesser force have been used and found ineffective;
- Similarly, in Western Australia only specialist officers are trained and equipped in the use of tasers, which are only to be used in situations where all other reasonable means of controlling the situation (for example, de-escalation and non-physical techniques other than use of force options) have been exhausted or are impractical in the circumstances.

Specific measures in states and territories

240. In the Australian Capital Territory, ACT Corrective Services does not use electrical discharge weapons. Electrical discharge weapons and chemical agents are not used in Bimberi Youth Justice Centre and are not authorised as methods of restraint under the *Children and Young People Act 2008* (ACT) or Children and Young People (Use of Force) Policy and Procedures (No 1) 2022 (ACT).

241. In New South Wales, Corrective Services does not use electrical discharge weapons.

242. Northern Territory Correctional Services does not use conducted energy weapons.

243. In Queensland police establishments, the deployment of tasers is within the situational use of force model. It is an option for police officers to use in watchhouses for the safety of other prisoners and Queensland Police Service (QPS) employees. The safety and security of all people in QPS custody is a priority to the QPS. QPS policy provides appropriate instruction, governance and oversight around the use of force on arrested persons. The Queensland Police Service is committed to using restraint only when necessary. Under the situational use of force model, QPS members are required to use the minimum amount of force necessary to safely resolve an incident. When a member uses a restraint on a prisoner in a watchhouse or holding cell, there is a requirement to report this. It has not been identified that restraints are being used inappropriately.

244. Electrical discharge weapons and chemical agents are not permitted in Queensland youth detention centres.

245. In South Australia, an Electronic Control Device (ECD) also known by the brand Taser, is not worn by custody staff as standard operational equipment. An ECD will only enter a cell facility when requested by the Officer in Charge of the Cell complex and used by police officers that are trained in the use of an ECD. An ECD will only be used in circumstances after all de-escalation options have been exhausted. The officer must believe on reasonable grounds there is a risk of serious injury to any person and they are satisfied that it is the most appropriate tactical option in the circumstances.

246. In Victoria, Youth Justice Operational Safety policies and training provide staff with safe, lower-level responses to challenging behaviour including de-escalation, redirection, and engagement. The model promotes situational awareness and risk assessment processes to prevent or manage emerging risks, and to promote effective communication to understand and respond to young people's behaviour.

Chemical agents

247. In prisons, chemical agents such as tear gas may be used on inmates to minimise an assessed risk of violent or prolonged struggle in correctional facilities, including for the protection of staff and other prisoners. The use of these chemical interventions is subject to recording, oversight and review associated with 'use of force incidents' in the relevant jurisdiction. Each jurisdiction has its own legislation and/or guidelines regarding the use of force by law enforcement agencies and corrective services. These guidelines are consistent with the *Australia New Zealand Policing Advisory Agency National Guidelines for Incident Management, Conflict Resolution, and Use of Force,* which promote the use of the minimum amount of force appropriate for the safe and effective performance of duties that is proportionate to the level of risk involved. Electrical discharge weapons and chemical agents are not permitted or used in the immigration context.

Specific measures in states and territories

248. In the Australian Capital Territory, chemical agents (oleoresin capsicum or OC) are used in accordance with policy and as part of a suite of options aimed at de-escalating situations and incidents. Review and oversight activities are in place in relation to using chemical agents as with using other forms of force. The particular form of personal OC products used by ACT Corrective Services are designed to minimise environmental or collateral exposure.

249. In New South Wales, while chemical aids are utilised by Corrective Services NSW, they are a tactical option that must only be utilised when other, less impactful de-escalation techniques have failed or will not be effective. Corrective Services NSW has strict protocols to ensure that the use of chemical aids is always reported, their use in every case is reviewed by an expert internal review committee, and inmates are assessed by medical officers following any exposure.

250. In the Northern Territory, the use of OC spray is considered a necessary operational safety tool in correctional facilities but is subject to stringent governance, reporting and incident review arrangements.

251. In South Australian adult prisons, the use of a chemical agent or less-lethal weapon only occurs once other reasonable methods of control have been exhausted, or where an authorised officer believes it necessary to prevent or stop any disturbance in which there exists a threat of death, bodily harm, escape or property damage. A prisoner must be warned that a chemical agent may be used and the prisoner is allowed the opportunity to cease the non-compliant or destructive activity, unless the challenge would create a risk (e.g. escape, injury or death etc).

252. In South Australia, the *Youth Justice Administration Act 2016* (SA) sets out the requirements relating to the use of force at Kurlana Tapa Youth Justice Centre. Appropriately trained staff may only use such force as is reasonably necessary, justified and proportionate in the circumstances. Kurlana Tapa staff strive to minimise the use of force through a range of de-escalation techniques and through practices such as active engagement and building meaningful rapport with children and young people.

253. In Victoria, Victorian Youth Justice staff are supported by a Safety and Emergency Response Team with two discreet levels; one focused on engagement with young people with a formal 'on the ground' presence alongside unit staff to respond to incidents and support de-escalation; and the other a dedicated response team to manage and respond to escalated incidents and are trained and approved to carry OC Spray. OC spray must only be deployed during violent or potentially violent physical incidents, where staff believe alternative options would be ineffective or expose staff or young people to risk of serious injury or death. All use of force is recorded in a dedicated register, reviewed daily and reported to the Commission for Children and Young People on a daily basis.

Transportation of persons deprived of their liberty

Reply to the recommendation contained in paragraph 71 of the report of the Subcommittee

254. All Australian governments endeavour to ensure transport is undertaken in a safe way, including appropriate ventilation, space, temperatures and safety features. The safety and security of all people in custody, especially during transportation, is a priority.

Specific measures in states and territories

255. In the Australian Capital Territory (ACT), transportation by ACT Corrective Services of persons deprived of their liberty is undertaken in a safe way and in a manner which maintains the dignity of the person being transported in accordance with the Corrections Management Act 2007 (ACT) and related policy. Young persons transported by ACT Corrective Services are transported in accordance with the *Children and Young People Act 2008* (ACT). Bimberi Youth Justice Centre escorts young people in a purpose-built escort vehicle. Mechanical restraints (handcuffs) are not used on young people while being transported under the Children and Young People (Escorts) Policy and Procedures 2018 (No 1).

256. The Northern Territory will be reviewing their procurement strategy around escort vehicles, together with directives around the use of restraints during escort, and will be informed by the secure arrangements that can be provided during transportation.

257. In Queensland, measures used to transport prisoners, such as restraints, are often adopted on the basis of a risk assessment to ensure safety and reduce the risks of potential escape. Operational police policy provides appropriate risk-based decision frameworks for custody staff around the risks associated with transporting arrested persons and the potential risk to staff, the person and other people being transported.

258. In South Australia, the Department for Correctional Services has a standard operating procedure that ensures the safe, secure movement of prisoners to enable and provide safe working practices for its employees, and the security for members of the public whilst conducting supervised escorts.

259. As previously referenced, in South Australia the use of mechanical restraint on children and young people at Kurlana Tapa Youth Justice Centre is subject to requirements set out in the Youth Justice Administration Regulations 2016 (SA). Under the Regulations, mechanical restraint can only be used in prescribed circumstances and only ever as a last resort following a risk assessment. The Regulations also prescribe a range of recording, monitoring and review requirements that must be followed when mechanical restraints are used, including that the children or young person must not be left unsupervised.

260. In Victoria, use of mechanical restraint (handcuffs) on children and young people in Victorian Youth Justice must be based on a risk assessment conducted prior to use. Routine use of mechanical restraint is prohibited. They must only be applied when there are no other means of resolving a situation or mitigating the threat or risks presenting staff and must be applied for the shortest period possible. Young people must never be left alone when mechanically restrained and must be under constant supervision. Every use of mechanical restraint is recorded and reported daily including to the Commission for Children and Young People.

4. Conditions of detention

Reply to the recommendation contained in paragraph 73 of the report of the Subcommittee

261. Australia is working to improve the protection of children and young people within youth justice systems and youth detention facilities. The federal government continues to engage with states and territories to ensure the treatment of children and young people in

detention meets all expectations for the safety and protection of children and young people under government care.

Banksia Hill Youth Detention Centre and facilities in Western Australia

262. The Western Australian (WA) Government is investing over $100m towards improving services for youth in detention. This includes new infrastructure, additional staff and more support services. A new Crisis Care Unit will provide dedicated support for detainees experiencing mental health crises. A new Aboriginal Services Unit has been established and a new allied health team from the WA Department of Health is providing specialist neuropsychology and paediatric support at the facility.

263. A new operating philosophy and service model (model of care) for youth custody has been developed - founded on world best practice in youth justice, focusing on rehabilitation and reducing reoffending behaviour through a trauma-informed, therapeutic approach.

264. Other recent measures to improve juvenile justice include:

- An infrastructure review to determine the State's youth custodial needs and assess the requirement for additional facilities;
- A new cohort of Aboriginal mentors to assist detainees and staff;
- Specialised medical services to be delivered through a new Aboriginal health provider;
- Telethon Kids Institute to provide expertise on the assessment and management of children and young people with a neurological impairment.

265. The WA Government will also undertake a comprehensive review of the *Young Offenders Act 1994* (WA). The review will consider the over-representation of young Aboriginal people in detention and the impacts of cognitive disabilities such as foetal alcohol spectrum disorder on young offenders.

