



Submission to the Australian Human Rights
Commission's *OPCAT in Australia Consultation Paper*

July 2017



**Jesuit
Social Services**
Building a Just Society

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For further information, contact:

Sally Parnell

Chief Operating Officer, Jesuit Social Services

9421 7600

sally.parnell@jss.org.au

Jesuit Social Services: Who we are

Jesuit Social Services works to build a just society by advocating for social change and promoting the health and wellbeing of disadvantaged people, families, and communities. We value all persons and seek to engage with them in a respectful way that acknowledges their experiences and skills and gives them the opportunity to harness their full potential.

We strengthen and build respectful, constructive relationships with a focus on:

- **Effective services** – by partnering with people most in need and those who support them to address disadvantage
- **Education** – by providing access to life-long learning and development
- **Capacity building** – by refining and evaluating our practice and sharing and partnering for greater impact
- **Advocacy** – by building awareness of injustice and advocating for social change based on grounded experience and research
- **Leadership development** – by partnering across sectors to build expertise and commitment for justice.

The promotion of **education, lifelong learning and capacity building** is fundamental to all our activity. We believe this is the most effective means of helping people to reach their potential and exercise their full citizenship. This, in turn, strengthens the broader community. Our service delivery and advocacy focuses on the following areas:

- **Justice and crime prevention** – people involved with the justice system
- **Mental health and wellbeing** – people with multiple and complex needs and those affected by suicide, trauma and complex bereavement
- **Settlement and community building** – recently arrived immigrants and refugees and disadvantaged communities
- **Education, training and employment** – people with barriers to sustainable employment.

For nearly 40 years, we have accompanied people involved, or at risk of becoming involved, in the criminal justice system. In Victoria we work with people to prevent and divert involvement in the justice system and support people exiting prison and youth justice facilities. This includes the Corrections Victoria Reintegration Program in North and West Metropolitan Melbourne (Reconnect), the African Visitation and Mentoring Program (AVAMP), Next Steps and Perry House residential programs, the Youth Justice Community Support Service, Group Conferencing and Barreng Moorop (delivered in partnership with the Victorian Aboriginal Childcare Agency and the Victorian Aboriginal Legal Service).

For 10 years in the Northern Territory we have worked alongside the Eastern and Central Arrernte people in a number of ways to better their situation and have more control over their lives. As part of this work, we provide community capacity building support through the Stronger Communities for Children program in the remote communities of Atitere, Bonya, Engawala and Santa Teresa; are involved in a Men's Behaviour Change program in Alice Springs in partnership with Tangentyere Council and the Alice Springs Women's Shelter, and are a member the Northern Territory-wide Making Justice Work campaign to promote evidence-based approaches to community safety in order to respond more effectively to crime in the community. We also provide capacity building support in a number of other locations, including Wadeye, and work in a similar way in New South Wales (Mount Druitt and Bourke).

In 2016, we established an office in Darwin. Our Darwin activities include policy and advocacy work, where we work alongside the Policy Unit in Victoria. We commenced piloting Youth Justice Group Conferencing in Darwin, Palmerston and Katherine in early 2017, which aims to help young people see the impact of their actions on victims of crime, and to support young people to restore relationships with those they have harmed.

Our programs also include:

- **Jesuit Community College:** increasing opportunities for people constrained by social and economic disadvantage to participate in education, work and community life and reach their full potential.
- **Community and Settlement Programs:** capacity building with Aboriginal communities in Northern Territory and NSW; and working with newly arrived migrants across metropolitan Melbourne and in NSW, including the African and Vietnamese communities.
- **Connexions:** delivering intensive support and counselling for young people with co-occurring mental health, substance and alcohol misuse problems.
- **Artful Dodgers Studios:** providing pathways to education, training and employment for young people with multiple and complex needs associated with mental health, substance abuse and homelessness.
- **The Outdoor Experience:** offering an alternative treatment service through a range of outdoor intervention programs for young people aged 15 – 25 years, who have or have had issues with alcohol and/or other drugs.

Research, advocacy and policy are coordinated across all program and major interest areas of Jesuit Social Services. Our advocacy is grounded in the knowledge, expertise and experiences of program staff and participants, as well as academic research and evidence. We seek to influence policies, practices, legislation and budget investment to positively influence participants' lives and improve approaches to address long term social challenges. We do this by working collaboratively with the community sector to build coalitions and alliances around key issues, and building strong relationships with key decision-makers and the community.

Our Learning and Practice Development Unit builds the capacity of our services through staff development, training and evaluation, as well as articulating and disseminating information on best practice approaches to intervening with participants across our programs.

We acknowledge the Traditional Custodians of all the lands on which Jesuit Social Services operates and pay respect to their Elders past and present. We express our gratitude for their love and care of the land and all life.

