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Ending state-perpetrated sexual violence in prisons

Submission to the Australian Law Reform Commission's Justice Responses to Sexual Violence: Issues Paper

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Formerly Incarcerated Justice Advocates Melbourne (FIGJAM)

FIGJAM is a collective of formerly incarcerated women based in Melbourne who have survived violence in the community but also at the hands of the state (namely prisons and police). FIGJAM was founded by Family Violence Justice Project Co-Ordinator from Flat Out - Nina - in the hope and dream of building a community of staunch advocates providing connection, support and stability to its members. FIGJAM use their voices and experiences to change community attitudes and push through barriers of stigma and discrimination. They are invited regularly to consult, sit on focus groups, present at conferences, engage with and attend community events, influence policy reform, write submissions and participate in creative arts activities, podcasts and research.

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Flat Out

Flat Out is a Victoria-wide advocacy and support service for women, trans and gender diverse people and their children who have been criminalised. We are an independent, not for profit, community-based organisation that aims to prevent women and trans and gender-diverse people from entering and returning to prison. Flat Out resources women, trans and gender diverse people with lived expertise to inform and educate the broader community about the right to live free from trauma, injustice and violence, and the issues they face within the criminal legal system.

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Human Rights Law Centre

The Human Rights Law Centre uses strategic legal action, policy solutions and advocacy to support people and communities to eliminate inequality and injustice and build a fairer, more compassionate Australia. We work in coalition with key partners, including community organisations, law firms and barristers, academics and experts, and international and domestic human rights organisations.

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Executive summary

Flat Out and the Human Rights Law Centre make this submission in response to the Australian Law Reform Commission's inquiry into legal responses to sexual violence (**the ALRC inquiry**) and its corresponding issues paper (**the ALRC issues paper**).

Strip searching people in prisons is humiliating, dehumanising and traumatising. It involves a person being forced to remove all their clothing over and over again in front of prison guards, and often also submit to bending, spreading and coughing. Children caged in youth prisons are required to strip naked in front of adults.

This conduct would be considered criminal if carried out in the wider community, yet it is enabled in prisons across Australia by law and perpetrated within a criminal legal system that systematically fails victim survivors of sexual violence. For decades, people with lived experience of incarceration have been calling out strip searching for what it is: sexual abuse at the hands of the state.¹ With rates of items detected as low as 0.006%, strip searching fails to achieve its intended purpose and instead functions as a powerful tool of coercive control over people in prison.

In this submission, formerly incarcerated women, trans and gender diverse people share their experiences of being subjected to strip searches. While strip searching harms all people in prison and is only permitted by virtue of their dehumanisation, this submission focuses on the experiences of victim survivors of sexual abuse perpetrated by the state and its agents, Aboriginal and Torres Strait Islander women, women with disabilities and unmet health needs, trans and gender diverse people and children in prison as groups of people that are disproportionately harmed by strip searching, both due to their mass incarceration and their lived experience of violence.

In this context, the continued, normalised use of strip searching in prisons means that “prison is not and cannot be a therapeutic community, as prisons are built on an ethos of power, surveillance and control, yet trauma sufferers require safety in order to begin healing.”² The use of strip searching in prisons also legitimises tactics of abuse and control, enhancing the criminogenic effects of incarceration.

Alternatives to prisons and brutal prison practices like strip searching exist, and governments must start using them now in order to prevent further state-sanctioned violence.