Don Dale Youth Detention Centre

266. The Don Dale Youth Detention Centre in the Northern Territory will be replaced with a new Youth Justice Centre in Darwin, which will meet the therapeutic and rehabilitative needs of young people. The new centre is scheduled for completion in mid-2024. The new centre will be trauma-informed and programmatically-focused, supported by the new Model of Care for Youth Justice Operations which provides the operating Philosophy and Service Model Commitment from Government for Youth Justice Operations, continuing the implementation of reforms.

Specific measures in other states and territories

267. In the Australian Capital Territory, the Bimberi Youth Justice Centre accommodates children and young people aged 10 to 21 years old who have been refused bail or sentenced to a period of detention in the Australian Capital Territory. It has been specifically designed to meet human rights standards. Independent reviews of the Centre have been conducted in recent years (for example, the Australian Capital Territory Human Rights Commission in 2019 and the Australian Capital Territory Inspector of Correctional Services in 2021) with the Australian Capital Territory Government agreeing to the vast majority of recommendations in these reviews. The Australian Capital Territory has successfully raised the minimum age of criminal responsibility to 14 years.

268. The Northern Territory Government has invested $29.33 million in to the Alice Springs Youth Detention Centre construction and refurbishment program that includes a complete refit of bedrooms, including doors and hardware, and general improvements through the buildings to improve amenities for young persons and staff operations. New buildings have also been constructed with enhanced young person admission area, including body scanning technology, dedicated medical suites with dental room and audiology equipment, and new learning hub focussed on education, training and vocational skills development. The Centre will return to full operations in mid-December 2023.

269. The Queensland Government is building two new therapeutic youth detention centres, one will be located in South-East Queensland and one in Northern Queensland (the Cairns region). Both detention centres support the government's goal to provide more regional youth detention services, facilitating connection to family, community, and country. Both new centres will include therapeutic design elements to support young people's rehabilitation. These elements include smaller more purposeful accommodation units, consultation and treatment rooms, multipurpose spaces for education, skills development and training and space for cultural connection.

270. In South Australia, the Government is currently de-commissioning a youth custodial facility built in 1993 and consolidating youth custodial services onto a single site, built in 2012. Construction is underway to provide additional infrastructure needed to support consolidation, which is incorporating contemporary, therapeutic design principles including through the use of green space and natural materials, recognising the physical and psychological impact of the built-environment. A part of this, a new 12-bed accommodation unit will be launched as an Enhanced Support Unit, with a service model that aims to improve response to children and young people with more complex needs, including disability-related needs.

271. The South Australian Government is committed to continually reviewing and enhancing practice at Kurlana Tapa Youth Justice Centre to ensure services meet the objectives and obligations outlined in the Youth Justice Administration Act 2016, including through upholding the Charter of Rights of Children and Young People Detained in Youth Justice Facilities.

The use of isolation for children under the age of 18

Reply to the recommendation contained in paragraph 74 of the report of the Subcommittee

272. The use of isolation or segregation in Australia is limited to circumstances when it is reasonably necessary for the child's protection, or the protection of another child, staff or property. There are a number of conditions that accompany the decision to isolate or segregate a child, including a maximum period of time the child can be kept in isolation or segregation, and requirements for regular contact with staff, and access to support services, education, basic human necessities and exercise. Any solitary confinement of young people is recorded and monitored closely.

273. Solitary confinement is not used in immigration detention for minors or adults.

Specific measures in states and territories

274. In the Australian Capital Territory (ACT), there is no use of solitary confinement for young people. Segregation of young people is defined by the Children and Young People (Segregation) Policy and Procedures 2018 (No 1) (ACT).

275. In New South Wales (NSW), Youth Justice NSW may use segregation if there is an immediate or unacceptable danger or risk of harm to a young person or member of staff. Segregation is not to be used as a punishment and is to end immediately when the unacceptable danger or risk of harm has passed.

276. Confinement is used in NSW as a penalty for misbehaviour by a detainee in a Youth Justice NSW detention centre. Confinement may be imposed for no more than 12 hours for a young person under 16 years and no more than 24 hours for a young person aged 16 years and over. A young person subject to confinement may be visited by prescribed persons, including their lawyer, an Official Visitor for the detention centre, the Inspector of Custodial Service and a medical practitioner.

277. Neither segregation nor confinement in NSW Youth Justice Centres equate to 'solitary confinement' as young people have access to meaningful contact with other people.

278. In South Australia (SA), the Youth Justice Administration Regulations 2016 (SA) govern the use of isolation and segregation at Kurlana Tapa Youth Justice Centre, including that it must not continue for longer than is reasonably necessary in the circumstances. Where a young person is subject to segregation, the Regulations require that they must not be prevented from having contact with other young people for more than 22 hours in any 24-hour period unless such contact would be detrimental to the wellbeing of them or the other residents. They must also be offered regular time out of their rooms through, for example, opportunities to exercise and must not be prevented from communicating with staff. Children and young people subject to segregation or isolation also have access to cultural and clinical support people, and phone calls to family and friends.

279. In Victoria, in youth justice facilities and in accordance with section 488 of the *Children, Youth and Families Act 2005* (Vic), isolation is authorised only when all other reasonable steps have been taken to prevent the young person from harming themselves or any other person or from damaging property; the young person's behaviour presents an immediate threat to their safety or the safety of any other person or to property; or it is in the interest of the security of the centre. Any period of isolation must be underpinned by the ongoing protection and promotion of the young person's human basic rights, freedoms and physical and mental wellbeing and ceased at the earliest opportunity. The use of isolation, or the placing of a young person in a locked room for any length of time, separate from others and displaced from their normal routine, is a practice that restricts the liberty of young people and is therefore a last resort option for staff in all circumstances. Solitary confinement is prohibited in Victorian Youth Justice as per the Mandela Rules rule 44.

280. In Western Australia (WA), solitary confinement is not practiced, however lockdowns occur for a number of reasons. Non-routine lockdowns are utilised for reasons including maintaining the good government, good order or security of the detention centre, for emergency management and unplanned operational impacts (see section 196(2)(e) of the *Young Offenders Act 1994* (WA)). If detainees choose to remain in their cell rather than take part in daily activities, this is recorded as 'in-cell' time.

281. The WA Department of Justice has undertaken extensive work to address impacts on out-of-cell hours. Out-of-cell hours are maximised wherever there is the opportunity, noting the challenges staff face managing complex and often violent detainees. Significant infrastructure damage and regular critical incidents have impacted efforts to provide detainees with increased time out-of-cell. However, the WA Government's more than $100 million investment in infrastructure, services and staff is delivering promising early results.

Levels of cleanliness

Reply to the recommendation contained in paragraph 75 of the report of the Subcommittee

282. Australia is committed to ensuring that all places of deprivation of liberty are kept with the highest possible standards of health and cleanliness.

Specific measures in states and territories

283. In the Australian Capital Territory (ACT), ACT Corrective Services aims to keep all ACT correctional centres to the highest possible standards of health and cleanliness in accordance with the *Corrections Management Act 2007* (ACT) and relevant policies. Oversight is provided by Official Visitors, the Inspector of Correctional Services, the Australian Capital Territory Human Rights Commission and the NPM, all of whom have access to ACT correctional centres as they wish and without notice required, with the exception of in the event of a major security incident.

284. In Queensland, Hospital and Health Services are required to comply with public health legislation and standards of health and cleanliness. Local policies are in place across all services, including in Authorised Mental Health Services, to ensure standards are adhered to.

285. In South Australia (SA), health services in adult prisons are provided by South Australia Prison Health Services (under the Department for Health and Wellbeing) or private prison providers. All South Australia adult correctional facilities are visited on a regular basis by an Official Visitor as per section 20 of the *Correctional Services Act 1982* (SA). Official Visitors are also able to attend prison health centres and clinics. The Kurlana Tapa Youth Justice Centre is subject to health inspections in line with local council requirements.

Training, codes of practice and guidelines

Reply to the recommendation contained in paragraph 77 of the report of the Subcommittee

286. All Australian jurisdictions provide comprehensive training to ensure appropriate care of detainees, with additional specific training provided to support staff in youth justice facilities.

287. All persons held in immigration detention facilities are treated in accordance with human rights standards. The Australian Government has contracted appropriately trained and experienced service providers to ensure immigration detainees' needs are adequately met. The Department of Home Affairs welcomes engagement and oversight to enable further transparency in the operations of immigration detention.

Specific measures in states and territories

288. In the Australian Capital Territory (ACT), ACT Policing has internal guidelines regarding the custodial management of detainee's welfare and access to facilities. This guide is available to all staff, and any staff who work in the watch house are required to undergo induction training.

289. ACT Corrective Services provides 12 weeks of initial training to correctional officers who then have one year to complete their Certificate III in Custodial Practice (Adult Corrections). The Enterprise Agreements covering custodial officers specifies a range of other mandatory training to be completed annually, and there is a further program of training in addition to this. Non-custodial officers also have a range of mandatory and optional training to complete, and specialist roles may have additional training and ongoing accreditation requirements. The Australian Capital Territory Public Service Values, the Australian Capital Territory Corrective Services Ethical Conduct Policy and training such as Five-Minute Interventions guide appropriate interactions between staff and detainees.

290. Sections 40–55 of the *Corrections Management Act 2007* (ACT) specify the minimum requirements that must be supplied to detainees in relation to goods, services and activities.