Our recommendations

- That appropriate professional support is provided as part of visiting teams to ensure people in custodial environments (especially those with Acquired Brain Injury, cognitive impairment or mental health issues) are able to voice their experiences and concerns.
- Youth detention facilities be prioritised as requiring immediate attention.
- That as part of implementing OPCAT, the NPM regularly review conditions for those held at offshore immigration detention facilities.
- That the NPM focus on the following areas:
 - Indefinite detention of people with cognitive disabilities
 - Use of lockdowns, isolation and restraint
 - Staff training/capacity
- That the Victorian Government increases resources to the Independent Visitor Program to strengthen capacity to effectively capture the voice and views of people who are detained and their experience of custody.
- That NPMs explore new or innovative feedback channels to complement more traditional mechanisms to allow people who have been detained to offer their views post-release (e.g. development of web-based applications).
- That an Independent Custodial Inspector be established in the Northern Territory and this role form part of the National Preventative Mechanism framework.
- That NPMs use third parties (such as community service organisations) to give people a voice once they have been released from detention

Jesuit Social Services also supports the recommendations contained in the Australia OPCAT Network's joint submission.

Introduction

Jesuit Social Services welcomes the opportunity to comment on the Australian Human Rights Commission's *OPCAT in Australia Consultation Paper*.

We support the Australian Government's commitment to ratify OPCAT and believe it:

- presents a valuable opportunity to strengthen oversight measures already in place, and enhance Australia's commitment to these protections
- will help improve oversight mechanisms and ensure that practices in youth and adult detention facilities meet UN standards of treatment and are thoroughly investigated – this includes assessing the use of isolation and solitary confinement, and subjecting these types of practices to investigation by an independent monitoring body, strengthening accountability and improving outcomes for detainees
- offers a clear opportunity to drive more holistic and therapeutic practices within prisons, and the justice system more broadly
- provides children, young people and adults within these environments – many who are often disadvantaged in multiple and complex ways – with a voice.

Given our experience and advocacy concerning people involved in the criminal justice system, our comments and recommendations are focussed on the prison environment.

Our experience of the inspection framework for places of detention in Australia

Staffing or relevant professional expertise we consider important for inspections

Given the complexity and vulnerability of people in detention, we support the need for professionals to be included on visiting teams.

As documented in Jesuit Social Services' *States of Justice: Criminal justice trends across Australia*¹, the social backgrounds of those in prison commonly include poor mental and physical health, self-harm, sexual abuse, child abuse, trauma, victimisation, disability, periods of homelessness, low education attainment, poor literacy and numeracy skills, and risky health behaviour such as tobacco, smoking and heavy drinking. Disadvantage and involvement in the justice system are inextricably linked.

Jesuit Social Services and Catholic Social Services Australia's *Dropping off the Edge 2015* report found that a small number of Australian communities experience a web-like structure of disadvantage, with significant problems including unemployment, a lack of affordable and safe housing, low educational attainment, and poor quality infrastructure and services.² Across Australia, this entrenched disadvantage is demonstrated by:

- Only six per cent of male and 14 per cent of female prisoners in Victoria having completed secondary education or equivalent,³ while only 36 per cent of eligible people in prison in 2014/15 were enrolled in education programs.⁴
- Those living in the three per cent most disadvantaged postcodes in New South Wales being three times as likely to experience long term unemployment.⁵
- An individual in the three per cent most disadvantaged postcodes in Tasmania being 50 per cent more likely to have had some form of personal contact with the criminal justice system.⁶
- In the Northern Territory, different localities have quite different patterns of disadvantage:
 - In the Tiwi Islands, disadvantage is felt in the lack of internet access, low family incomes and young adults not engaged in work or study while social indicators such as criminal convictions and prison admissions were less prominent.
 - In Katherine, disadvantage is reflected in the rankings for criminal convictions, domestic violence and prison admissions. On the other hand, skills appear to be at a higher level than in many other locations.

The inequity between the ATSI and non-ATSI populations in Australia is particularly stark and well-documented:

- The juvenile detention rate for the ATSI population is 24 times the rate of the non-ATSI population⁷
- The ATSI adult imprisonment rate increased by 77 per cent between 2000 and 2015⁸
- The unemployment rate is 4.2 times higher for the ATSI population than the non-ATSI population⁹
- The proportion of ATSI people aged 20-24 years who had attained Year 12 or equivalent is 61.5 per cent in 2014-2015 compared with 86.4 per cent for the non-ATSI population¹⁰
- The rate of homelessness is 14 times higher for the ATSI population than the non-ATSI population¹¹
- The age-standardised rate of hospitalisations for assault among ATSI people was 14 times as high as for non-ATSI people (1,157 compared with 83 per 100,000 population) in 2012–13.¹²
- ATSI children were 7 times as likely as non-ATSI children to have received child protection services¹³

According to the Australian Institute of Health and Welfare, a snapshot of prisoners on 30 June 2014 shows:¹⁴

- Three in 10 prison entrants and discharges were ATSI people
- A third of prisoners had completed Year 10, and only 16 per cent had completed Year 12
- Half of prison entrants were unemployed in the 30 days before prison entry, and one in four was homeless in the four weeks before entering prison
- One in three prison entrants had a chronic health condition
- Half of prison discharges said their health got better while in prison, for ATSI people this was three in five
- Three in four prison entrants were smokers. This is over five times the rate of the general population. Half of these smokers would like to quit
- Two in three prison entrants used illicit drugs in the 12 months prior to entering prison
- Two in five prison entrants drank alcohol at risky levels before prison; this was more than half for ATSI people
- One in four prisoners received medication for mental health related issues while in prison
- One in three had a long-term health condition or disability that limited daily activities, or restricted participation in education or employment.