Incarcerated women are having to be violated and expose of themselves to see their loved ones, their families, children and to have visits with anyone from outside the prison walls. It is very dehumanising and degrading, and often women may 'choose' to withdraw from visits due to the dread of strip searches, and I do not use the word 'choose' lightly, these women do not choose this practice, it is either be violated and exposed, which many will do to have their visits and others will not do and will lose their visits. This obligatory process is disheartening and can be detrimental to women's connection to the outside world. - Sara S

I was imprisoned 8 years ago, and left one year ago. In the time I spent in prison 4 and a half of it I spent at Dame Phillis Frost Centre and 2 and a half at Tarrengower. In the time at DPFC I felt violated by the strip searches that were routine there. Searches would be done at the beginning and at the end of each personal visit. Also strip searches were routine as part of the random urinalysis procedures at DPFC. As part of the strip you had to 'bend over and part your cheeks for close inspection. As a young child I sustained abuse and these invasive searches would re traumatise me. During the time at DPFC there was an introduction of an xray machine at the visit centre. This reduced the searches but if you went through the machine and it detected anything unusual you still had to undergo the stringent strip search. Also if an officer identified you as suspicious you also had to be strip searched. At Tarrengower there was an introduction of mouth swabs to detect drugs so urinalysis and strip searches only eventuated if the swab detected something. And there are no searches conducted for visits. - Nikita

¹ Debbie Kilroy and Tabitha Lean, State-sanctioned sexual assault: the injustice of strip searching women in prisons (*Croakey Health Media*, 30 January 2024) <<https://www.croakey.org/state-sanctioned-sexual-assault-the-injustice-of-strip-searching-women-in-prisons>>; Debbie Kilroy, 'Strip-Searching: Stop the State's Sexual Assault of Women in Prison' (2003) 12 *Journal of Prisoners on Prisons* 34- 36.

² Flat Out Inc, Submission No 980 to Victoria, Royal Commission into Family Violence (29 May 2015).

Recommendations

1. The ALRC recommend that the federal, state and territory governments work towards closing current prisons, and commit to a plan of action to do so. Money being funnelled into prisons should be reallocated to housing and culturally safe services that meet the needs of people at risk of criminalisation and divert people away from the criminal legal system.
2. To end the over-imprisonment of, and acute harms caused to, particular cohorts of people disproportionately locked away in prisons across Australia, the ALRC recommend that the federal, state and territory governments raise the minimum age of criminal responsibility to at least 14 years old without exception and repeal reverse onus provisions in bail laws.
3. The ALRC recommend that state and territory governments urgently enact law reform to cease and prohibit the practice of strip searching of people in prisons.
4. The ALRC recommend that state and territory governments urgently implement safer and less invasive alternatives such as body scanners.
5. The ALRC recommend that use of scanners and any other alternative search methods only ever be used as a last resort when absolutely necessary, after less intrusive alternatives have been exhausted, an individual risk assessment has been completed and there remains objectively reasonable grounds to believe that the person is carrying dangerous contraband.
6. The ALRC recommend that the reasons for any less invasive search – including the risk assessment, the basis of reasonable belief, the nature of any intelligence and relevant human rights considerations – be documented, together with any items identified by the search.
7. The ALRC recommend that state and territory governments publicly report on rates of strip searching in prisons on a regular basis.
8. The ALRC recommend that relevant guidelines, policies and procedures for strip searching be made publicly available documents.
9. The ALRC recommend that state and territory governments create and properly resource independent legal and advocacy services for people in prison, and support Aboriginal Legal Services to provide such services to Aboriginal and Torres Strait Islander people in prison (to the extent such services do not already exist).
10. The ALRC recommend that the federal government resolve the funding standoff with the states and that the Victorian, NSW and Queensland governments implement Australia's obligations pursuant to the United Nations anti-torture treaty, the Optional Protocol to the Convention Against Torture (OPCAT), as a priority.
11. The ALRC recommend that the federal government enact an accessible and legally enforceable human rights framework in the form of a national Human Rights Act, and recommend that all states and territories to do the same. In the ACT, Victoria and Queensland, where human rights protections have already been legislated, the ALRC recommend that these laws be strengthened to allow people in prisons to hold governments to account for breaches of their rights.

