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## Human Rights Law Centre submission

Submission to the Royal Commission into the Protection and Detention of  
Children in the Northern Territory

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28 October 2016

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## Contact

Ruth Barson  
Director of Legal Advocacy  
Human Rights Law Centre Ltd  
Level 17, 461 Bourke Street  
Melbourne VIC 3000

T: + 61 3 8636 4450  
F: + 61 3 8636 4455  
E: [ruth.barson@hrlc.org.au](mailto:ruth.barson@hrlc.org.au)  
W: [www.hrlc.org.au](http://www.hrlc.org.au)

## Human Rights Law Centre

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## 2. Summary

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### 2.1 Summary of submissions

1. These submissions are intended to provide an overview of the human rights issues which are central to the Royal Commission's mandate, with a particular focus on Terms of Reference (c)(iv), (d) and (g). These submissions also build on relevant evidence already received by the Royal Commission – in particular, the statement of the National Children's Commissioner.
2. These submissions pay particular attention to the specific rights of Aboriginal and Torres Strait Islander young people, given they constitute over 90 per cent of the Northern Territory's youth detention population. Rather than dealing with Aboriginal and Torres Strait Islander young people's rights discretely, the Northern Territory's entire youth justice system should be designed with the rights of Aboriginal and Torres Strait Islander young people at its core.
3. These submissions identify the key human rights issues central to the Royal Commission's mandate, but are not intended to be the HRLC's final submissions. In particular, the HRLC intends to make further submissions analysing best practice youth detention models internationally, with a particular focus on jurisdictions with large Indigenous populations.
4. The HRLC would be pleased to provide further information or evidence, including in areas not covered in these submissions. Notably, these submissions are being lodged prior to the hearing of evidence about past and current youth detention practices. Once such evidence is ventilated, the HRLC may provide further input into how such practices give rise to further breaches of or inconsistencies with human rights obligations, and how they should be changed to better protect the human rights of young people.

### 2.2 Summary of preliminary recommendations

The following recommendations are not intended to be final. Rather, they are intended to be preliminary suggestions to guide the Royal Commission's further lines of enquiry with respect to ensuring human rights compliance.

#### ***Recommendation 1: Aboriginal and Torres Strait Islander young people***

- All of the Royal Commission's recommendations should be framed with the unique rights and vulnerabilities of Aboriginal and Torres Strait Islander young people at their core.

#### ***Recommendation 2: use of restraints***

- Restraints should only be used in exceptional circumstances (such as imminent risk of escape, or harm to self or others), where all other less restrictive control methods have been exhausted and never for routine or disciplinary purposes.
- The register of restraints should be made publically available annually.

### ***Recommendation 2: solitary confinement***

- Solitary confinement should not be permitted in any circumstances in youth detention.

### ***Recommendation 3: strip searching***

- The Royal Commission should seek clarification about existing strip searching policies and practices in the Northern Territory's youth detention facilities.
- Strip searching should be abolished in youth detention or, at the very least, significantly limited to circumstances of absolute necessity, and informed by a risk-based (rather than routine-based) approach.

### ***Recommendation 4: age of criminal responsibility***

- The age of criminal responsibility should be raised to 12 years.

### ***Recommendation 5: provision of medical care and proper education***

- Early assessment of all young people in detention should be undertaken to diagnose disability or other health issues, which would enable provision of proper care and treatment.
- The provision of education in detention should be aligned to the needs and abilities of each young person and designed to prepare them for return to society. The Royal Commission should consider a robust model of education provision for the Northern Territory's youth detention facilities, similar to Parkville College in Victoria.

### ***Recommendation 6: oversight***

- Limitations on the independence and scope of the role of the Northern Territory Children's Commissioner should be removed.
- A whole of government independent oversight body should be established, modelled on Western Australia's Office of the Inspector of Custodial Services.

### ***Recommendation 7: Human Rights Act***

- A Human Rights Act, modelled on legislation in Victoria and the ACT, should be implemented in the Northern Territory.

### ***Recommendation 8: vulnerable minorities***

- Young people with disability – steps should be taken to ensure young people with disability have access to early diagnosis and subsequent treatment and care in detention.
- Girls – the Royal Commission should explicitly consider the unique vulnerability of girls in detention and ensure that all recommendations are gender-sensitive.
- LGBTI young people – policies should be developed to protect the rights and integrity of lesbian, gay, bisexual, transgender and intersex young people in detention.

### 3. Human rights compliant youth detention framework

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#### 3.1 Why consideration of non-compliance is relevant to the Royal Commission

5. Central to the Royal Commission's mandate is an analysis of:
- (a) whether the treatment of young people in youth detention is inconsistent with human rights or freedoms embodied in Commonwealth or Northern Territory law or recognised by an international instrument; and
  - (b) the reforms necessary to prevent ongoing violations of young people's rights.<sup>1</sup>
6. In order to fulfil this mandate, the Royal Commission will require an understanding of:
- (a) relevant human rights obligations and standards;
  - (b) current deficiencies in legislation, which contribute to treatment inconsistent with human rights obligations;
  - (c) examples of human rights compliant youth justice practices; and
  - (d) a framework for reform, which ensures deficiencies are remedied and laws, practices and oversight mechanisms are both human rights compliant, implementable and effective.

#### 3.2 Relevant international instruments

7. These submissions focus on the most pertinent ratified conventions,<sup>2</sup> being the Convention on the Rights of the Child (**CROC**) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (**CAT**), and the guiding principles, standards and international jurisprudence which shed light on these instruments.
8. These submissions also pay particular attention to the International Covenant on Civil and Political Rights (**ICCPR**), the International Covenant on Economic, Social and Cultural Rights (**ICESCR**), the Convention on the Rights of Persons with Disabilities (**CRPD**) and the UN Declaration on the Rights of Indigenous Peoples (**UNDRIP**).
9. Australia's obligations under each convention must be upheld by all levels of government in each state and territory.

#### 3.3 Key human rights principles

10. The key overarching human rights principles which should guide the Royal Commission's considerations can be summarised as follows:

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<sup>1</sup> See Terms of Reference (c)(iv) and (g)(i)-(iii).

<sup>2</sup> The ICESCR, ICCPR, CAT and CROC were ratified by the Australian Government in 1975, 1980, 1989 and 1990 respectively.