291. The Children and Young People Policies and Procedures (ACT), including 'Minimum Living Conditions', 'Behaviour Management', and 'Discipline' address this recommendation. All operational staff are required to complete nine weeks induction training and annual skills maintenance training to ensure understanding and compliance with policies and procedures. Young people are aware of their rights through induction processes, Charter of Rights for Young People in Bimberi posters and flyers and the young person's handbook.

292. In New South Wales correctional centres, restrictive regimes and withdrawal of privileges must not be below an inmate's minimum entitlement (e.g. to clothing, bedding, food, time out of cells, visits, and telephone contact). An inmate who is held under a segregated or protective custody direction must not be deprived of any rights or privileges other than those determined by the Commissioner (or the governor in the exercise of the Commissioner's functions) either generally or in a particular case, and other than those the deprivation of which is necessarily incidental to the holding of the inmate under a segregated or protective custody direction.

293. In the Northern Territory, staff are trained to interact with prisoners with respect, humanity and decency. Withholding basic needs or demeaning a prisoner is not an appropriate nor accepted method of punishment.

294. In Queensland, the Queensland Police Service facilitates a mixed mode training program for police officers and watchhouse officers working in a watchhouse. This training includes verbal and non-verbal de-escalation tactics, awareness of human rights obligations, as well as the support available to detainees through various advocacy and community support agencies. Training is supplemented by a manual containing comprehensive guidelines on custody and detention in watchhouses.

295. In Queensland, corrective services officers undertake a workplace ethics training package. All complaints about staff misconduct or corrupt conduct are taken seriously, and include internal investigation and reporting and referral to external bodies where required. Prisoners are also able to make complaints to the centre directly, official visitors, the Ombudsman and the Queensland Human Rights Commission.

296. In Queensland, the Forensic Disability Service (FDS) has highly qualified staff and a comprehensive code of conduct. All clients detained in the FDS are aware of and have access to all goods, services and activities available to them.

297. Youth detention centre staff in Queensland are given comprehensive training. Basic necessities are provided to detainees as a matter of course, and information about other goods, services and activities available to them is provided on admission.

298. In South Australia, operational staff in adult correctional facilities undergo rigorous training as per the agency's framework for managing training and development for all employees. The Learning Academy is the DCS Centre of Excellence for training provision and maintains the core goal of establishing, equipping and sustaining high performing teams, through high quality training and development opportunities.

299. South Australia has developed policy referred to as the Custody Management General Order, that outlines the management of all detainees in police care. This ensures all basic needs of detainees are met. South Australia Police have a code of conduct that all employees are must to adhere to. There is specific training for staff in relation to the management of detainees in police cell facilities which is refreshed annually.

300. In South Australia, children and young people are provided with all basic amenities, goods, services and activities in line with the Charter of Rights for Youths Detained in Training Centre. Basic amenities are never withheld from children and young people in Kurlana Tapa Youth Justice Centre as punishment. Staff undergo induction and accredited training, including in positive behaviour support, trauma-informed practice, cultural awareness and working with children and young people with neuro-developmental disability. Staff must also adhere to the 'Working with Children and Young People Code of Conduct' which outlines responsibilities and requirements to provide a safe environment for children and young people.

301. In Victoria, the *Charter of Human Rights and Responsibilities Act 2006* (Vic) assists in ensuring that the human rights of people in custody are limited only to the extent that is reasonably and demonstrably justified. The Charter underpins policies, procedures and training and all correctional staff in Victoria must act compatibly with human rights and consider human rights when making decisions.

302. Young people in Victorian Youth Justice custody have a set of minimum rights and responsibilities detailed in the *Children, Youth and Families Act 2005* (Vic) requiring care and rehabilitation that is responsive to the individual developmental needs of children and young people. Additionally, the Victorian *Charter of Human Rights and Responsibilities Act 2006* (Vic) and the Australian Children's Commissioners and Guardians model charter of rights for children and young people detained in youth justice facilities (2014) outline basic entitlements which cannot be withheld for any reason, including as punishment.

303. Comprehensive policies and guidelines govern prison staff conduct and responsibilities in Victoria's adult corrections system. These are reinforced from the outset in pre-service training and through regular, continuous staff training. Additionally, people in custody in Victoria receive an orientation session upon entering prison that provides valuable information on prisoner rights, as well as available activities and opportunities (e.g. employment, programs, supports). Necessities (shampoo, conditioner, soap, toothpaste,

toothbrush etc.) are also provided to prisoners upon entry and are available for repurchase (even where prisoner spending may be otherwise restricted due to disciplinary processes).

304. In Victoria there is a robust requests and complaints process and external oversight bodies. This framework enables people in custody and their loved ones to voice concerns or requests to ensure needs continue to be met.

305. In Western Australia, basic needs of prisoners are met in line with the usual daily regime of the facility. Supervision of a particular prisoner on a specific regime is digitally and manually recorded. Compliance checks are conducted to ensure that daily basic needs of the prisoners are met. All prisoners have minimum entitlements in accordance with the Commissioner's Operating Policy and Procedure 10.1: Prisoner Behavioural Management. Additional privileges may be granted or removed depending on behaviour and the regime implemented.

Reports on the behaviour of detainees

Reply to the recommendation contained in paragraph 79 of the report of the Subcommittee

306. Across jurisdictions, both youth and adult detainees have access to numerous avenues to raise complaints about their detention. Please refer to paragraphs 141-161 of this report for further information on complaints mechanisms.

Specific measures in states and territories

307. In the Australian Capital Territory (ACT), ACT Corrective Services takes complaints seriously and see them as an opportunity to improve. Complaints can also be made internally via the detainee complaints email which can be confidential. Oversight provided by Official Visitors, the Inspector of Correctional Services, the Australian Capital Territory Human Rights Commission (HRC), and the Australian Capital Territory Ombudsman provides independent opportunities for complaints to be made by detainees. The Inspector, HRC and Ombudsman also have powers of investigation. Processes such as the detainee discipline process have external adjudication and review mechanisms in place and are protected by the *Corrections Management Act 2007*.

308. The Children and Young People (Complaints Management) Policy and Procedures 2018 (No 1) (ACT) outline complaints procedures for young people in detention in the Australian Capital Territory. There are also review mechanisms in place guided by the *Children and Young People Act 2008* (ACT) and policies and procedures. Young people are visited regularly by the Australian Capital Territory Public Advocate, Official Visitors, Aboriginal and Torres Strait Islander Advocate and the Australian Capital Territory Inspector of Correctional Services.

309. In South Australia, the effective management of enquiries and complaints is important for effective adult prisoner management and the good order of the system. All prisoners are entitled to raise matters and have them dealt with in a fair and confidential manner without fear of disadvantage and retribution. The recording and monitoring of complaints enables the Department for Correctional Services to be transparent and accountable in its decision making and assists in identifying opportunities to improve performance.

310. Complaints by children and young people in contact with Department of Human Services Youth Justice are confidential. Mechanisms are in place to prevent victimisation as a result of making a complaint. If children and young people are unhappy about the outcome of a complaint, they have access to information about how to confidentially raise their concerns with external independent oversight bodies such as the Training Centre Visitor and the South Australia Ombudsman.

311. In Victoria procedures are in place to fairly and effectively deal with prisoners on matters of a disciplinary nature. Disciplinary policies provide guidance on making decisions in accordance with the *Charter of Human Rights and Responsibilities Act 2006* (Vic) and support informed decisions based on individual circumstances and known facts.

312. People in custody in Victoria have the power to take any decision to the Supreme Court for a judicial review. Decisions that may be reviewed include the outcome of a disciplinary finding. This is not available to people in custody in all states and territories.

Solitary confinement

Reply to the recommendation contained in paragraphs 81 and 83 of the report of the Subcommittee

313. All Australian jurisdictions have regulations that clearly govern the use of, and regime related to, solitary confinement and isolation – including time controls, approval processes, regular review and reporting requirements. All Australian jurisdictions have legislation and/or guidelines that provides that solitary confinement may be used in some places of detention, but only for the purposes of protecting the detainee's safety, the safety of another person or the security and good order of a facility. Decisions to place individuals in segregated custody are subject to regular review.

314. Solitary confinement is not used in immigration detention for minors or adults.

Specific measures in states and territories

315. In the Australian Capital Territory (ACT), ACT policing has nominated 'at risk' cells which allow for increased monitoring and segregation from other detainees whilst in police custody. This is for the safety and protection of the individual, and not for disciplinary issues.

316. Reasons for and regime related to placement in solitary confinement, isolation, quarantine and other circumstances having the same effect are clearly delineated and distinguished in the *Corrections Management Act 2007* (ACT) and the Corrections Management (Segregation and Separate Confinement) Policy and operating procedures.

317. Those placed in segregation or separate confinement for behavioural reasons in the Australian Capital Territory are observed, have searches and other incursions into their privacy undertaken in accordance with the above legislation, policy and procedures and any other relevant policies (such as At-Risk, Discipline, etc.). Separate Confinement for disciplinary reasons may occur for 3, 7 or 28 days. Segregation may only occur for safety and security, protective custody, health or investigative purposes. In all cases, access to basic requires of light, ventilation, temperature, sanitation, meals, fresh air, exercise, personal hygiene, health, personal space, etc. are maintained.