In this context, it is critical that appropriate and culturally sensitive support is provided to ensure people in custodial environments (especially those with Acquired Brain Injury, cognitive impairment or mental health issues, and/or from a CALD or ATSI background) are able to voice their experiences and concerns.

As the Enabling Justice project highlights, misunderstandings that occur while people with an ABI are in prison can result in serious consequences, such as ending up 'in the slot' (in solitary confinement) or in protection, which can put their wellbeing at risk, as well as impacting upon a person's capacity to access programs needed to become eligible for parole. Without an understanding of the nature of cognitive impairment, correctional staff can misinterpret people's behaviour (e.g. like missing the correct time for medication dispensation being seen as laziness rather than affected memory capacity). The reaction from correctional staff can, therefore, exacerbate the vulnerability of the individual, and see people receive punitive responses to their cognitive impairment.

The Enabling Justice Project

Jesuit Social Services and the Centre for Innovative Justice at RMIT established the Enabling Justice project in 2015 to explore the experiences of people with an ABI in the criminal justice system and to offer alternative responses, including advocacy in order to address their over representation in the criminal justice system.

A justice user group was created and one-on-one interviews were held. Justice users themselves identified areas in need of reform and participated in discussions about issues and ideas for improving the criminal justice system. A Consultation Paper was produced to give voice to the experiences and views of the justice users involved in the project. The full consultation paper can be found at <http://jss.org.au/enabling-justice-project-consultation-paper/>.

Sometimes brain injury is not easily recognisable as it can affect specific and isolated areas of functioning. Because a brain injury can happen at any time in a person's life, in either childhood or adulthood, it is possible for the injury to go undetected, particularly if it is the result of a cumulative process (as with alcohol related brain injury), or the person was experiencing homelessness, mental illness, family violence, or drug and alcohol misuse, where comprehensive medical treatment and

rehabilitation services may never have been accessed. For this reason ABI is often referred to as a 'hidden' disability, and the actions of people with ABI may be put down to behavioural and personality issues.

Some of the issues in the consultation paper include:

- Current sentencing options for people with an ABI are too limited, meaning that prison is often the only available option
- Prison should be an opportunity for assessment and connection to social support, particularly for those found to have cognitive impairment and/or multiple and complex needs
- A term of imprisonment should be a punishment of last resort for low-level offending
- Transitional centres seem to be a necessary bridge between prison and the community, and reduce recidivism; but there are not enough to meet demand
- Investment in post-release housing is necessary to reduce recidivism, ensure community safety and allow ex-prisoners to live dignified lives.

A final report of the project will be released in late 2017.

The types of professionals that may be required during visits include: social workers; psychologists/mental health practitioners; disability workers; interpreters/translators/elders; family violence workers.

We recommend appropriate professional support is provided as part of visiting teams to ensure people in custodial environments (especially those with Acquired Brain Injury, cognitive impairment or mental health issues) are able to voice their experiences and concerns.

What are the most important or urgent issues that should be taken into account by the NPM?

Specific places of detention that are of immediate concern

Given the National Children's Commissioner's work in 2016¹⁵ to assess the readiness of youth justice processes to implement OPCAT identified that all jurisdictions have some gaps that must be addressed as they move towards compliance with the NPM criteria – as well as documented evidence of continued abuse in **youth detention facilities** across Australia (see Appendix 1) – we suggest that youth detention centres require immediate attention.

We also believe it is critical to include **offshore immigration detention facilities** within the jurisdiction of OPCAT. People who come to Australia seeking asylum are among the most vulnerable members of our community. Respect for their human dignity and health and wellbeing requires that they are properly fed, sheltered, safe, provided with appropriate educational opportunities, receive medical care and have their claims adjudicated fairly within a reasonable timeframe.

As highlighted in Jesuit Social Service's submission to the Senate Inquiry into *Serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru Regional Processing Centre, and any like allegations in relation to the Manus Regional Processing Centre*¹⁶, numerous allegations of abuse, coupled with protests and frequent reports of self-harm and attempted suicide, raise the

important question of who in practice is responsible for ensuring that the rights of people seeking asylum are upheld. Recent debate over legal jurisdiction indicates a lapse in transparency and accountability, and consequently undermines the protection of people directly affected by the experience of prolonged immigration detention.

It is our view that the Australian Government is responsible for people who travel to Australia seeking asylum, and that an independent third-party reviewer should be established to regularly review conditions for those held at Nauru and Manus Island.

We recommend that youth detention facilities be prioritised as requiring immediate attention.

We recommend that as part of implementing OPCAT, the NPM regularly review conditions for those held at offshore immigration detention facilities.