- Parties must implement legislation and practices which are in the best interests of the child and which protect children from all forms of physical or mental violence, injury, abuse, neglect, maltreatment or exploitation.<sup>3</sup>
- The torture and ill-treatment of children is absolutely prohibited and states must ensure that children deprived of their liberty are treated with humanity and respect for their inherent dignity.<sup>4</sup>
- Young people deprived of liberty are particularly vulnerable to abuse, torture and treatment which may undermine long-term psychological and physical well-being.<sup>5</sup> The unique status of children deprived of liberty requires 'higher standards and broader safeguards for the prevention of torture and ill-treatment.'<sup>6</sup>
- The aim of detention is the reformation and social rehabilitation of detainees and young people should be accorded age-appropriate treatment.<sup>7</sup>
- Deprivation of liberty should be 'a last resort measure to be used only for the shortest possible period of time.'<sup>8</sup>

### 3.4 Indigenous Peoples' rights

11. Approximately 96% of young people in youth detention facilities in the Northern Territory are Aboriginal or Torres Strait Islander. This statistic is emblematic of the failure of successive governments to implement effective reforms and uphold Indigenous young peoples' human rights, which has drawn criticism from the Committee on the Rights of the Child,<sup>9</sup> the Committee against Torture,<sup>10</sup> numerous Special Rapporteurs and, most recently, by the Human Rights Council when Australia was subject to its Universal Periodic Review.<sup>11</sup>
12. Whilst these submissions focus on specific inconsistencies between Northern Territory legislation and relevant human rights obligations, each and every issue and reform proposal must be considered in light of the unique rights, needs and vulnerabilities of Aboriginal and Torres Strait Islander young people, and the importance of ending their staggeringly high over-representation in the criminal justice system.

<sup>3</sup> *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) ('CROC') art 19.

<sup>4</sup> CROC art 37; *International Convention on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976) ('ICCPR') art 7 and art 10; and *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987) ('CAT') art 2.

<sup>5</sup> This position was expressed by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment of punishment and was affirmed by the American Academy of Child and Adolescent Psychiatry in 2012. See, [http://www.aacap.org/aacap/policy\\_statements/2012/solitary\\_confinement\\_of\\_juvenile\\_offenders.aspx](http://www.aacap.org/aacap/policy_statements/2012/solitary_confinement_of_juvenile_offenders.aspx)

<sup>6</sup> Juan E. Mendez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc A/HRC/28/68 (5 March 2015), para 16.

<sup>7</sup> ICCPR art 10.

<sup>8</sup> *Ibid* para 25.

<sup>9</sup> Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention, Concluding observations: Australia*, UN Doc CRC/C/AUS/CO/4 (28 August 2012).

<sup>10</sup> Committee against Torture, *Report of the Committee against Torture*, UN Doc CAT A/56/44 (1 Jan 2001), para 52.

<sup>11</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review*, UN Doc A/HRC/31/14 (13 January 2016).

13. Human rights law imposes a number of additional obligations on states for upholding the rights of Indigenous peoples. For example, in addition to the various rights considered in detail below, the ICESCR and the ICCPR require parties to recognise the right of every person to take part in cultural life.<sup>12</sup> The Committee on Economic Social and Cultural Rights has emphasised the right of Indigenous peoples to participate in traditions, customs, forms of education, languages and other manifestations of cultural identity.<sup>13</sup> The fact of a young person's detention does not displace the state's obligation to fully provide for this right.
14. Whilst not explicitly dealing with the rights of Indigenous people in detention, the United Nations Declaration on the Rights of Indigenous People (**UNDRIP**) establishes a universal framework of minimum standards for the survival, dignity, wellbeing and rights of Indigenous peoples. The rights contained in UNDRIP should inform all recommendations made by the Royal Commission.
15. The Expert Mechanism on the Rights of Indigenous Peoples has considered issues of access to justice for Indigenous children (though not specifically the issue of detention). Pertinent comments of the Expert Mechanism can be summarised as follows:
  - States should implement special protection measures for Indigenous young people, which are culturally sensitive and trauma informed;<sup>14</sup>
  - States should work with Indigenous peoples to develop alternatives for Indigenous young people in conflict with the law, including the design and implementation of culturally appropriate juvenile justice services and the use of restorative justice approaches. Arrest, detention or imprisonment should only be used as a measure of last resort;<sup>15</sup> and
  - traditional restorative justice systems consistent with international law could be used to address cases involving Indigenous young people.<sup>16</sup>
16. The HRLC will address these obligations in more detail in subsequent submissions when considering best practice youth justice systems. The HRLC endorses the Centre for Innovative Justice' submission with respect to the long-term benefits of Indigenous sentencing courts; an Aboriginal Justice Agreement; and specific therapeutic courts, such as drug and alcohol courts.

### 3.5 Specific deficiencies in Northern Territory law

#### (a) **Restraints**

##### **Obligations deriving from international instruments**

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<sup>12</sup> *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) ('ICESCR') art 15.

<sup>13</sup> UN Committee on Economic, Social and Cultural Rights ('CESCR'), *General Comment no. 21, Right of everyone to take part in cultural life*, UN Doc E/C.12/GC/21 (21 December 2009), para 37.

<sup>14</sup> Expert Mechanism on the Rights of Indigenous Peoples, *Access to justice in the promotion and protection of the rights of indigenous juridical systems and access to justice for indigenous women, children and youth, and persons with disabilities*, UN Doc A/HRC/27/65 (7 August 2014), para 52.

<sup>15</sup> *Ibid* Advice for States, para 11.

<sup>16</sup> *Ibid* para 51.



17. The foundational human rights proposition for the permissible use of restraints is that they should only be used as a last resort, in very limited circumstances, including to prevent escape or injury, and with appropriate supervision and authorisation.<sup>17</sup>
18. In applying this principle specifically to young people, the Special Rapporteur on Torture stated in 2015 that restraints or force may be used only when a young person poses an imminent threat of injury to herself, himself or others, when all other means of control have been exhausted and for as limited a period as possible.<sup>18</sup>
19. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (**Havana Rules**) are particularly pertinent when considering the use of restraints in juvenile detention.

Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorised and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time.<sup>19</sup>
20. The United Nations Standard Minimum Rules for the Treatment of Prisoners (**Mandela Rules**), which apply generally to places of detention, prohibit the use of restraints as a method of discipline.<sup>20</sup> They also prohibit the use of chains, irons or other instruments of restraint which are inherently degrading or painful.<sup>21</sup>
21. Further, on a number of recent occasions, the Committee on the Rights of the Child and the Committee against Torture have articulated concerns about the use of restraints on children in custodial settings. Examples include:
  - (a) In its 2016 concluding observations in relation to the United Kingdom and Northern Ireland, the Committee on the Rights of the Child expressed concern about the use of restraints to maintain good order and discipline in young offenders and urged the abolition of restraints for disciplinary purposes. The Committee emphasised that restraints should only be used to prevent harm and as a last resort. The Committee also urged the UK to systematically and regularly collect and publish disaggregated data on the use of restraints and other restrictive interventions on children.<sup>22</sup>
  - (b) In its 2016 concluding observations in relation to New Zealand, the Committee on the Rights of the Child noted its concern about the 'use of restraints and deprivation of liberty in the form of Secure Care.'<sup>23</sup> It recommended that New Zealand take various

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<sup>17</sup> Ibid rule 47(2) and 48.

<sup>18</sup> Juan E. Mendez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc A/HRC/28/68 (5 March 2015), para 86(f).

<sup>19</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty ('Havana Rules') UN Doc A/RES/45/113 (14 December 1990), para 64.

<sup>20</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners ('Mandela Rules') UN Doc E/CN.15/2015/L.6/Rev.1, rule 43.

<sup>21</sup> Ibid, rule 47(1).

<sup>22</sup> Committee on the Rights of the Child, *Concluding observations of the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*, UN Doc CRC/C/GBR/CO/5 (12 July 2016).

<sup>23</sup> Committee on the Rights of the Child, *Concluding observations of the fifth periodic report of New Zealand*, UN Doc CRC/C/NZL/CO/5 (30 September 2016), para 22.

actions to eradicate the abuse of children, 'including in the form of restraints and detention, and ensure that all professionals and staff working with and for children are provided with the necessary training and supervision, and are subjected to the necessary background checks.'<sup>24</sup>

(c) In its 2016 concluding observations in relation France, the Committee against Torture criticised the use of restraints without reference to consistent criteria and for varying duration.<sup>25</sup>

22. Whilst these observations were not made directly about Australia, they (and other similar comments) are relevant in guiding Australia's obligations. Australia has generally not reported to UN human rights treaty body mechanisms on the use of restraints (or the extent of the use of solitary confinement) in youth detention facilities. This will likely change when Australia reports in future given the profile of the issues being investigated by this Royal Commission.

#### **Relevant Northern Territory legislative provisions**

23. In 2016, section 151AB was inserted into the Youth Justice Act NT (1991) (**YJ Act**). It enables the Commissioner of Correctional Services to approve a mechanical device for restricting the movement of detainees. Whilst the YJ Act previously permitted the use of 'handcuffs or similar devices', the types of devices are not presently listed in the legislation.

24. However, we note the proposed Youth Justice Legislation Amendment Bill 2016 (**Bill**), which, if passed, would reintroduce a list of approved devices into the YJ Act, limiting the list to handcuffs, ankle cuffs and waist restraining belts (whether or not spit hoods are permitted is unclear). It is therefore proposed that all other devices be prohibited from use in youth detention.

25. The Bill also requires additional details about the use of restraints to be recorded by the superintendent in a register. However, nothing in the Bill suggests that the register must be made publically available.

26. Finally, the Bill explicitly enables the making of a determination by the Commissioner about the appropriate use of approved restraints. This is in addition to the existing definition in section 151AA of the "appropriate" use of restraints, being in the least restrictive or invasive way in the circumstances and for the minimum amount of time reasonable.

27. Neither the current provision nor the proposed amendments in the Bill explicitly state that restraints should only be used as a last resort, where all less restrictive methods are exhausted, and only in exceptional circumstances (meaning not for routine use). In fact, the YJ Act explicitly permits use of restraints for routine purposes, such as detainee movement.

#### **Inconsistencies and reform**

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<sup>24</sup> Ibid, para 23.

<sup>25</sup> Committee against Torture, *Concluding observations on the seventh periodic report of France*, UN Doc CAT/C/FRA/CO/7 (10 June 2016).

28. In light of the above, the current legislative framework, including the proposed Bill, is deficient and requires reform in the following areas:
- (a) In addition to the proposed amendments, the legislation should explicitly stipulate that restraints must only be used in exceptional circumstances, where all other less restrictive control methods have been exhausted or failed and never for routine or disciplinary purposes (as distinct from, for example, circumstances of imminent risk of harm to self or others); and
  - (b) Whilst the use of restraints is recorded in a register and the type of information to be recorded is expanded by the Bill, there is no legislative requirement to make the register publically available. The lack of a publically available information gives rise to the risk of the over-use of such devices and a lack of accountability and transparency. As such, the legislation should make clear that the register, including all information, is to be made publically available annually.

**(b) Solitary confinement**

**Obligations deriving from international instruments**

29. The Mandela Rules define ‘solitary confinement’ as the confinement of prisoners for 22 hours or more a day without meaningful human contact.<sup>26</sup> The Istanbul Statement on the use and effects of solitary confinement further states that ‘the reduction in stimuli is not only quantitative but also qualitative. The available stimuli and the occasional social contacts are seldom freely chosen, are generally monotonous, and are often not empathetic.’<sup>27</sup>
30. The use of solitary confinement on children is strictly prohibited.<sup>28</sup> This is because the isolation inherent in solitary confinement can have severe, long-term and irreversible effects on a child’s psychology and physiology, as was recently articulated by the Special Rapporteur on Torture.<sup>29</sup> Negative health effects include insomnia, confusion, compounded trauma, hallucinations and psychosis.<sup>30</sup>
31. Accordingly, in his 2015 Report, the Special Rapporteur on Torture recommended the prohibition on solitary confinement of children for any duration and for any purpose.<sup>31</sup> This

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<sup>26</sup> Mandela Rules rule 44.

<sup>27</sup> ‘The Istanbul Statement on the use and effects of solitary confinement’ (9 December 2007) *International Psychological Trauma Symposium, Istanbul*. Available at: [http://solitaryconfinement.org/uploads/Istanbul\\_expert\\_statement\\_on\\_sc.pdf](http://solitaryconfinement.org/uploads/Istanbul_expert_statement_on_sc.pdf)

<sup>28</sup> Mandela Rules rule 45(2) and Havana Rules, para 67. See also CAT/C/MAC/CO/4, para. 8; CAT/OP/PRY/1, para. 185; CRC/C/15/Add.151, para. 41; and CRC/C/15/Add.232, para. 36 (a).