318. The Australian Capital Territory does not use solitary confinement for young people. Young people can be segregated as per the Children and Young People (Segregation) Policy and Procedures 2018 (No 1) (ACT). During segregation a young person's Minimum Living Conditions must still be met.

319. In New South Wales (NSW), segregation directions may be made in respect of adult inmates in order to protect the safety of the inmate or another person and the security and good order of a correctional centre. In the youth justice system, a young person may be segregated in order to protect the personal safety of that or another person.

320. Under clause 154 of the Crimes (Administration of Sentences) Regulation 2014 (NSW) an inmate in a NSW correctional centre must not be put in a dark cell, or under mechanical restraint, as a punishment, or be subjected to solitary confinement.

321. In the Northern Territory, the use of separate confinement is governed by Northern Territory Correctional Services Directive 2.4.2 Separate confinement and non-entitlement to prescribed privileges.

322. In Queensland, adult prisoners are only subject to separate confinement in accordance with strict legislative requirements under the *Corrective Services Act 2006* (Qld) including clear justifications, time limits and regular review, including review by official visitors. Further, the Corrective Services Regulation 2017 provides standards for prisoners undergoing separate confinement.

323. In Queensland youth detention centres, the Youth Justice Regulation 2016 provides a strict framework to ensure separations are used only when absolutely necessary and for the shortest time possible. Young people are always provided a range of health, wellbeing and therapeutic supports while separated.

324. In Queensland, the Director of Forensic Disability Policy, *Regulated Behaviour Control* provides that any use of regulated behaviour control at the Forensic Disability Service (FDS) must occur in accordance with the provisions of the *Forensic Disability Act 2011* (Qld) and only be used as a last resort and where there is no less restrictive way to protect the health and safety of clients or to protect others. The FDS does not engage in the practices of solitary confinement or isolation. The Act provides for the use of seclusion under sections 61-67 of the *Forensic Disability Act 2011* (Qld). A client may only be placed in seclusion if a senior practitioner is satisfied the seclusion is necessary to protect the client or other persons from imminent physical harm, and there is no less restrictive way to protect the client's health and safety or to protect others.

325. In South Australia (SA), a quality, humane approach to the management of adult prisoners placed in separation is ensured, and decisions are made pursuant to legislation, and in a way that minimises the risk of injury or harm to prisoners, employees and visitors.

326. The Youth Justice Administration Regulations 2016 (SA) explicitly prohibit the use of isolation or segregation as a form of punishment. The Regulations also set out the recording, monitoring and approval requirements to ensure that isolation and segregation are only used as a last resort, in accordance with strict requirements, and only for as long as is reasonably necessary in the circumstances. Under the Regulations, the use of isolation or segregation must also not contravene a young person's rights under the Charter of Rights for Youths Detained in Training Centres. A range of recording, approval and review mechanisms are in place to monitor the use of isolation and segregation at Kurlana Tapa Youth Justice Centre. Staff must observe children and young people under isolation or segregation every 15 minutes at a minimum to ensure their safety. There are no automatic additional requirements in relation to searches where a child or young person is subject to isolation or segregation.

327. In Victoria, the use of solitary confinement is prohibited in Victorian Youth Justice. In accordance with section 488 of the *Children, Youth and Families Act* 2005 (Vic), isolation is authorised only when all other reasonable steps have been taken to prevent the young person from harming themselves or any other person or from damaging property; the young person's behaviour presents an immediate threat to their safety or the safety of any other person or to property; or it is in the interest of the security of the centre.

328. Further isolation must never be used as a form of punishment or discipline in Victoria. It must be: employed as a last resort only, following consideration of alternative behaviour management strategies and operational arrangements; implemented for the least amount of time possible; proportionate to the objective for which it is imposed; and, considerate of a young person's individual characteristics and identified vulnerabilities, including age and physical and mental wellbeing.

329. Every episode of isolation in Victoria is recorded in an isolation register. Additionally, any period of isolation for an Aboriginal child or young person must result in a notification to an Aboriginal Liaison Officer and include consideration of vulnerability to suicide and self-harm and setting observation levels and support accordingly. Every episode of isolation is reported to the Commission for Children and Young People.

330. In Victoria's adult corrections system, in recognition of the restrictive nature of management units, all decisions to separate a prisoner involve a multilayered approval process to ensure the placement is justified and required to mitigate the risk identified. The Corrections Victoria Duty Director is required to authorise separations after hours, on weekends or public holidays and the Sentence Management Division must review and approval all requests to separate. The Sentence Management Division provides independent and impartial oversight into separation placements and must review all prisoners placed onto a separation regime within seven days of the initial decision. This review involves the prisoner and focuses on reviewing the circumstances of the separation and considering the placement of the prisoner to determine whether ongoing separation or an alternative

placement is required. All separations in excess of 30 days must be approved by the Assistant Commissioner, Sentence Management Division.

331. A reform project is currently underway in Victoria to explore options for the use of separation in a manner which is less restrictive, lessens the negative impacts on the person in custody, and addresses the cause of separation. It is intended that a new model for the use of separation in the men's and women's prisons will strengthen oversight and transparency.

332. In Western Australia (WA), section 36(3) of the *Prisons Act 1981* (WA) permits a Superintendent to issue orders to officers and prisoners as necessary for the good government, good order and security of the prison. This includes the ability to place a prisoner in separate confinement for a short period of time in cases of necessity or emergency only. Under section 43 of the *Prisons Act 1981* (WA), the Chief Executive Officer may order the separate confinement of a prisoner for up to 30 days.

333. In practice in WA, separate confinement in adult prisons is conducted in accordance with the Commissioner's 'Operating Policy and Procedure 10.1 Separate Confinement', covering the application, approval and review and documentation process, along with prisoner entitlements, supervision level and privileges. Under this policy, separate confinement is only used as a last resort and the duration is to be as brief as possible.

5. Access to healthcare

Reply to the recommendation contained in paragraph 88 of the report of the Subcommittee

334. States and territories provide a team of doctors, nurses, mental health and addiction specialists, and visiting specialists including psychiatrists, dentists and allied health specialists to provide health services to detainees.

335. In each state and territory, corrective services, the state health department or contracted providers seek to ensure an adequate standard of health care is provided to those detained in correctional facilities.

336. All jurisdictions have guidelines that outline the principles, values and procedures that underpin efforts to prevent, reduce and, where safe and possible, eliminate the use of restraint tools in health settings. The rights of the person detained must be balanced with risks to safety, including the duty of care that the hospital owes to its staff to prevent them from harm in their line of work.

337. The federal government's independent review of health care services for First Nations people in prison is due to be considered by Health Ministers in mid-2024. It will provide recommendations for all Australian governments to improve health outcomes for First Nations people in prison. The concurrent co-design process to strengthen Aboriginal Community Controlled Health Sector-led models of prisoner health care is intended to further help ensure greater access to effective, culturally-safe and equitable health services for First Nations people in prison.

Specific measures in states and territories

338. In the Australian Capital Territory, ACT Corrective Services and Justice Health Services comply with:

- An equivalency of care in line with community access, and
- Handcuffs are not used as a means of restraint to facilitate medical treatment and where a person is confined within a secure area, the use of handcuffs is not indicated. For the safety and security of the person in custody, medical staff and the general public, restraints may be used in public hospitals. In such cases, humane restraint methods considering self-agency and dignity are used.

339. Health services in Bimberi Youth Justice Centre are provided by Canberra Health Services.

340. In Queensland, youth detention centres have 24/7 onsite primary health care operated by Queensland Health. Onsite mental health services are available during business hours, with after-hours arrangements in place to ensure appropriate care for any acute mental health emergencies.

341. Queensland Health providers primary health care services to people in Queensland Corrective Services' custody that is commensurate with the community standard, including access to specialist, oral, and mental health services.

342. In South Australia, South Australia Prison Health Services (SAPHS) and private prison providers provide adult prisoners with health services appropriate to their ongoing health needs and in line with that which they would receive in the general community. Additionally, allied health services (podiatry, optometry, physiotherapy) are provided by external providers. Dental services for prisoners are provided by the South Australian Dental Service (SADS), and psychiatric clinics are provided by the South Australian Forensic Mental Health Service (FMHS). Upon entering the prison system, all adult prisoners are assessed in conjunction with SAPHS and private prison providers. Issues such as mental health, drug and alcohol, and risk of suicide or self-harm are considered, in addition to information provided by South Australia Police. A range of services are available for adult prisoners experiencing mental health issues or being at risk of self-harm. These services can be provided by Forensic Mental Health Services, SAPHS, the prison High Risk Assessment Team, and psychologists. South Australia Health provide a visiting service at Kurlana Tapa Youth Justice Centre. Young People have access to a range of services including dental, mental health and drug and alcohol services, as well as general health support.

6. Understaffing

Reply to the recommendation contained in paragraph 91 of the report of the Subcommittee

343. All Australian governments are committed to upholding international standards for the treatment of detainees. Resourcing for such measures is managed through the budget process of each parliament.

Specific measures in states and territories

344. In South Australia, in recognition of the important role that staff play in supporting vulnerable children and young people in Kurlana Tapa Youth Justice Centre, the South Australian Government is investing in workforce strategies to build the custodial workforce and staffing capability. Recent recruitment has been the highest and most consistent ever at Kurlana Tapa, and enhancements to training and staff wellbeing practices remains a key focus.