Based on our experience working with people in **adult prisons** (and post-release) as part of the ReConnect program in Victoria, we note the following:

- Prisons often have a narrow risk assessment (focussed on risk to self and/or others), not the broader factors behind why people are there (and what support they need to address underlying needs).
- There is a poor understanding of CALD language barriers and support needs (translators are commonly identified as not required, however our experience often contradicts this assessment)
- Poor management of people with complex needs is common (e.g. limited staff skills to appropriately and sensitively respond to people with intellectual disability and cognitive impairment)
- High use of remand creates a volatile environment and restricts access to support programs.
- An over-reliance on management (e.g. isolation as a behaviour management tool) only serves to exacerbate existing trauma and underlying issues, and works against positive rehabilitation and re-socialisation.
- Straight release from prison (sometimes directly from strict management regimes) is often characterised by poor transition arrangements and limited access to: pre-release visits; basic health information upon exit (i.e. medication type and dose); and support in community. This is particularly the case for young men and people from an ATSI background.
- Inequitable access to support programs in prison.
- Staff not being trained in trauma-informed practices, and taking a punitive rather than rehabilitative approach.
- Private prisons can be more challenging in terms of engaging with staff, poor culture, and higher staff to prisoner ratios.
- Use of medication as a behaviour control mechanism (e.g. to manage aggression).

ReConnect

The ReConnect program supports high risk and high profile men and women to transition from prison to community. ReConnect provides targeted (up to four weeks) and intensive (up to 12 months) reintegration outreach services for serious violent or sex offenders, Aboriginal and Torres Strait Islander, women prisoners, and prisoners with high transitional needs.

ReConnect aims to: create individual transition plans for people exiting prison; provide assertive outreach and practical assistance to people exiting prison; assist people exiting prison to address the underlying causes of their offending; facilitate community reintegration and reduce re-offending.

Jesuit Social Services delivers ReConnect across Melbourne's north and western regions, as part of the Corrections Victoria Reintegration Pathway.

While we have observed these issues in Victoria, we believe that they are likely to be common across jurisdictions and therefore warrant consideration and scrutiny in the context of OPCAT implementation throughout Australia.

Broader systemic issues that the NPM should focus on

Indefinite detention of people with cognitive disabilities

As argued in our submission to the Senate Community Affairs References Committee's *Inquiry in to Indefinite detention of people with cognitive and psychiatric impairment in Australia*, under current Australian schemes the criminal justice system does not easily adapt and respond to the complex and varied needs of people with cognitive and psychiatric impairment. There is a serious lack of specialised screening and assessment tools, a lack of access to appropriate therapeutic support services, inflexible and inadequate legislative schemes and a lack of appropriate and rehabilitative diversion options. People with cognitive and psychiatric impairments are at high risk of re-entering the justice system without receiving the crucial support they need, including interventions to reduce offending. We are greatly concerned that this issue has a disproportionate impact on Aboriginal and Torres Strait Islander people given that they are over-represented in both the criminal justice system and amongst people with disabilities.

Jesuit Social Services has serious concerns about the interactions of people with cognitive and psychiatric impairments at all points in the criminal justice system, particularly regarding their indefinite detention.

Jesuit Social Services calls for an end to the arbitrary and indefinite detention of people with cognitive and psychiatric impairments. Detention of people with cognitive and psychiatric impairments should only be used as a last resort and must be suited to the person's circumstances/needs, including specialised, therapeutic programs. Wherever possible, people with cognitive and psychiatric impairments should be supported as part of a health (not punitive justice) response. This will require legislative change, including: repealing mandatory sentencing laws; amendments to bail laws; and amendments to relevant legislation to remove the indefinite detention of people who are deemed unfit to plead.

Jesuit Social Services strongly recommends the introduction of appropriately resourced, accessible and specialised assessment and screening tools at all key points of the justice system (across all Australian jurisdictions). Coupled with this is the need for appropriately resourced and specialised therapeutic

support options both within the community and in prison, including in remote and regional Australia. Diagnosis and appropriate therapeutic support at the earliest opportunity would reduce the likelihood of further contact with the criminal justice system as well as ensuring compliance with Australia's human rights obligations.

Use of lockdowns, isolation and restraint

Impacts of solitary confinement: International research and our experience

In light of the health and community safety risks associated with solitary confinement as confirmed by both international research and local experience, Jesuit Social Services considers that the use of isolation, separation and lockdowns in youth justice centres, and for young people in adult prisons, should be kept to an absolute minimum. Practices must ensure that harm to children and young people is minimised and that their rights are protected.

We recognise and support the findings of the World Health Organisation,¹⁷ which show that:

- The detrimental effects of solitary confinement on health include anxiety, depression, anger, cognitive disturbances, perceptual distortions, paranoia and psychosis.
- Levels of self-harm and suicide, which are already much higher among prisoners than in the general population, rise even further in segregation units.
- Prisoners with pre-existing mental illness are particularly vulnerable to the effects of solitary confinement.
- Children and young adults are still developing physically, mentally and socially, which makes them particularly vulnerable to the negative effects of solitary confinement.
- Solitary confinement can affect rehabilitation efforts and former prisoners' chances of successful reintegration into society following their release.
- International human rights law requires that the use of solitary confinement be kept to a minimum and reserved for the few cases where it is absolutely necessary, and that it be used for as short a time as possible.