<sup>29</sup> Juan E. Mendez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc A/HRC/22/53 (1 February 2013).

<sup>30</sup> ‘The Istanbul Statement on the use and effects of solitary confinement’ (9 December 2007) *International Psychological Trauma Symposium, Istanbul*. Available at: [http://solitaryconfinement.org/uploads/Istanbul\\_expert\\_statement\\_on\\_sc.pdf](http://solitaryconfinement.org/uploads/Istanbul_expert_statement_on_sc.pdf).

<sup>31</sup> Juan E. Mendez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc A/HRC/28/68 (5 March 2015), para 86(f).

position was also emphasised by the Committee on the Rights of the Child, which urged parties to prohibit and abolish the use of solitary confinement against children.<sup>32</sup>

32. Further, in 2016, the Committee on the Rights of the Child urged the UK to ‘immediately remove all children from solitary confinement, prohibit the use of solitary confinement in all circumstances and regularly inspect the use of segregation and isolation in child detention facilities.’<sup>33</sup>
33. The US has recently banned the use of solitary confinement for juvenile offenders in the federal prison system, noting the potential long-term psychological and developmental damage it can cause.
34. In addition to the potential for harm, the Istanbul Statement emphasises that placing young people in solitary confinement also risks putting them out of sight and in conditions ripe for abuse. The safeguarding of young peoples’ rights are best ensured where young people are easily accessible and have consistent contact with the outside world.

#### **Northern Territory legislative provisions**

35. Pursuant to section 153(5) of the YJ Act, the superintendent may isolate a detainee for up to 72 hours (with approval of the Commissioner) if the superintendent is of the opinion that a detainee should be isolated to protect the safety of another person or for the good order or security of the facility. It is our understanding (although we will provide further input after evidence on the matter has been heard by the Royal Commission) that the 72-hour maximum period has, in practice, been exceeded by youth detention authorities.
36. The YJ Act does not define isolation. It should be noted that multiple terms are used throughout Australia to describe what essentially amounts to solitary confinement, which include: isolation, segregation, behaviour management and high security. The HRLC understands isolation practices in the Northern Territory meet the international law definition of solitary confinement.

#### **Inconsistencies and reform**

37. Northern Territory legislation explicitly breaches human rights obligations by allowing for the use of solitary confinement on young people.
38. Further, the breadth of circumstances which may justify solitary confinement on the basis of the ‘good order or security of the facility’ compounds this violation. In order to be compliant with human rights obligations, the Northern Territory should abolish the use of solitary confinement in youth detention facilities.

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<sup>32</sup> Committee on the Rights of the Child, *General comment no. 10*, UN Doc CRC/C/GC/10 (25 April 2007). See also CRC/C/15/Add.151, para. 41; CRC/C/15/Add.220, para. 45 (d); and CRC/C/15/Add.232, para. 36 (a).

<sup>33</sup> Committee on the Rights of the Child, *Concluding observations of the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*, UN Doc CRC/C/GBR/CO/5 (12 July 2016).

39. While the term ‘meaningful human contact’ is not clearly defined under international law, the use of the term ‘meaningful’ indicates that, for example, the provision of books; communication through an intercom or through the door; or other dehumanised forms of contact, would not satisfy the requirement. As such, any attempt to justify isolation on the basis that ‘meaningful human contact’ is taking place should not be accepted.

**(c) Strip searching**

**Obligations deriving from international instruments**

40. Subjecting children and young people to strip searches can be demeaning and traumatising. This is particularly the case in light of the high number of young people in detention who have experienced physical and sexual abuse.<sup>34</sup> As such the Special Rapporteur on Torture states that strip searches should not be performed without reasonable suspicion and that routine strip searches should be abolished.<sup>35</sup>
41. In addition to the requirement that children be treated with humanity and respect for their inherent dignity, the CROC stipulates that no child shall be subject to arbitrary or unlawful interference with his or her privacy.<sup>36</sup> Further, the Mandela Rules state that strip searches should be undertaken only if absolutely necessary and that appropriate alternatives should be used wherever possible.<sup>37</sup>

**Northern Territory legislative provisions**

42. Section 161 of the YJ Act permits strip searches in a number of circumstances, including, most broadly, where the superintendent believes on reasonable grounds that it is necessary in the interests of the security or good order of the detention centre. This means that strip searches are conducted routinely (for example in relation to detainee movements), rather than in response to reasonably identified risks.
43. Additionally, it is our understanding that the Northern Territory is the only Australian jurisdiction which does not have a comprehensive policy for the performance of strip searches on children and young people.<sup>38</sup>

**Inconsistencies and reform**

44. In light of the preceding, strip searches of children should be abolished or, at the very least significantly limited to circumstances of absolute necessity, informed by a risk-based (rather than routine) approach, such as where:

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<sup>34</sup> Australian Children’s Commissioners and Guardians, *Human rights standards in youth detention facilities in Australia: the use of restraints, disciplinary regimes and other specified practices*, April 2016, page 39.

<sup>35</sup> Juan E. Mendez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc A/HRC/28/68 (5 March 2015), para 86(f).

<sup>36</sup> CROC art 16.

<sup>37</sup> Mandela Rules rule 52.

<sup>38</sup> Australian Children’s Commissioners and Guardians, *Human rights standards in youth detention facilities in Australia: the use of restraints, disciplinary regimes and other specified practices*, April 2016, pages 55-59.

- (a) there is a belief held on reasonable grounds that the young person is concealing contraband; and
- (b) the contraband cannot be located after employing all other means, including a 'pat' search or the use of metal detection devices.<sup>39</sup>

45. The use of strip searching on children may also be modified or limited as is the case in many jurisdictions. For example:

- body scanners (and other similar equipment), which do not require the removal of clothing, are used in a number of US prisons,<sup>40</sup> and are being piloted in the ACT;<sup>41</sup>
- the use of strip searching is significantly limited in the ACT and Queensland (as well as, for example, in the UK). In Queensland it is confined to circumstances where it is necessary for the security of employees or children in detention only;<sup>42</sup>
- strip searching procedures have been modified at Banksia Hill Detention Centre in Perth, which uses "half-and-half" searches to prevent a young person from being completely naked during the search.<sup>43</sup>

**(d) Age of criminal responsibility**

**Obligations deriving from international instruments**

46. The CROC requires parties to establish a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.<sup>44</sup> The internationally accepted minimum age of criminal responsibility is 12 years and both the Committee on the Rights of the Child and, more recently, the Special Rapporteur on Torture have recommended that the minimum age must be set at no lower than 12 years.<sup>45</sup>

**Northern Territory legislative provisions**

47. Currently, the age of criminal responsibility in all Australian states and territories, including in the Northern Territory, is 10 years, subject to the *doli incapax* principle.<sup>46</sup>

**Inconsistencies and reform**

48. The Committee on the Rights of the Child has expressed concern in this regard. For example, in 1997, in its concluding observations on Australia, the Committee stated that it was 'deeply concerned that the minimum age of criminal responsibility is generally set at the very low level

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<sup>39</sup> Examples include section 113(a) of the *Corrections Management Act 2007* (ACT) or the practice in the UK, where strip searching women is reduced to the absolute minimum compatible with security.