345. In Western Australia (WA), since 2022 more than 130 new probationary Youth Custodial Officers have joined the Department of Justice, with 36 recruits currently undergoing training at the Corrective Services Academy and four more training schools scheduled for 2024. As noted previously at paragraphs 261-264 of this report, the WA Government is establishing new staff positions which include more Aboriginal support officers and Aboriginal medical and mental health workers, and made a significant $100 million investment in infrastructure, services and staff to support the new model of care.

B. Populations in situations of vulnerability

1. Women and girls

Reply to the recommendation contained in paragraphs 93, 95 and 97 of the report of the Subcommittee

346. The Australian Government considers it imperative that the rights of women and girls in detention are protected and they have equal access to all programs and support services.

347. State and territory governments have been investing in new fit for purpose prisons, while noting prisoner populations and prison capacities have been in decline in most/some Australian jurisdictions since 2018-19.

348. Australia recognises the importance of ensuring women and girls are accommodated separately to males and boys in detention centres. Within immigration detention facilities, women are only co-located with males when they are kept in family groups.

349. A number of programs are offered in all jurisdictions for women. Services include counselling, rehabilitation, wellbeing programs, and neo-natal services.

Specific measures in states and territories

350. In the Australian Capital Territory (ACT), there is only one correctional centre due to the small size of the jurisdiction and population. The number of women detainees is very small, usually well under 45. While women's accommodation and services are at the same facility as the men's, the women's section is well separated from the men's section. The *Corrections Management Act 2007* (ACT) requires men and women be housed separately.

351. The *Corrections Management Act 2007* (ACT) (CMA) requires that sensitive activities such as searching are undertaken by officers of the same sex as the person being searched. In the case of transgendered or persons with variations in sex characteristics, the person is asked to nominate the sex of the officer undertaking the search (in line with requirements of the CMA). Male staff do not work alone in the women's areas of the correctional facility.

352. Noting that the Bimberi Youth Justice Centre houses both male and female young people, they are accommodated in separate units except for the admissions unit. Young women are cared for by both male and female staff, with searches only carried out by female staff. Bimberi does not have the capacity to have young women only cared for by female staff.

353. As far as is practicable, women detainees in the Australian Capital Territory have equality of access to work and to educational, exercise, sports and recreational activities as men detainees. Where there are variations in access they are based on factors such as length of individual sentence, not sex or gender. ACT Corrective Services have maintained a focus on improving services and programs for women with the introduction of the Integrated Offender Management Framework.

354. In Queensland, the Inspector of Detention Services has published inspection standards which aim to ensure transparency in the outcomes that are assessed during inspections of prisons, youth detention centres and police watchhouses. The Inspector of Detention Services has prepared separate standards for inspections of prisons and youth detention centres, including in relation to: accommodation and physical care, including hygiene and sanitation; education, training and employment; and rehabilitation programs and initiatives.

355. In Queensland youth detention centres, young people are either accommodated in male or female accommodations. There are also other stand-alone accommodation units, which can be utilised for specific purposes, such as mothers and babies. Females are accorded the same access to education, exercise, sports and recreation activities as males are. However, the interventions and programs are altered for different needs of girls and boys (and other considerations such as culture, developmental level, disabilities, learning difficulties etc). Roster allocation considers an appropriate staffing gender balance for each accommodation unit.

356. In South Australia, girls and young women attend school and are offered a range of vocational, recreational, cultural (including through the girls yarning circle) and therapeutic opportunities to meet their individual needs, based on their circumstances.

357. South Australia avoids the long-term accommodation of women in a men's prison. The only time this occurs is on immediate admission to an adult prison facility in regional locations, or when women request specific family connection opportunities in regional areas. Women who are admitted to regional area prisons are separated from men and transferred to the Adelaide Women's Prison. This is a women's only facility and accommodates women

sentenced and on remand and of all security levels. The DCS Strong Foundations and Clear Pathways2: Women's Action Plan (WAP) 2019-2024 and Aboriginal Strategic Framework 2020-2025 and Action Plan bring focus to targeted responses for women and Aboriginal women more specifically. Both plans include activity to consider Aboriginal prisoners' proximity to country and access to family support when determining placement in a prison. Also, to bring policy and procedural clarity to movement of women between regional prisons and the Adelaide Women's Prison, particularly with consideration given to Anangu women.

358. To align with the requirement of the *Correctional Services Act 1982* (SA), DCS prioritises a higher ratio of women staff to be operating at the Adelaide Women's Prison to ensure there are always women staff available to undertake the gendered requirements for strip searching and to preserve women's dignity and to ensure no undue humiliation in these circumstances. DCS does however acknowledge that male officers have a role in women's prison to mimic community equivalent environments as well as to model respectful male behaviours to women and to be good male role models.

359. The South Australia DCS Strong Foundations and Clear Pathways2: Women's Action Plan 2019-2024 ensures that women in custody at the Adelaide Women's Prison receive a targeted gendered response and that any gendered inequities and disadvantage that may be experienced by women are accounted for. DCS provides a range of programs and activities for women that are responsive to their pathways into criminal justice systems and to their unique gendered needs.

360. There are unique complexities in South Australia given the typically low number of girls and young women in custody at Kurlana Tapa Youth Justice Centre. Despite this, the South Australian Government is committed to providing a flexible and responsive service to this cohort. In South Australia, girls and young women are accommodated in their own units separate to boys and young men. Kurlana Tapa Youth Justice Centre employs female staff and ensures, to the greatest extent possible, that female staff are always present on the unit. When this is not possible, female staff from other units may be called to attend.

361. In Victoria, women in custody have access to work, educational, exercise, sports and recreational activities equivalent to those available in men's prisons. In addition, Victoria has progressively introduced reforms that recognise that women in contact with the justice system often have complex and varied needs and have experienced high rates of victimisation and trauma. Women have access to specific trauma informed gender responsive services including family engagement services, women's justice diversion program, and financial and legal services. Women also have access to vital family violence programs for both perpetrators and victim-survivors. In addition, trauma informed training is provided for all staff working in the women's system.

362. In Victoria, women in custody have access to the Living with Mum Program that under specific circumstances allows for infants and/or young children to reside in prison with their mother for the duration of her imprisonment.

363. Victoria has also invested in infrastructure in the women's system including a new reception unit, Aboriginal Healing Unit and close support and supervision accommodation at the Dame Phyllis Frost Centre. The new infrastructure replaces beds no longer fit for purpose and is designed to help more women get involved with rehabilitation services.

2. Children

Reply to the recommendation contained in paragraphs 99, 101 and 103 of the report of the Subcommittee

364. Australian governments are working to improve the protection of children and young people within youth justice systems and youth detention facilities. The National Children's Commissioner is 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.

365. In all jurisdictions, detention is intended to be a last resort, and is only considered where alternative arrangements such as youth justice conferencing, diversion programs or community orders have been considered as not appropriate.

366. Most Australian states and territories have legislation that prohibits the use of isolation or segregation for punishment in juvenile justice or police detention settings. While States and Territories differ in the circumstances in which young people may be isolated, across all jurisdictions it is only authorised in limited circumstances. The use of isolation or segregation is limited to circumstances when it is reasonably necessary for the child's protection, or the protection of another child or preserve centre security or order. There are a number of conditions that accompany the decision to isolate or segregate a child, including a maximum period of time the child can be kept in isolation or segregation, and requirements for regular contact with staff, and access to support services, education, basic human necessities and exercise.

367. Children in detention can raise concerns or make complaints directly with state and territory children's commissioners in some jurisdictions. In other jurisdictions complaints can be made through ombudsman offices, and in others through official visitors' programs. Complaints about breaches of human rights may also be made to the Australian Human Rights Commission, as well as jurisdictional Human Rights Commissions.

368. Aboriginal and Torres Strait Islander children and young people experience contact with the criminal justice system – as both offenders and victims – at much higher rates than non-Aboriginal and Torres Strait Islander children and young people.

369. For the 2022-23 financial year, the Commonwealth, through the Indigenous Advancement Strategy, invested $13.5 million in youth support and diversion activities which aim to address the underlying drivers of crime and support First Nations young people to engage in education and employment. Separately, the Commonwealth funds youth through-care programs which provide intensive case management for First Nations young people to help them transition from prison or detention back into their communities and avoid reoffending.

370. The Commonwealth NPM may also review frameworks, policies and arrangements in place for children in detention even if no children are detained in a particular year, to ensure those arrangements remain appropriate.

Specific measures in states and territories

371. In the Australian Capital Territory (ACT), ACT Youth Justice staff are provided with training on childhood and adolescent development, trauma informed practice, working with young people impacted by trauma and human rights, as part of the Bimberi Youth Justice Centre's staff induction program. The Children and Young People (Discipline) Policy and Procedures 2018 (No 1) (ACT) and the Children and Young People (Behaviour Management) Policy and Procedures 2018 (No 1) (ACT) addresses this recommendation. The Australian Capital Territory does not use solitary confinement for young people.