Solitary confinement negatively affects an individual's overall level of physical and mental health in custody. Many people describe experiencing physical health impacts such as deterioration in eyesight (e.g. seeing black dots), poor appetite and joint pain. Mental health impacts are more profound and include increased difficulty in regulating emotions (e.g. anger/rage), constant hypervigilance and paranoia, distortions in time, increased suicide/self-harm risk, increased symptoms of anxiety/depression, and describe feeling that they are going 'crazy'.

Solitary confinement also creates significant barriers to achieving successful rehabilitation and reintegration. People are often released straight back into the community from these regimes after spending up to 23 hours in their cell a day. This significantly compromises community safety and puts the individual leaving this regime at significant risk in the community.

For children, researchers have demonstrated the link between isolation and lasting psychological damage.¹⁸ Children and young people are particularly vulnerable due to the fact that they are still developing mentally and physically. The traumatic nature of isolation can have a severe consequence on adolescent brain development, making them all the more vulnerable to sustained contained with the justice system and suicide.¹⁹

In the Northern Territory, excessive use of isolation, lockdowns and restraint in youth detention centres has been identified in a number of reviews:

- Hamburger Report 2016: *“...it appeared that the “de-escalation” and observation cells are the only recourses of staff, and there is little or no attempt to talk down or de-escalate youth who are involved in incidents or act out. At Don Dale, placement in a “de-escalation” cell is in effect separate confinement, with youth spending the maximum 24 hours in a “de-escalation cell, once placed in one.”*
- Children’s Commissioner Own Initiative Report 2016: *“...prolonged and often repeated episodes of isolation for extended periods of time were identified. This often led to further outbursts with the young person becoming increasingly more agitated and attempting self-harm.”*
- Vita Report 2016: *“The review found that too much reliance was placed on confinement and separating detainees away at Don Dale in particular. This was probably due to the lack of appropriate cellular and other centre infrastructure as well as a lack of training and supervision of staff.”*
- Royal Commission Interim Report 2017: *“The Commission is continuing to take evidence on a range of practices within the detention centres, including the use of restraints, isolation and force, as well as the general treatment of detainees by detention centre staff. The evidence heard so far, however, raises serious concerns about inappropriate and unlawful practices, unacceptable standards of conduct and inappropriate methods of dealing with detainees within the youth detention centres”*

Young people in the adult criminal justice system (aged 18-25) are identified as being particularly vulnerable to the ill effects of isolation due to their developmental age. Isolation not only risks exacerbating or bringing on short and long term mental health issues, but can also prove physically harmful to the health and well-being of adolescents by restricting their ability to engage in physical exercise.²⁰ Isolation also increases the risk that those detained will self-harm, for example by banging their heads against walls.²¹

In Victoria, we have worked with young men aged under 23 who have experienced long term management placements (isolation) in adult prisons, sometimes for long periods of time (e.g. two years). Some of these young men identify as Aboriginal and have had limited culturally appropriate supports whilst under this regime. Many young men are placed within these regimes following their involvement in incidents in the prison. What we know is that young men who have experienced significant trauma experience impacted brain development and as a result are more likely to react with a fight/flight response when feeling under threat.

Given this, young men will generally react in a way that they know keeps them alive when they feel under threat from prison staff or other prisoners – namely, with violence. We are concerned that long term isolation has become the Victorian prison system’s default response to ‘managing’ young men who have experienced trauma.

Jesuit Social Services has worked to support some of these young men to transition into the community, which has been a challenging journey for them. Many report feeling ‘institutionalised’ at a young age upon release, struggle to manage day-to-day living tasks such as being out in public, experience constant feelings of hypervigilance and, at times, have created spaces to sleep in that are the same size as a prison cell.

Some of these young people would describe feeling as though they have ‘lost’ themselves under this regime and have limited hope for their future in the community. Many are traumatised from what they have experienced in custody during prison incidents and from spending such prolonged periods of time in isolation.

Many of these young people do not remain in the community for long periods of time, often returning to prison. This is particularly concerning not only for the wellbeing of these young people and for economic reasons, but also as it risks undermining the safety of the community. Importantly, their offending tends to significantly increase in severity from their previous offences.

Keeping young people under 25 in isolation is particularly concerning as we know the adult brain does not fully develop until the age of 25 or beyond. For a 20 year old who has experienced significant trauma and is put in isolation for an extended period, the lasting impacts on his/her brain development can be significant.

Solitary confinement and isolation are not conducive to rehabilitation, reintegration or community safety, and increase risk to the community. We should heed the lessons concerning the impact on young people experiencing these conditions in adult prisons and ensure that these practices are used as an option of absolute last resort (and preferably not at all) for children and young people in youth justice facilities.

Staff training/capacity

Legislative, regulatory and oversight frameworks must be underpinned and complemented by an ongoing and enhanced focus on strengthening a culture that supports a rehabilitative approach in custodial environments. In this regard, it is critical that prisons are sufficiently resourced to manage the multiple and complex needs of people in detention.

Part of the challenge is that staff are often low-paid and operating in a culture of monitoring and compliance. Staff within youth and adult detention centres set the tone for the people's experience of detention. The influence that these officers' behaviour has on people in their care is significant.