<sup>40</sup> Elaine Pittman, 'County Jails Deploy Whole-Body Scanners to Detect Hidden Weapons or Contraband', *Government Technology* April 27, 2011.

<sup>41</sup> ACT Human Rights Commission, Human Rights Audit on the Operation of ACT Correctional Facilities under Corrections Legislation, July 2007, <http://www.hrc.act.gov.au/res/Corrections%20Audit%202007.pdf>.

<sup>42</sup> *Youth Justice Regulations 2003* (Qld), s 26(1).

<sup>43</sup> Australian Children's Commissioners and Guardians, *Human rights standards in youth detention facilities in Australia: the use of restraints, disciplinary regimes and other specified practices*, April 2016, page 53.

<sup>44</sup> CROC art 40(3).

Juan E. Mendez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc A/HRC/28/68 (5 March 2015), para 85(g).

<sup>46</sup> *Criminal Code Act* (NT), section 38(1).

of 7 to 10 years, depending upon the state.<sup>47</sup> In 2012, the Committee again expressed concern that ‘no action has been undertaken...to increase the minimum age of criminal responsibility.’<sup>48</sup>

49. Importantly, Australia is now out of step with comparative jurisdictions such as Canada, where the age of criminal responsibility is 12 years and New Zealand, where the age is staggered depending on the severity of the crime, but is 13 years for the majority of criminal offences.

**(e) Medical care**

**Obligations deriving from international instruments**

50. Article 12 of the ICESCR entitles all persons to the highest attainable standard of physical and mental health. Further, the Mandela Rules and Havana Rules require the provision of prompt access to medical attention and specialised treatment for people in detention.<sup>49</sup> The Havana Rules also emphasise the importance of access to treatment for mental illness and substance abuse,<sup>50</sup> as well as notification of family about the state of health of a young person on request or in the event of illness.<sup>51</sup>
51. The denial of medical treatment or the administration of inappropriate treatment can amount to inhuman conditions in detention in contravention of the requirements under ICCPR, CAT and CROC.<sup>52</sup>
52. The Special Rapporteur on Torture recommended that states ensure paediatricians and child psychologists with trauma-informed training are available on a regular basis to all children in detention.<sup>53</sup> Such treatment should also be delivered in a culturally informed and appropriate manner for Aboriginal and Torres Strait Islander young people.
53. The Committee on the Rights of the Child has expressed concern that in Australia, ‘no measures have been taken to ensure that children with mental illness and/or intellectual deficiencies who are in conflict with the law are dealt with using appropriate alternative measures without resorting to judicial proceedings.’<sup>54</sup>

**Northern Territory legislative provisions**

54. Section 173 of the YJ Act states that detainees must be given access to medical practitioners for the purposes of medical consultation and treatment, on request. The *Youth Justice*

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<sup>47</sup> Committee on the Rights of the Child, *Concluding observations of the Committee on Rights of the Child: Australia*, UN Doc CRC/C/15/Add.79 (1997).

<sup>48</sup> Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention, concluding observations: Australia*, UN Doc CRC/C/AUS/CO/4 (28 August 2012), 82(a).

<sup>49</sup> Mandela Rules, rule 27 and Havana Rules, para 49.

<sup>50</sup> Rules 51 and 53.

<sup>51</sup> Rule 56.

<sup>52</sup> Juan E. Mendez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc A/HRC/28/68 (5 March 2015).

<sup>53</sup> *Ibid* para 85(d).

<sup>54</sup> Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention, Concluding observations: Australia*, UN Doc CRC/C/AUS/CO/4 (28 August 2012), para 82(b).

*Regulations* (NT) (**Regulations**) also state that a comprehensive medical assessment must be carried out within 24 hours after a detainee's admission to detention.<sup>55</sup>

55. However, both provisions are silent (or at least are not explicit) about disability or mental health assessment or the provision of appropriate treatment. Further, we understand that in practice there are significant concerns about the provision of health care and, in particular, mental health services.
56. Similarly, we understand that there is substantial under-diagnosis in the Northern Territory of foetal alcohol syndrome; deafness; cognitive impairment; and other disabilities.

#### **Inconsistencies and reform**

57. Failure to diagnose can result in a number of inequities, including inappropriate sentencing, inappropriate placement in youth detention, and unfair or inhumane treatment.
58. Given this risk, legislation should be amended to require both the youth justice system and the youth detention system to undertake early assessment and diagnosis of all young people, to enable proper care and treatment.

#### **(f) Provision of Education**

##### **Obligations deriving from international instruments**

59. The CROC states that parties must recognise the rights of the child to education and that such education be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential.<sup>56</sup> This right is also articulated in the ICESCR.<sup>57</sup> Importantly, the CROC requires that Indigenous children not be denied the right, in community with other members of their group, to enjoy culture, practices and language as part of their education.<sup>58</sup>
60. The Mandela Rules and the Havana Rules provide for the mandatory education of every young person of compulsory school age, aligned to their needs and abilities and designed to prepare them for return to society.<sup>59</sup> Further, the Havana Rules stipulate that, where possible, such education should be provided outside the detention facility in community schools to ensure that juveniles can continue their education after release, without difficulty.<sup>60</sup>
61. The Special Rapporteur on the right to education has noted that persons in detention constitute 'a group subject to discrimination generally and to discrimination in the provision of education specifically.'<sup>61</sup> The Special Rapporteur recommended the compulsory provision of primary and, wherever possible, secondary level education to all detainees, whether

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<sup>55</sup> Regulation 57.