372. All young people in Bimberi Youth Justice Centre, regardless of age, are provided with the opportunity to participate in education and programs. Education is facilitated by the Australian Capital Territory Education Directorate. Attendance at the Murrumbidgee Education and Training Centre is compulsory for all young people in Bimberi. Murrumbidgee School is located within Bimberi Youth Justice Centre and provides educational and training programs to all young people in custody in the Australian Capital Territory. Murrumbidgee School provides a range of programs including year 7 to 9 Australian Curriculum engagement, year 10 and year 12 Certificate (in partnership with the student's enrolled school), Canberra Institute of Technology courses and other recognised certification and training. A significant part of the role of Murrumbidgee School staff is to work with multidisciplinary Declared Care Teams to support young people with their transition back into the community. Transition plans can encompass re-engagement with education, training, work experience and paid employment, and often include involvement with external support agencies and community organisations. Where a young person is enrolled at a school, Murrumbidgee School staff liaise with the student's enrolled school to ensure the student can continue their learning while in custody.

373. In Queensland, youth detention centres, following alleged unsafe or anti-social behaviour, an age- and developmentally appropriate discussion is initiated through which the young person hears the allegation and has an opportunity to speak, and their views are considered before a decision about consequences is made. Consequences are explained to young people clearly and simply, as are review and appeal options.

374. All young people in Queensland youth detention centres are expected to attend the onsite schools, run by the Department of Education (DoE). Young people are assessed by DoE to determine their numeracy and literacy levels and are provided tailored lessons and supports to maximise learning goals. This includes considering and responding to any learning difficulties or disabilities any young person may have.

375. In South Australia, Kurlana Tapa Youth Justice Centre operates within a behaviour support framework designed to guide the way staff interact with young people and foster a culture of pro-social interactions and respect. It provides the foundation for the individual behaviour support of children and young people through a continuum of proactive planning, support and progression within a consistent environment. A progressive phase benefits model is applied to assist children and young people to remain motivated to model positive, pro-social behaviour. As previously indicated, children and young people are provided with all basic amenities, goods and services as required under the Charter of Rights for Children and Young People Detained in Training Centres regardless of their phase level. Phase progression is determined by a phase review panel. Children and young people are informed of the reason behind their phase level and have access to formal avenues of appeal if they are unhappy with a decision of the panel.

376. The South Australian Government is committed to strengthening and further embedding child-focused, therapeutic and trauma-informed practice at Kurlana Tapa Youth Justice Centre to ensure positive outcomes for children and young people. A review of the accredited training provided to all operational staff at Kurlana Tapa is currently underway. This provides an opportunity to ensure training is contemporary and supports staff to work effectively with vulnerable children and young people with complex trauma, mental health needs and requirements for cultural safety.

3. First Nations groups

Reply to the recommendation contained in paragraphs 105, 107 and 109 of the report of the Subcommittee

377. The Australian Government recognises that the overrepresentation of Aboriginal and Torres Strait Islander Peoples in the criminal justice system regretfully results from intergenerational trauma, racism, disempowerment, dispossession, the impacts of colonisation, the forced removal of First Nations children, and compounded entrenched socio-economic disadvantage.

378. Through key frameworks under the National Agreement on Closing the Gap (the National Agreement) the Australian Government is committed to working with the states and territories to address the drivers of incarceration and improve justice and community safety outcomes for First Nations people.

379. The National Agreement prioritises partnership with Aboriginal and Torres Strait Islander communities and organisations, and centres on delivering meaningful change and tracking progress. The National Agreement acknowledges that Aboriginal and Torres Strait Islander peoples have always held the solutions and recognises when Aboriginal and Torres Strait Islander peoples have a genuine say in the design and delivery of polices, programs and services that affect them, better life outcomes are achieved.

380. All Australian Governments have worked in partnership with the Coalition of Aboriginal and Torres Strait Islander Peak Organisations and agreed to key Closing the Gap targets for reducing the rates of youth in detention and adult incarceration. Target 10 of the National Agreement is to reduce the rate of First Nations adults in incarceration by at least

15% by 2031. Target 11 of the National Agreement aims to reduce the over representation of First Nations children and young people in detention by at least 30% by 2031.

381. The Justice Policy Partnership was established under the National Agreement in 2021, and brings together representatives from the Coalition of Aboriginal and Torres Strait Islander Peak Organisations, Aboriginal and Torres Strait Islander experts, and all Australian, state and territory governments to take a joined-up approach to addressing Targets 10 and 11 of the National Agreement.

Justice initiatives

382. The Australian Government recently committed to establishing and expanding justice reinvestment initiatives across the country, national reporting on deaths in custody, improving representation in the legal system and building the capacity of Aboriginal Community Controlled Organisations.

383. On 21 June 2023, the Australian Government established the real-time data dashboard which provides up-to-date information on all deaths occurring in police and prison custody as well as in youth detention. Real-time reporting of all deaths in custody is an important step towards bringing additional transparency and accountability to this serious issue.

384. The Australian Government recognises that justice reinvestment is a long-term, community-led approach intended to shift interactions away from the criminal justice system. For this reason, the Commonwealth are working in partnership with Aboriginal and Torres Strait Islander communities to invest in new and exciting justice reinvestment initiatives that support prevention, early intervention and rehabilitation across Australia. In the 2022-23 Budget the Australian Government committed $69 million over four years to establish the National Justice Reinvestment Program to support up to 30 community led justice reinvestment initiatives. This program is ongoing with $20 million per year from 2026-27.

385. In the 2023-24 Budget, the Australian Government committed an additional $10 million over four years to support placed-based justice reinvestment in the Central Australia region of the Northern Territory, under the $250 million plan for *A Better, Safer Future for Central Australia.*

386. Both the National Justice Reinvestment and the Justice Reinvestment in Central Australia Program opened up for applications on 14 September 2023.

387. The Commonwealth Government is also working in partnership with First Nations people on the design of the National Justice Reinvestment Unit which will coordinate and support justice reinvestment initiatives at a national level.

388. Other measures for First Nations justice initiatives committed through the Federal 2022-23 Budget include:

- $13.5 million for Aboriginal and Torres Strait Islander legal services to ensure First Nations families who have lost a loved one in custody can access culturally appropriate, timely and fair legal assistance before, during and after all coronial processes;
- $1 million to build capacity and support the leadership of the National Aboriginal and Torres Strait Island Legal Services (NATSILS), and
- $3 million to support the work of the National Family Violence Prevention Legal Services Forum.

Health care

389. Australia recognises that First Nations people experience disability at much higher rates than the non-Indigenous population.

390. The Australian Government provides funding to health services to provide health care to First Nations people, boosting funding for Indigenous-specific health initiatives by $4.1 billion over four years to 2022-23. Of this funding, nearly $4.0 billion is provided through the Indigenous Australians' Health Programme (the Programme). The Programme objective is to provide Aboriginal and Torres Strait Islander people with access to effective

high quality, comprehensive, culturally appropriate, primary health care services in urban, regional, rural and remote locations across Australia. This includes through Aboriginal Community Controlled Health Services, wherever possible and appropriate, as well as mainstream services delivering comprehensive, culturally appropriate primary health care. The federal Department of Social Services also funded an initiative in 2019-2020 to examine methods and processes for identifying and assessing disability in First Nations prisoners and ex-prisoners across jurisdictions in Australia, including regional and remote areas. Additionally, the Australian Government invests in culturally-appropriate mental health and suicide prevention programs, services and research for First Nations peoples across the country.

391. The current review of prison health services for First Nations people and co-design to strengthen Aboriginal Community Controlled Health Sector-led care in prisons will also contribute to ensuing access to effective, culturally-safe and equitable health services for First Nations people in prison.

392. The Australian Government supported almost all (26) of the 27 recommendations of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, for which it has sole or joint responsibility. Of these recommendations: 19 have been implemented; seven are on track to be implemented; and two have been directed to the Northern Territory Government. The Northern Territory Government accepted all 227 recommendations, with 80 percent having been completed and 44 underway.

393. Significant reforms have been implemented in the youth justice and child protection system. Reforms have included a significant expansion of youth diversion and alternatives to detention programs, providing the police and courts more discretion to choose the right consequences for young offenders, remove barriers to youth diversion programs, and introduction of improvements in the operational model in youth detention including in the recruitment and development of staff and expanding programs available to young people and partnerships with Aboriginal Medical Services and Aboriginal elders.

394. State and territory governments also have programs to divert people out of the criminal justice system and provide alternatives to prison, some of which specifically target Aboriginal and Torres Strait Islander peoples. These include specialised courts and court lists to divert Aboriginal and Torres Strait Islander people from custody, diversionary approaches for drug offences, restorative justice programs and prisoner through support and rehabilitation programs to reduce recidivism. Further, such measures are designed for or with First Nations people in a way that is culturally safe, or draws on cultural knowledges and practices in order to drive more effective justice outcomes – noting that a culturally disempowering justice environment can also lead to recidivism.

Specific measures in states and territories

395. In the Australian Capital Territory, the Government is undertaking a review of overrepresentation of First Nations people in the criminal justice system. A central element of this review will be consideration of the Australian Capital Territory Government's progress in implementing matters in the Australian Law Reform Commission's 2018 recommendations. In addition, the Australian Capital Territory Government currently delivers a range of programs for First Nations people in contact with the criminal justice system, including bail support, circle sentencing courts and housing support for offenders.