A therapeutic and trauma-informed approach to detention is the beginning of an approach which – when delivered together with purposeful day-based activities, access to therapy, restorative practice, and offender specific programs – has the potential to greatly improve outcomes for people leaving detention.

We believe that Governments must ensure that youth detention and adult corrections officers are trained in a trauma-informed youth specific therapeutic practice framework by experienced and qualified instructors, and that this should: be delivered by an accredited provider; be part of a program of ongoing professional development; complemented by Senior Practitioners; and supported by regular reflective practice.

Example - Youth justice

Jesuit Social Services believes that recent events in Victoria have highlighted the risk of using an under-skilled, under-resourced and casualised workforce to address the needs of a vulnerable and complex group of young people. In the Northern Territory, the inadequacy of staff training has been widely documented.²²

We can turn to international jurisdictions to see examples of best-practice in youth justice workforce capability (see table below). In the United States, industry hiring processes have tightened over time, largely due to staff misconduct. Juvenile corrections officers working in federal youth detention centres are required to possess a university level degree and the selection process involves a thorough background investigation that includes inquiries with family members and friends.²³ In the Netherlands, staff require a minimum three-year bachelor degree to work in youth prisons,²⁴ and in Spain's youth detention 'Re-education Centres' run by non-profit organisation Diagrama, front-line staff (named 'educators') are expected to have a professional qualification.²⁵

Jurisdiction	Facility	Minimum qualification
Victoria	Youth justice centre	None
Northern Territory	Youth Detention Centre	None * but receive a Cert III qualification in Correctional Practice (Youth Justice) during the first 12 months of employment
United States	Federal youth detention centre	Undergraduate university degree
The Netherlands	Youth detention centre	Undergraduate university degree
Spain	Re-education Centre	Professional qualification

We envision a youth justice workforce across Australia that is highly qualified and grounded in principles that place the interests, developmental needs and rehabilitation of children and young people at the forefront.

We recommend the NPM focus on the following areas:

- Indefinite detention of people with cognitive disabilities
- Use of lockdowns, isolation and restraint
- Staff training/capacity

How should Australian NPM bodies engage with existing inspection mechanisms and NGOs?

Ensuring a diversity of options

It is critical that there is a diversity of mechanisms and responses to ensure that the rights of children, young people and adults are upheld in custodial settings. There is a clear opportunity to better monitor quality and complaints and to explore other avenues to support people to raise and articulate their concerns. Jesuit Social Services' experience working with people who intersect the criminal justice system – including custodial settings – would indicate that establishing a relationship of trust is critical to understanding their experience of custody. Please note that the below paragraphs relate primarily to the Victorian context.

The experience of Jesuit Social Services at Perry House, a four-bedroom residential service for young people with an intellectual disability who intersect the criminal justice system (located in Melbourne), indicates that oversight by Community Visitors delivered by the Victorian Office of the Public Advocate helps to ensure accountability for good practice and drive holistic, person-centred practice. Community Visitors arrive unannounced and observe, ask questions, talk to residents and review documents, resulting in a report for the Department of Health and Human Services. Given the significant numbers of children and young people who have lower level cognitive functioning or a diagnosed intellectual disability and are incarcerated, we would support a greater alignment between Youth Justice and Disability complaint mechanisms.

The current Independent Visitor Program (Commissioner for Children and Young People) performs this role to an extent but their presence at the Centres is known in advance which may at times place limitations on its effectiveness. This could be offset by a number of unannounced visits as is the case

with Community Visitors. As a further example, Victoria could align complaint mechanisms with what happens in the disability sector, where sign off is required from an independent third party (e.g. Office of the Principal Practitioner) when looking at regimes to manage restrictive interventions and compulsory treatment by service providers. This could include any significant modification of behaviour support plans such as changes to medication regimes or the use of restraints and isolation/solitary confinement.

We would support an increase in resources to the Independent Visitor Program (Commissioner for Children and Young People) to strengthen their capacity to effectively capture the voice and views of children and young people and their experience of custody.

In practice, often the last opportunity for people in detention to offer feedback is at exit; however, providing additional formal channels to feed into existing mechanisms (e.g. Commissioner for Children and Young People) once young people are in the community would enhance accountability. This could include the development of web-based applications where young people can provide feedback.

It is also critical to make sure that young people are aware of their rights in detention and how they can make a complaint. This will help ensure they are empowered to raise issues if they are being mistreated, not feeling safe, etc.

We recommend the Victorian Government increase resources to the Independent Visitor Program to strengthen capacity to effectively capture the voice and views of people who are detained and their experience of custody.

We recommend NPMs across Australia explore new or innovative feedback channels to complement more traditional mechanisms to allow people who have been detained to offer their views post-release (e.g. development of web-based applications).

Independent Custodial Inspector in the Northern Territory

As per our submission to the *Royal Commission into the Protection and Detention of Children in the Northern Territory*²⁶, we support the call by the North Australian Aboriginal Justice Agency (NAAJA), Central Australian Aboriginal Legal Aid Service (CAALAS) and Northern Territory Legal Aid Commission (NTLAC) for the establishment of an Independent Custodial Inspector in the Northern Territory. We recommend that this role form a part of an effective and independent NPM framework committed to safeguarding the values and standards of *UNCAT*.