<sup>56</sup> CROC arts 28 and 29.

<sup>57</sup> ICESCR art 13.

<sup>58</sup> CROC arts 29 and 30.

<sup>59</sup> Havana Rules rule 38 and Mandela Rules, para 104.

<sup>60</sup> Havana Rules rule 38.

<sup>61</sup> Human Rights Council, Report of the Special Rapporteur on the right to education of persons in detention, A/HRC/11/8 (2 April 2009).



sentenced or in remand, with the aim of minimising the negative impact of detention and improving the prospects of reintegration, rehabilitation and morale.<sup>62</sup>

### **Inconsistencies and reform**

62. These fundamental principles form the basis of the international obligations relevant to the provision of education in youth detention. As to the question of compliance with these obligations in the Northern Territory, we understand that the right to education is not fully implemented in the Northern Territory's youth detention system. To this end, we have read and considered the submissions of the Centre for Innovative Justice, in support of Parkville College. We fully endorse these submissions. We note that Parkville College is a best practice example of the implementation of the human right to education in a custodial context, and recommend the Northern Territory adopt a similar model.

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<sup>62</sup> Human Rights Council, Report of the Special Rapporteur on the right to education of persons in detention, A/HRC/11/8 (2 April 2009), [91].

## 4. Independent oversight

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### 4.1 Why consideration of independent oversight is relevant to the Royal Commission

63. Independent oversight of detention facilities is integral to preventing mistreatment of detainees and ensuring accountability. To achieve these imperatives, inspectors must be independent from the authority charged with administration of detention facilities. Oversight also assists in ensuring compliance with domestic and international human rights obligations more broadly.
64. Currently, there is no oversight mechanism in the Northern Territory that is independent, expert and resourced, and which enables the unfettered, spontaneous inspection of detention facilities, including access to detainees, documents and information.
65. Notably, Megan Mitchell (Australian Children's Commissioner) Howard Bath (former Children's Commission, Northern Territory) and Colleen Gwynne (Children's Commissioner, Northern Territory) all expressed significant concern at the lack of independent external oversight of youth detention facilities in the Northern Territory. They each emphasised independent oversight as critical to improving conditions and accountability for in youth detention facilities.

### 4.2 Limitations on the role of the Children's Commissioner

66. Currently, there are a number of significant limitations on the powers and independence of the Northern Territory's Children's Commissioner.
67. Under sections 34 and 35 of the Children's Commissioner Act 2013 (NT) (**CC Act**), the Children's Commissioner may request access to a vulnerable child. Such a request must include a specific time and place for contact. The request may then be approved or denied after consideration, which may take a significant period of time. Similarly, the Commissioner may request information or documentation. However, there is no compulsion or immediacy with respect to its provision.
68. Further, the circumstances in which the Children's Commissioner may publish a report or inquiry are opaque. The CC Act has a number of interrelated provisions, with varying criteria, that enable the non-publication of reports or inquiries. These provisions should be remedied to ensure the default position is for publication.
69. The HRLC is aware that a number of reports prepared by the Northern Territory Children's Commissioner, such as a report completed after an investigation into the treatment of Dylan Voller, were not tabled after either the Government or the Children's Commissioner prevented their publication. These reports detailed some of the mistreatment that was aired by Four Corners.
70. Whilst the removal of these limitations on the Children's Commissioner's powers is critical, this is not a panacea to lack of independent oversight of all detention facilities in the Northern

Territory. In addition to a broader suite of powers for the Children's Commissioner, a whole of government approach to independent oversight, as set out below, is necessary. This approach would ensure consistency of oversight and expertise across all places of detention.

### 4.3 Optional Protocol to the Convention against Torture

71. The Optional Protocol to the Convention against Torture (**OPCAT**) is an international treaty that establishes a system of independent inspections of detention facilities by national and international monitoring bodies. Australia signed OPCAT in 2009 but has not yet ratified it.
72. In 2012, the Joint Standing Committee on Treaties supported ratification of OPCAT. The Committee recommended that the Australian Government work with states and territories to establish a national mechanism to comply with OPCAT. States and territories, including the Northern Territory, have drafted legislation in preparation for ensuring compliance when OPCAT is ratified.
73. Whilst ratification is a decision for the Australian Government, there are important steps that states and territories should take to implement OPCAT compliant oversight of detention facilities.
74. Governments can choose how they comply with OPCAT and there are a number of models internationally, such as in South Africa and New Zealand.
75. Taking into account Australia's federated system, the HRLC recommends a model for an independent oversight body in the Northern Territory based on Western Australia's Office of the Inspector of Custodial Services (**WA Inspector**). Under the *Inspector of Custodial Services Act 2003 (WA)*, the WA Inspector is required to inspect all detention facilities in the State (other than police cells). This includes routine inspections of each facility at least once every three years as well as unannounced inspections occurring outside this cycle.
76. The WA Inspector's work has included reporting and providing recommendations following serious incidents in youth detention, such as a riot at Banksia Hill Juvenile Detention Centre in 2013. To this end, the Inspector's work has been critical in ensuring subsequent positive developments in youth detention practices in Western Australia.
77. The WA Inspector reports to Parliament about its inspections and those reports are publically available. The stated intention of the WA Inspector is to:
  - Improve public confidence in the justice system;
  - Ensure decent treatment of detained people; and
  - Ensure the justice system provides value for money.
78. It is noteworthy that this year, the West Australian model has been replicated in Tasmania, and to some extent NSW, and could be appropriately adapted for the Northern Territory.

79. As noted above, a limitation of the WA model is that the inspector's mandate does not cover oversight of police custody. This should be remedied if a similar body is established in the Northern Territory.

## 5. Human Rights Act

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### 5.1 Why consideration of a Human Rights Act is relevant to the Commission

80. In light of the success of human rights legislation in other jurisdictions, this Royal Commission should consider how analogous legislation could protect the rights of young people in detention in the Northern Territory and prevent mistreatment in the future.
81. Unlike many comparative international jurisdictions, Australia does not have a national Bill of Rights or Human Rights Act to enshrine and protect human rights and, in particular, the rights of children and young people. This means that where Australia ratifies an international instrument, such as the CROC, there are inadequate domestic legal mechanisms to enforce the rights in the international instrument.
82. Accordingly, there are significant gaps in protection of human rights under Australian law.<sup>63</sup> Only Victoria and the ACT have statutory human rights acts and both jurisdictions chose to enact modest charters. The Queensland Government is currently considering whether to introduce a human rights act after the Queensland's Legal Affairs and Community Safety Committee recommended one, albeit based on a weak model.