396. In addition to aforementioned programs, outlined in further detail in the report's section on bail reforms and reducing recidivism, the Australian Capital Territory also has the Warrumbul Circle Sentencing Court. The Warrumbul Circle Sentencing Court will provide local Elders with a role in the sentencing of young people, providing them with a link back to country and their community. The Court will work with offenders to identify underlying issues that have contributed to a young person's offending behaviour. This information will then be used to make decisions on appropriate rehabilitation, reduce the risk of reoffending, and promote confidence in the court process. The program is an extension of the Galambany Court which has provided a much needed culturally appropriate sentencing option for over

18s and has reduced demands on a broad range of government services including police, courts, hospitals, foster care and emergency housing.

397. In New South Wales (NSW), as part of ongoing efforts to reduce reoffending, Corrective Service NSW provides programs to inmates (including Aboriginal inmates) which target offending behaviour based on assessed risk of re-offending, and specific needs. This includes the EQUIPS suite of programs and other programs for sex offenders, violent offenders, and drug and alcohol abuse. Programs can be offered in more than one location (or at individual centres).

398. NSW also recognises that First Nations people continue to be over-represented in custody and on community supervision orders in NSW. Corrective Services NSW works with other government and non-government agencies on initiatives to reduce the incarceration and re-offending rates of Aboriginal people. The National Agreement on Closing the Gap has a raft of targets designed to enhance outcomes for Aboriginal and Torres Strait Islander people. These include the reduction of the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15 per cent by 2031.

399. In Queensland, the Queensland Police Service (QPS) has introduced an Enhanced Disposition and Diversion Framework that includes adult cautioning, adult restorative justice conferencing and drug diversion. The framework aligns with recommendation 5-2 of the *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (ALRC Report 133) (ALRC Report). The framework applies to all persons, not just Aboriginal people and Torres Strait Islander people. The QPS has introduced a three-day cultural capability training package for police recruits. The package includes cultural capability training in relation to Multicultural Australia and First Nations Peoples. This training is aligned with aspects of recommendation 14-4 of the ALRC report, namely providing specific cultural awareness training for police.

400. The training applies to all police recruits (not just those being deployed to an area with a significant Aboriginal and Torres Strait Islander population). The QPS has introduced initiatives to increase Aboriginal and Torres Strait Islander employment within the Service. One initiative is a pilot program to recruit, train and engage local First Nations residents to undertake security services for government buildings. Another initiative is the appointment of a full time First Nations Recruitment Officer. These initiatives are aligned with recommendation 14-4 of the ALRC report. Queensland has a legislated requirement for police officers to notify the Aboriginal and Torres Strait Islander Legal Service (ATSILS) if an Aboriginal person or Torres Strait Islander person is taken into police custody to be questioned as a suspect about their involvement in the commission of an indictable offence. This requirement is aligned with recommendation 14-3 of the ALRC report.

401. The Queensland Government has indicated its support for increasing investment in Aboriginal and Torres Strait Islander Community Controlled Organisations (ACCOs) to deliver services to First Nations people, particularly in-service systems in which they are disproportionately represented, such as the Youth Justice system. This support has been reflected in Queensland Youth Justice updating its procurement procedures to ensure that the tendering process is appropriate and safe for ACCOs and that there is a commitment to codesign and working with First Nations services.

402. In South Australia, the Tiraapendi Wodli Port Adelaide Justice Reinvestment is an initiative supported by the South Australian Government. As part of this initiative, a Priority Action Plan has been developed in partnership with local community and includes actions to strengthen local capacity and accessibility of government services, and deliver improvements across child protection, family safety, health, justice and education. This includes the Aboriginal Families Thrive Program, a strengths-based, early intervention program that provides culturally connected and coordinated supports to Aboriginal parents, children, young men and families.

403. The South Australian Government entered into a formal Partnership Agreement with the South Australian Aboriginal Community Controlled Organisation Network (SAACCON) in November 2022 and is committed to equal participation and shared decision making to deliver on the National Agreement on Closing the Gap. The South Australia Department of

Human Services is working with SAACCON to establish a range of actions in response to Target 11 and the four priority reform areas in line with commitments under Closing the Gap.

404. The South Australian Department of Human Services is also working to meaningfully embed the Aboriginal and Torres Strait Islander Youth Justice Principle in the *Youth Justice Administration Act 2016* (SA) into all areas of service delivery. This includes strengthening culturally safe practice through the development of an Aboriginal Practice Framework.

405. In line with the recommendation of the Advisory Commission into Incarceration Rates of Aboriginal Peoples in South Australia (2022-2023), as part of a suite of measures to reduce Aboriginal incarceration rates, the South Australian Government is investing $737,000 over two years to develop an Aboriginal Justice Agreement – a formal undertaking between government and Aboriginal communities to develop and implement a collaborative approach to improve justice outcomes. A specialist therapeutic court program for Aboriginal children and young people was launched in South Australia in August 2023. The Youth Aboriginal Community Court Adelaide (YACCA) is a culturally responsive program aiming to minimise young people's interactions with the justice system through intervention and support. The program, which involves Aboriginal Elders and Respected Persons in the court process, is being trialled for two years in the Adelaide Youth Court. Participating young people have their sentence delayed while support is given to address issues that contribute to their offending and implement protective factors.

406. The South Australia Treatment Intervention Court provides programs to help people, including Aboriginal persons, who have mental health or mental impairment and/or illicit drug problems. Programs offered through the Treatment Intervention Court aim to reduce recidivism rates by stabilising the defendant’s mental and physical health and addressing drug dependence.

407. Several strategic priorities for the Department for Correctional Services (DCS) are focussed on Closing the Gap, including those that interact with health needs. In 2023, DCS launched the Aboriginal Strategic Framework 2020 – 2025, and second Action Plan 2022 - 2023 in consultation with Aboriginal prisoners and offenders, staff, and a reference group of Aboriginal leaders. The second Action Plan includes components aimed at ensuring all correctional services-led programs and services are culturally responsive and focused on increasing Aboriginal economic participation and partnerships.

408. The Mental Health and Suicide Prevention bilateral schedule with South Australia includes the establishment and operation of a new Aboriginal Mental Health and Wellbeing Centre.

409. In April 2022, the Victorian Government launched the Youth Diversion Statement outlining a commitment to diversion, prevention and early intervention.

410. The Children’s Court Youth Diversion service (CCYD) was established in 2017. The CCYD provides a legislated framework for diversion in Victoria. It aims to divert young people with limited or no criminal history. Since the program commenced in 2017, more than 9,000 diversions have been completed.

411. In Victoria, the average daily number of Aboriginal people aged 10–17 under Youth Justice supervision (both in custody and the community) reduced from 132 in 2016–2017 to 55 in 2021-22. This reduction can in part be attributed to the implementation of early intervention and diversion strategies delivered in partnership with Aboriginal organisations and community through the Victorian Aboriginal Justice Agreement. As a result, Victoria has one of the lowest rates of 10–17-year-old Aboriginal children and young people under Youth Justice supervision in Australia. This progress contributes towards Victoria’s greater commitment identified within Wirkara Kulpa (Victoria’s first Aboriginal Youth Justice Strategy) to see no Aboriginal children and young people in the Youth Justice system.

412. Wirkara Kulpa was launched February 2022 under the umbrella of the Aboriginal Justice Agreement. It is a trauma-informed, child-centred 10-year Aboriginal Youth Justice Strategy led by the Aboriginal Justice Caucus which will deliver significant reforms, initiatives, and programs to reduce the overrepresentation of Aboriginal children and young people in the justice system.

413. Wirkara Kulpa also promotes the use of pre-charge diversion and cautioning schemes through initiatives such as the Aboriginal Youth Cautioning Program (AYCP). Designed in collaboration with the Aboriginal Justice Caucus, the AYCP provides oversight of police decision-making and encourages alternative pathways for young people in contact with police.

414. The Victorian Government, under Wirkara Kulpa, is also progressing the design of alternative service models for Aboriginal children and young people aged 10-14, in collaboration with Aboriginal partners and communities along with other key stakeholders.

415. The Victorian Government continues to work with the Aboriginal Justice Caucus to implement actions in the Aboriginal Justice Agreement (which aims to improve Aboriginal justice outcomes) and to identify reform opportunities to address Aboriginal overrepresentation in custody. Work to date has focused on rehabilitation and reintegration, including pre-and post-release cultural supports, education programs, transitional housing and developing a healing unit for Aboriginal women.

416. Causes of and measures for reducing Aboriginal overrepresentation in custody have also been explored by the Victorian Yoorrook Justice Commission in its most recent Report into Victoria's Child Protection and Criminal Justice Systems.

417. In Western Australia (WA), since 2017 each of the 18 adult and youth correctional facility sites have held quarterly Aboriginal Services Committees (ASC) meetings. ASCs provide a counterbalance to 'over-securitisation', by casting a critical cultural lens over how WA's correctional system cares for some of the most vulnerable persons in our care.

418. Each of the 18 sites are required to submit their Local ASC meeting reports for review and analysis, with outcomes, trends and developments reported to the Department's Executive. ASCs:

- Monitor and improve delivery of culturally appropriate services for Aboriginal people in custody;
- Ensure local implementation and delivery of the Department's Reconciliation Action Plan actions and timelines;
- Develop, implement and report on key ASC focus areas and other service delivery needs;
- Review effectiveness and efficiency of operational practices and policies to deliver quality culturally appropriate services to Aboriginal people in our care, and
- Promote and empower Aboriginal people's involvement and active participation in ASC decision-making processes.