Establishing a Northern Territory Inspector of Custodial Services within the framework of a NPM would have broad benefits for young people in youth detention, as it would ensure that legislative protections for children and young people detained are upheld.

Specifically, the Western Australian Inspector of Custodial Services should be drawn on as the model to adopt, given its focus on institutional and systemic issues, not just individual complaints. It has the power to obtain relevant information and undertake reviews on custodial services that are then tabled in Parliament and made publically available, ensuring accountability and transparency.

This Royal Commission presents a clear opportunity for Australia to strengthen and safeguard human rights, and for the youth detention system to strengthen accountability to vulnerable children and young people in their care through implementing an effective oversight mechanism.

We recommend the establishment of an Independent Custodial Inspector in the Northern Territory and that this role form part of the National Preventative Mechanism framework.

Harnessing the expertise of community service organisations

In addition to using volunteers, we could also strengthen processes by using third parties (such as community service organisations; CSOs) to give people a voice once they have been released from detention. Because CSOs are more removed from the statutory environment and have built trust with those in/exiting custody, they have a critical role to play in identifying problems in places of detention. In this context, it is vital that formal mechanisms are established to enable CSOs to work with NPMs to effectively harness their on-the-ground program experience, and to develop positive solutions in a collaborative manner.

We call on NPMs to use third parties (such as community service organisations) to give people a voice once they have been released from detention.

Appendix 1 – Youth Justice abuses in Australia

Victoria²⁷

- In Victoria, the transfer of young people from a youth justice centre to the adult maximum security Barwon Prison was recently found unlawful by the Supreme Court, with the Government ordered to move the young people back to youth justice centres. In his address at Jesuit Social Services' National Justice Symposium, Hugh De Kretser, Executive Director of the Human Rights Law Centre, detailed the experience of young people at Barwon; the volatility, the tension, the denial of proper education, the overuse of solitary confinement, constant handcuffing, and evidence of assaults by adult prison guards.
- The Commissioner for Children and Young People found that isolation and 'lock-down' practices are used at unacceptable levels in Victoria, and also highlighted persistent staff shortages and a lack of reliable information and transparency about the use of these practices. Their report *The Same Four Walls* documents how whole units or entire centres were 'locked-down', with all children locked in their cells, at least 520 times in 18 months, largely due to inadequate staffing. At least 50 recorded lock downs lasted more than 36 hours. The report found 'children and young people enclosed alone between four walls with limited access to fresh air, human interaction, stimulation, psychological support and, in some circumstances, basic sanitation.'

Northern Territory²⁸

- The Four Corners exposé on the Don Dale youth facility in the Northern Territory sparked a Royal Commission into the abuse and horrific conditions to which children and young people were subjected. This included reports of young offenders being stripped naked, assaulted and tear gassed.
- As per the Interim Report of the Royal Commission, the evidence heard so far raises serious concerns about inappropriate and unlawful practices, unacceptable standards of conduct and inappropriate methods of dealing with detainees within youth detention centres. The Commission has also heard concerns about the age and unhygienic conditions of the detention centres, their inappropriate design, the absence of privacy and the lack of windows for natural light and ventilation.

ACT²⁹

- The Canberra Times claims to reveal six years of violence and abuse inside the Bimberi Youth Detention Centre in the ACT. Frontline staff, former detainees and government officials have come forward to blow the whistle on a series of disturbing incidents between 2011 and 2017. Young people have allegedly been abused and humiliated by a small number of "bad apple" staff, several inside sources alleged. Staff have themselves been threatened and attacked by volatile detainees, with occupational violence dismissed as part and parcel of their difficult job, sources added.
- Allegations have included: "Sickening" acts of violence between detainees and staff members; Guards encouraging children to settle disagreements in organised fights; Detainees being supplied with alcohol and drugs; Indigenous and immigrant detainees being goaded with racial slurs.
- Current staff members said a lack of resources and training created an environment where they were concerned for their own safety when dealing with volatile detainees.
- The ACT Government's Executive Director of Youth Services, Dr Mark Collis has said "I am confident the centre hasn't had the kind of catastrophic failures that others have. We have a centre that delivers really good outcomes for kids."

- The ACT Human Rights Commission has confirmed that it is aware of concerns about the treatment of young people at Bimberi. “We have a number of regulatory and oversight mechanisms that we are utilising regarding these concerns that have been brought to our attention, and are reviewing Bimberi practices, including use of force and strip-searching, which we expect to complete later in 2017,” a spokeswoman said.

Queensland³⁰

- The independent review into Queensland's youth detention centres was launched after a scathing Amnesty Report and graphic footage was aired of serious mistreatment of children within the Cleveland Youth Detention Centre in Townsville. Over 80 recommendations were made to bring the Queensland youth justice system in line with international law and to respond to the individual developmental needs of each child. The Queensland Government has pledged to implement all recommendations.
- Allegations included young people being hog-tied, physically abused, locked down in isolation likely to cause significant sensory deprivation and subjected to barking and snapping security dogs.