### 5.2 How a Human Rights Act would benefit the Northern Territory

83. A Human Rights Act in the Northern Territory, based on the Victorian and ACT models, would require consideration of human rights as part of all law-making and policy development processes. The 2015 review of the Victorian legislation noted that it had 'helped to promote and protect human rights in Victoria.'<sup>64</sup>
84. The Northern Territory, like Queensland, has a unicameral parliament. Unlike other states and territories, there is no upper house to review and scrutinise legislation, or to act as a check-and-balance on executive law making. This makes a Human Rights Act particularly important in the Northern Territory as a safeguard on the way the parliament exercises its legislative power.
85. A Human Rights Act in the Northern Territory, based on the Victorian and ACT models, would also require public authorities to comply with human rights, and would provide a mechanism for young people to protect their human rights in the courts (although with no right to compensation). For example, in 2014, the ACT Supreme Court stayed proceedings relating to a young girl because the delay in bringing the girl to trial amounted to a breach of the requirement that children be brought to trial as quickly as possible.<sup>65</sup>

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<sup>63</sup> Commonwealth, National Human Rights Consultation, *Report*, (2009).

<sup>64</sup> Michael Brett Young, *From commitment to culture: The 2015 Review of the Victorian Charter of Human Rights and Responsibilities Act 2006* (2015).

<sup>65</sup> *LM v Children's Court of the Australian Capital Territory and the Director of Public Prosecutions for the ACT* [2014] ACTSC 26.

### 5.3 How a Human Rights Act might prevent mistreatment of young people in detention facilities in the Northern Territory

86. In the ACT and Victoria, human rights legislation includes specific provisions relating to children, persons deprived of their liberty and children deprived of their liberty. For example, in the Victorian Charter:
- Section 10 protects individuals from torture and cruel, inhuman or degrading treatment;
  - Section 17 ensures children are treated in their best interests;
  - Section 22 provides for humane treatment when individuals are deprived of liberty; and
  - Section 23 relates to the treatment of children in the criminal process and requires that a child be treated appropriately for his or her age, be brought to trial as quickly as possible and be detained separately from adult detainees.
87. One pertinent and recent example of the how a Human Rights Act would have practical benefit in the Northern Territory relates to the use of restraint chairs on young people, as was depicted being used to restrain Dylan Voller in the Four Corners expose.
88. The *Youth Justice Amendment Act 2016* (NT), which incorporated a section into the YJ Act, enabling the use of mechanical restraints, was passed in February 2016.
89. Whilst it is difficult to predict whether a Human Rights Act would have prevented the passage of the legislation, it would have compelled both the policy team behind the proposal and the legislative drafters to consider the use of such devices through a human rights framework. It would also have required the relevant Minister to table a statement in Parliament explaining whether the legislation was compatible with human rights. In Victoria, the ACT and internationally, this process helps to ensure that legislation complies with human rights standards. In particular, it assists in ensuring that where legislation limits rights for a legitimate reason, it does so in the least restrictive manner. The process also promotes transparency on human rights issues.

### 5.4 How a Human Rights Act would likely operate

90. A Human Rights Act in the Northern Territory could be modelled and adapted from existing legislation in Victoria and the ACT. In both jurisdictions, the legislation sets out a range of rights, freedoms and responsibilities shared by all people in that jurisdiction and enshrines legislative protection for those rights. The 20 rights in the Victorian Charter of Human Rights (**Charter**) are based on the rights in the ICCPR. The Charter works to protect human rights in three main ways:

- (i) Public authorities must act in ways that are compatible with human rights;
- (ii) Human rights must be taken into account when developing new laws; and

(iii) Courts, must interpret legislation in a way that is compatible with human rights as far as possible.<sup>66</sup>

91. The ACT and Victorian models of human rights protection are referred to as a 'dialogue model'. The three arms of government (Parliament, the Executive and the Courts) engage in a dialogue about human rights, with the aim of building a culture that is respectful of human rights.
92. Generally, Parliament is required to consider whether proposed laws are compliant with human rights legislation and each bill must be accompanied by a statement of compatibility with human rights, including the nature and extent of any inconsistency.
93. The ACT and Victorian models preserve Parliamentary supremacy, in that their human rights charters are normal acts of parliament, meaning the courts cannot invalidate legislation if it doesn't comply with human rights and Parliament can choose to expressly override human rights.
94. The Royal Commission should include consideration of a Human Rights Act, modelled on legislation in Victoria and the ACT, as a protective mechanism against abuse of young people in detention.

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<sup>66</sup> Michael Brett Young, *From commitment to culture: The 2015 Review of the Victorian Charter of Human Rights and Responsibilities Act 2006* (2015), page 3.

## 6. Vulnerable minorities

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### 6.1 Young people with disabilities

95. It is well-accepted that a high number of young people in youth detention in the Northern Territory have a disability, enlivening the application of the Convention on the Rights of Persons with Disabilities. Of particular relevance are the requirements to ensure effective access to justice,<sup>67</sup> and to ensure that persons with disabilities are treated humanely, are not deprived of their liberty unlawfully or because of the existence of their disability.<sup>68</sup>
96. Importantly, the state can only appropriately respond to the rights of people with disability when proper diagnostic tools are in place. The HRLC understands that there are innumerable instances of detainees who have never had access to proper health, psychiatric or psychological assessment, meaning they do not receive proper care in detention.
97. Given the known high incidence of undiagnosed disability in the Northern Territory, it is critical to the realisation of human rights that appropriate steps be taken to ensure young people with disability have access to early diagnosis, and subsequent care and treatment. This is a core human right, and the cost of diagnosis and treatment does not displace the state's obligation to ensure young people with disabilities are treated appropriately.

### 6.2 Girls

98. Girls in detention face unique gender-based vulnerabilities. They are nearly twice as likely to have experienced abuse or neglect prior to entering detention compared to boys,<sup>69</sup> and are particularly susceptible to abuse and ill-treatment in detention.
99. Women and girls suffer from discrimination in the criminal justice system where there is 'a lack of gender-sensitive, non-custodial alternatives to detention, a failure to meet the specific needs of women in detention and an absence of gender-sensitive monitoring and independent review mechanisms'.<sup>70</sup>
100. The United Nations Committee on the Rights of the Child has observed that because girls in youth justice systems are only a small group, they may be overlooked. To remedy this,

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<sup>67</sup> *Convention of the Rights of Persons with Disabilities*, opened for signature 13 December 2006, 2515 UNTS 3 (entered into force 3 May 2008), art 13.