419. ASC's are strongly encouraged to be inclusive and seek active participation from Aboriginal prisoners and detainees, as well as external Aboriginal service providers. The underlying principles of ASCs seek to:

- Encourage Aboriginal engagement in initiatives that serve and promote wellbeing, as well as to provide culturally appropriate platforms which encourage and support Aboriginal participation;
- Ensure a culturally safe environment that is inclusive, respectful and responsive to the needs of Aboriginal people in our care;
- Recognise that Aboriginal culture, country and language is central to Aboriginal wellbeing, and ensuring these are celebrated and valued;
- Work with Aboriginal people to promote and improve the Department's cultural capacity and culturally appropriate service delivery, and
- Build meaningful partnerships with Aboriginal organisations, Elders, and other leaders within the broader community.

420. The key focus areas of ASCs include: Keeping Aboriginal People On-Country; Education and Training; Employment; Promotion of Culture and Wellbeing; Reporting of Incidents; and Review development and progress of Local Service Plans.

421. Significant efforts to reduce the overrepresentation of Aboriginal and Torres Strait Islander people are guided by the State's commitment to the National Agreement on Closing the Gap, by proactively advancing initiatives and projects aligned with Priority Reform Areas, particularly in partnership with Aboriginal Community Controlled Organisations.

422. WA closely monitors its progress against the ALRC Report and the final report from the Royal Commission into Aboriginal Deaths in Custody (RCIADIC). The State has progressed a range of legislative and policy projects to address the key areas of ALRC Report and continues to prioritise actions in line with its recommendations, including: bail; sentencing; equitable access to justice; access to appropriate identification and driver's licences; addressing fines; and adult incarceration.

4. Migrants

Reply to the recommendation contained in paragraphs 111 and 113 of the report of the Subcommittee

423. Nearly all asylum seekers (protection visa applicants) in Australia currently hold a bridging visa, or are in community detention or are otherwise not in held detention. Further, visa assessments are completed as expeditiously as possible to facilitate the shortest possible timeframe for detaining people in immigration detention facilities.

424. The Australian Government is committed to ensuring detainees in immigration detention are provided with high quality services commensurate with international standards and that the conditions in immigration detention are humane and respect the inherent dignity of every person.

425. People in immigration detention are accommodated in facilities most appropriate to their needs, circumstances and risk profile, with services developed to suit each individual's needs.

426. People in immigration detention have access to mental and physical health and welfare services, appropriate food (accommodating dietary and cultural requirements), educational programs, cultural, recreational and sporting activities, internet and computer facilities, televisions, clean and comfortable sleeping quarters, personal and professional visits, gym access and access to internal and outdoor spaces. The Australian Government respects and caters for religious and cultural diversity.

427. Australia also makes use of community detention where appropriate. Community detention was introduced in 2005 when the *Migration Act 1958* (Cth) was amended to allow the Minister for Immigration to make residence determinations. Under a residence determination, a person in immigration detention is permitted to live at a specified residence in the community while legally remaining in immigration detention. People in community detention are not under physical supervision and can move about in the community.

428. Australian governments recognise that access to legal assistance is an important element in ensuring equality of justice access and outcomes. Detainees are able to access legal representation and the Australian Government provides detainees with the means to contact family, friends and other support. The Australian Government provides an interpreter to any detainee who requires one.

429. All detainees are offered baseline and regularly scheduled mental health assessments throughout their time in detention. Regular mental health assessments are performed and delivered in line with the relevant Australian standards. Where it has been identified that a detainee has significant vulnerabilities that indicate management within a detention centre is no longer appropriate, they will be considered for alternative management options.

430. Complaints about immigration detention conditions may be made to the provider of immigration detention services, the Department of Home Affairs, as well as to independent oversight bodies such as the Commonwealth Ombudsman, the Australian Human Rights Commission, and law enforcement where there is an allegation of criminality. Detainees are informed of their rights, including those under international human rights law, and are able to comment on or complain about any matter relating to the conditions of detention.

431. People in immigration detention may seek judicial review of the lawfulness of their detention. They may also seek judicial review (and, in most circumstances, merits review) of the decision to refuse or cancel a visa which has resulted in them being an unlawful non-citizen who is subject to being detained under the Migration Act.

432. Further, the length and conditions of immigration detention, including the appropriateness of both the accommodation and services provided, are subject to regular review by senior officers of the Department of Home Affairs, and the Commonwealth Ombudsman has legislated oversight obligations of these matters. Other organisations such as the Australian Human Rights Commission, Australian Red Cross and the United Nations High Commissioner for Human Rights also have an oversight role with respect to people in immigration detention.

433. At the request of the Department of Home Affairs, the Office of the Commonwealth Ombudsman (the Office), in its role as Commonwealth NPM (for places of detention under control of the Commonwealth), has accepted the responsibility of 'Independent Visitor for Children'. When notified that a minor has been detained in immigration detention, the Commonwealth NPM will consider the individual circumstances of a child detained in, or residing under the care of a parent or guardian in, an immigration detention facility and determine whether engagement via a visit or remote monitoring would be warranted. Having a dedicated and independent mechanism to perform preventive, monitoring and oversight functions for children reinforces a message of safety, public transparency, and accountability.

VII. Next Steps

Reply to the recommendation contained in paragraph 114 of the report of the Subcommittee

434. The Australian Government is pleased to provide this reply to the Subcommittee.

Prevention of sanctions and reprisals

Reply to the recommendation contained in paragraph 115 of the report of the Subcommittee

435. All Australian governments have robust oversight bodies and policies and procedures in place to prevent reprisals against anyone who has been, or who has sought to be, in contact with the Subcommittee. This is further prevented by the nature of the unannounced visits and the requirements of the Subcommittee during such visits, which Australia duly followed.

436. All immigration detainees are able to raise complaints with the Department of Home Affairs, contracted service providers and a number of external scrutiny bodies, including the police, regarding any aspect of their detention.

437. All incidents in immigration detention are appropriately reviewed and referred to the relevant police jurisdiction where there is any allegation of criminality. Complaints made directly to external authorities are managed in accordance with the relevant authority or agency procedures. If a detainee is concerned about their treatment, or the conditions of their detention, they can make a complaint to the Department of Home Affairs (via the Global Feedback Unit), to the relevant detention services provider, the Commonwealth Ombudsman, or the Australian Human Rights Commission.

Specific measures in states and territories

438. In the Australian Capital Territory (ACT), section 16 of the *Monitoring Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018* (ACT) protects people who have given or disclosed information to the Subcommittee from reprisals.

439. In Queensland, section 20 of the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2023* (Qld) makes it an offence for a person to take a reprisal against another person because, or in the belief that, any person has provided or may provide information or other assistance to the Subcommittee.

Relevant updates

Reply to the recommendation contained in paragraph 116 of the report of the Subcommittee

440. The Australian Government is committed to protecting and promoting human rights to ensure that all Australians are able to participate fully in our democracy, our economy and our society. On 15 March 2023, the Attorney-General asked the Parliamentary Joint Committee on Human Rights to conduct a review of Australia's Human Rights Framework, to report by 31 March 2024. The Committee is considering whether the Framework remains fit for purpose, if improvements can be made, and whether the Australian Parliament should enact a federal Human Rights Act. The Government will consider the Committee's recommendations when it reports.

441. In January 2023, the Office of the Commonwealth Ombudsman (OCO) released the Commonwealth National Preventive Mechanism annual report for 2021-2022, marking the fifth anniversary of the OCO's appointment as NPM for federal places of detention and as Coordinator for all NPM bodies in Australia. Members of Australia's NPM Network, as coordinated by the OCO, have produced several statements and submissions since October 2022, including a submission to the Subcommittee on the draft General Comment on article 4 of the *OPCAT* and a submission to the Parliamentary Joint Committee on Human Rights' Inquiry into Australia's Human Rights Framework. Members of the Australian NPM have continued to meet periodically, and are due to publish the first Australian NPM Annual Report in early 2024.

Specific measures in states and territories

442. In the Australian Capital Territory (ACT), the Government has introduced the Human Rights (Complaints) Legislation Amendment Bill 2023 to the Legislative Assembly. Once passed, the Bill will establish an accessible mechanism for community members, including people deprived of their liberty, to raise complaints about alleged breaches of human rights by public authorities with the Australian Capital Territory Human Rights Commission. The Australian Capital Territory Government has committed to amend the *Monitoring Places of Detention (Optional Protocol to the Convention against Torture) Act 2018* (ACT) to clearly set out the powers, privileges and immunities of the Australian Capital Territory NPM in accordance with the *OPCAT*.

443. In Queensland, the *Inspector of Detention Services Act 2022* (Qld) establishes the Inspector of Detention Services, which is an oversight body with a preventative, proactive and independent mandate to carry out inspections of prisons, youth detention centres and police watchhouses. The Inspector of Detention Services has the purpose to promote and improve detention services and places of detention by upholding the humane treatment, management and conditions of people detained. The Inspector of Detention Services became operational in Queensland on 1 July 2023.

Continued engagement

Reply to the recommendation contained in paragraph 118 of the report of the Subcommittee

444. Australia is committed to continuing the ongoing engagement and dialogue it currently has with the Subcommittee, including through future meetings between the Subcommittee and Australia's national authorities on the implementation of the recommendations. Australia will continue to provide the Subcommittee with updates on Australia's progress and looks forward to continued engagement with the Subcommittee.