NSW³¹

- A review is underway in New South Wales into the use of force and isolation in juvenile detention, after it emerged some detainees had been locked in their rooms for extended periods. In one case, under the highly controversial but now defunct Chisholm Behaviour Program, a detainee was held in his room for 166 days out of 300.
- Restrictions are decided on a case-by-case basis by Juvenile Justice, but the ABC understands some detainees have been made to wear handcuffs during their recreation hour or are banned from mixing with others. Greens MP David Shoebridge said the practice constituted abuse.

Tasmania³²

- In mid-2016, the conduct of an Ashley Youth Detention Centre employee in restraining a young person during an incident was "of such gravity" that a formal state service investigation was initiated. The worker was eventually charged with assaulting two teenagers at the facility. An independent report completed before this incident found worrying staff behaviours, and a preference for physical restraint rather than de-escalation techniques, which it warned could lead to clashes with staff.
- The Tasmanian Government also commissioned a paper into custodial options in 2016. The Government is currently considering the report and has refused to reveal its recommendations.

Western Australia³³

- On 17 July 2017, the WA Office of the Inspector of Custodial Services released his report *Behaviour management practices at Banksia Hill Detention Centre* which found that the centre was unstable. The report detailed that between September 2016 and May 2017, the Department resorted to its specialist tactical response body (Special Operations Group) to bring some incidents to a close. On a number of occasions, SOG deployed distraction devices ('flash bombs' or 'flash bangs'), shotgun laser sights, and chemical agent. The report claimed that this use was unprecedented in either adult or youth facilities in the state, and that it was the most tangible and telling sign of a facility that was failing the basics.
- In February 2017, after viewing footage of an incident on 31 December 2016, the Inspector issued a 'Show Cause Notice' to the Department about aspects of the use of firearms and distraction devices. The Inspector also noted in the report that the first part of 2017 saw fewer

incidents of damage than 2016. However, levels of self harm, attempted suicide and assault remained high.

- The report stated that “it is difficult to avoid the conclusion that the ‘one-stop shop’ model has been a failure”. It recommended that the Government investigate opportunities for smaller facilities across the State. Other recommendations included: there must be a clear and consistent sense of purpose, driven by management and head office leaders; there must be an active, positive, stimulating regime for the young people; children in crisis and need must be given psychological and other specialist support.

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³ Ibid.

⁴ Department of Justice and Regulation (2015). *Annual Report, 2014-15*. Victorian Government, Melbourne. Available at: http://assets.justice.vic.gov.au/justice/resources/d2a58cac-e746-4942-a6be-9e4edc28db85/djr_annualreport2015.pdf

⁵ Ibid.

⁶ Ibid.

⁷ Productivity Commission for the Steering Committee for the Review of Government Service Provision 2016, *Overcoming Indigenous Disadvantage: Key Indicators 2016*, Commonwealth of Australia, <http://www.pc.gov.au/research/ongoing/overcoming-indigenous-disadvantage/2016/report-documents/oid-2016-overcoming-indigenous-disadvantage-key-indicators-2016-overview.pdf>

⁸ Ibid

⁹ Australian Institute of Health and Welfare (2015a), *The health and welfare of Australia’s Aboriginal and Torres Strait islander peoples 2015*, Cat. No. IHW 147, AIHW, Canberra, <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129551281>

¹⁰ Department of Prime Minister and Cabinet, *Closing the Gap: Prime Minister’s Report 2017*, Commonwealth of Australia 2017, Canberra, <http://closingthegap.pmc.gov.au/sites/default/files/ctg-report-2017.pdf>

¹¹ AIHW 2015a

¹² Ibid.

¹³ Ibid.

¹⁴ Australian Institute of Health and Welfare (2015b). *The health of Australia’s prisoners 2015*. AIHW, Canberra. Available at: <http://aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129553682>

¹⁵ <https://www.humanrights.gov.au/sites/default/files/Executive%20Summary%20FINAL.pdf>

¹⁶ <https://jss.org.au/submission-to-the-federal-senate-inquiry-into-nauru-and-manus-island/>

¹⁷ World Health Organization (2014) Prisons and Health, http://www.euro.who.int/_data/assets/pdf_file/0005/249188/Prisons-and-Health.pdf.

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²¹ Begley, P & Maley J (2016), ‘Solitary Confinement in Juvenile Jail Has Stopped, But Unclear When: Minister’, *Namoi Valley Independent*, 5 November 2016.

²² See the Royal Commission into the protection and Detention of Children in the Northern Territory Interim Report 2017 (<https://childdetentionnt.royalcommission.gov.au/about-us/Documents/RCNT-Interim-report.pdf>); Hamburger et al. 2016, Report of the Review of the Northern Territory Department of Correctional Services, (https://justice.nt.gov.au/_data/assets/pdf_file/0010/384454/NTDCS-Review-Final-Report-PDF-Redacted-Final.pdf); Office of The Children’s Commissioner Northern Territory 2016, Own Initiative Investigation Report: Services Provided by the Northern Territory Department of Correctional Services to Don Dale Youth Detention Centre and Alice Springs Youth Detention Centre, (http://www.childrenscommissioner.nt.gov.au/pdfs/other_reports/PDF%20Final%20Investigation%20Report.pdf); and Vita 2015, Review of the Northern Territory Youth Detention System Report,

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