<sup>68</sup> *Ibid* art 14.

<sup>69</sup> See Devon Indig et al, 2009 NSW Young People in Custody Health Survey: Full Report (Justice Health and Juvenile Justice, 2011) 157-159. See also research from the United States on the high rates of young women and girls in detention who have been victims of sexual assault: Malika Saada Saar et al, *The Sexual Abuse to Prison Pipeline: The Girls' Story* (2015).

<sup>70</sup> Committee on the Elimination of Discrimination against Women, *General Recommendation 33 on women's access to justice*, UN Doc CEDAW/C/GC/33 (23 July 2015), para 48.



'special attention must be paid to the particular needs of the girl child, e.g. in relation to prior abuse and special health needs.'<sup>71</sup>

101. Further, The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (**Bangkok Rules**) require that the vulnerability of young women and girl offenders be taken into account in decision making. The Bangkok Rules also require that young women and girls in detention have:
- (a) their protection needs addressed;
  - (b) equal access to education and vocational training;
  - (c) access age and gender specific programs and services, including sexual assault and violence counselling;
  - (d) education on women's health care and regular access to gynaecologists; and
  - (e) appropriate support and medical care if they are pregnant, taking into account the fact that they may be at greater risk of complications due to their age.<sup>72</sup>
102. The Royal Commission should explicitly consider the unique vulnerability of girls in detention and ensure that all recommendations are gender-sensitive.

### 6.3 LGBTI young people

103. Lesbian, Gay, Bisexual, Transgender and Intersex (**LGBTI**) people in detention experience extreme forms of violence, discrimination and ill-treatment.<sup>73</sup> In particular, transgender women are at a significant risk of violence, sexual assault and rape from other inmates in male prisons.<sup>74</sup> Transgender prisoners are more likely to experience assault and engage in self-harm; this vulnerability is further exacerbated in detention.<sup>75</sup>
104. The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity (**Yogyakarta Principles**) systemically articulate the international human rights law obligations as they apply to the lives and experiences of LGBTI people. Pertinently, Principle 9 relates to the right to treatment with humanity while in detention, including:

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<sup>71</sup> Committee on the Rights of the Child, *General Comment no. 10 Children's rights in Juvenile Justice*, UN Doc CRC/C/GC/10 (25 April 2007) . See also United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) rules 26.4.

<sup>72</sup> Bangkok Rules, rules 36-39; 65.

<sup>73</sup> 'Targeted and tortured: UN experts urge greater protection for LGBTI people in detention' (Joint Statement, 23 June 2016), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20165&LangID=E>.

<sup>74</sup> Australian Human Rights Commission, *Resilient Individuals: Sexual Orientation, Gender Identity & Intersex Rights (National Consultation Report) 2015* <<https://www.humanrights.gov.au/our-work/sexual-orientation-sex-gender-identity/publications/resilient-individuals-sexual>> 69.

<sup>75</sup> Ibid.

- that placement in detention is appropriate to a person's sexual orientation and gender identity and avoids further marginalisation or risk of violence or abuse;
- adequate access to medical care, including access to hormonal and other therapy and gender-reassignment treatment;
- necessary protective measures to ensure safety, but no greater restriction on rights; and
- appropriate and adequate training of personnel regarding relevant standards and principles.

105. We understand that currently, the Northern Territory does not have specific correctional policies to protect the rights and integrity of LGBTI young people in detention (i.e. policies on placement and access to hormone treatment). Particularly concerning is the lack of policies relating to the placement and treatment of transgender, gender diverse and intersex detainees.
106. Such policies should be developed with a focus on the matters set out above, deriving from the Yogyakarta Rules and should be strongly informed by international human rights law and best practice and in consultation with affected communities (e.g. Sisters & Brothers NT).

## 7. Evidence the Royal Commission may wish to call

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### 7.1 HRLC

107. The HRLC's mandate, human rights expertise and extensive history advocating for the rights of Aboriginal and Torres Strait Islander young people deprived of their liberty positions it exceptionally well to provide evidence on each of the matters set out in these submissions. It has also had extensive involvement in seeking to expose and improve the conditions in youth detention in the Northern Territory.
108. The HRLC's Executive Director, Hugh de Kretser, and Director Legal Advocacy, Ruth Barson, would be pleased to appear before the Royal Commission at a public hearing or the planned Policy Roundtable.
109. In September 2015, the HRLC filed a request for urgent action on the treatment of young people in Northern Territory's Don Dale Youth Detention Centre (**Request**) with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. The Request was also provided to The Hon John Elferink, the Attorney-General and Minister for Justice and then Minister for Correctional Services, Northern Territory Government.
110. Amongst other things, the Request:
- (a) detailed the incident of 21 August 2014, where six young people were tear-gassed and made reference to the Children's Commissioner's report, which documented a number of concerning practices being utilised at Don Dale;
  - (b) emphasised that the practices documented in the Children's Commissioner's report breached Australia's human rights obligations; and
  - (c) raised significant concerns about the Northern Territory Government's response to the Children's Commissioner's report and ongoing problematic practices existing at Don Dale, including the use of solitary confinement, isolation, use of restraints and denial of access to rehabilitation and education programs.
111. In addition to the Request, Ruth Barson, Director of Legal Advocacy at the Human Rights Law Centre, was interviewed as part of the Four Corners' story 'Australia's Shame', which catalysed the Royal Commission. In the course of her interview, Ms Barson stated that the footage aired as part of the program exposed breaches of numerous international instruments over multiple years.

### 7.2 Other witnesses

112. If the Royal Commission wishes to receive additional detailed evidence on particular issues, the HRLC recommends the following subject matter experts:

- Brendan Murray, Executive Principal, Parkville College – education provision in juvenile detention and guidance on implementation;
- Professor Chris Cunneen, Criminologist at UNSW – critical data gaps and the development of a best practice youth justice system with a specific focus on the rights of Aboriginal and Torres Strait Islander young people;
- Neil Morgan, Inspector of Custodial Services Western Australia – best practice oversight of detention facilities; and
- Professor Stuart Kinner, School of Criminology and Criminal Justice Head at Griffith University – expert in provision of health services to young people in detention.