I had an experience when I told two female prison officers, I was feeling extremely vulnerable and uncomfortable, (and as a sexual abuse survivor myself) they had responded with 'how do you think we feel? We don't like doing this either', this comment further felt degrading and highly dismissive. Strip search practices are contradictory to sexual assault charges, sexual assault convictions, and imprisonment. The system perpetrates sexual violence by enacting strip search policies, though arrests and incarcerates individuals that are sexual violence survivors, and those individuals that have perpetrated sexual violence, though it is acceptable at a systemic level for sexual violence to hold no accountability. – Sara S

It was my first time ever incarcerated, the whole experience was completely foreign to me and at no point did anyone explain to me what was going to be happening.

I went from Ringwood cells to the Melbourne remand centre where I was strip searched for the first time. It was winter and cold. I wasn't advised to change my clothing when my house was raided at around 10am, police took me knowing I wasn't going to be released.

I was under dressed, wearing a tracksuit that had a cord, (draw string) and a singlet, no bra.

When I arrived at the Melbourne Remand Centre very late at night I hadn't eaten all day, I was freezing cold, and withdrawing from methamphetamine.

I was completely distressed and beside myself as I wasn't able to collect my child from school and had not had any communication with him or anyone else. I had been crying and was experiencing high levels of anxiety.

On arrival I was escorted to a room, it was dark and cold, a tiny space with no windows. I was asked to undress.

Still the memory haunts me...for this reason I will not go into detail.

My pants were taken from me and I was supplied with another pair which had to be retrieved from another space. I was left alone, bare feet and hardly clothed, wearing my singlet and nickers.

Terrified and in shock my body trembled, I felt violated and abused. I began to sob.

As they entered, I was told to remove all my jewellery including the beads and jewels from my hair (dreadlocks). I did not speak, removed what I could and handed it to them.

There was a short discussion that I must remove all foreign matter from my hair to which I replied I couldn't. They again left and returned with scissors and cut my hair and told me to get dressed.

I was beside myself and could not believe the severity of what I had just experienced. I am a survivor of violence including sexual assault.

I was completely traumatised by this strip search and those to follow. How dehumanising!!

I was taken back to my cell, my sorrow quickly changed to anger. I thought to myself is this shit legal?? I couldn't believe what had happened.

Strip searches ARE sexual abuse, they are unlawful and violent. Prison officers use them as methods of power and control. Strip searches are often weaponised against women for 'noncompliance', having an emotional reaction to this treatment or refusing can lead you to being slotted (solitary confinement). Women have no agency or choice over their bodies while incarcerated, STOP being complicit and allowing state sanctioned abuse. - FIGJAM member

Responding to state-sanctioned sexual abuse

1. This submission focuses on the experiences of victim survivors of state-sanctioned and state-inflicted abuse in the form of strip searching in prisons. These experiences must form part of the ALRC inquiry into so-called 'justice responses' to sexual violence because strip searching is a form of sexual violence perpetrated by the state and its agents.
2. The forced removal of clothing and exposure of body parts constitutes conduct that would be considered sexual assault if imposed on the wider community, yet it is routinely carried out with impunity behind prison walls. Strip searches are inherently sexually coercive as the usual requirements for consent to sexual activity are dispensed with³ and, as discussed further below, because people in prison are under threat of consequence to submit to strip searches.
3. The state's impunity for inflicting sexual assault arises because strip searching is enabled by law and touted to serve the aims of the criminal legal system, despite available evidence indicating that strip searches fail to achieve their intended purpose of contraband detection. Despite the advocacy of people with lived experience of incarceration calling the practice out for what it is, strip searching is

³ Jessica Hutchison, "It's Sexual Assault. It's Barbaric": Strip Searching in Women's Prisons as State-inflicted Sexual Assault (2020) 35(2) Journal of Women and Social Work 169.

yet to be widely understood as sexual assault because it is inflicted on people in prison. As noted by critical scholar Jessica Hutchison: “[i]mprisoned women, the majority of whom are poor, racialized, and/or indigenous, are relegated to a class of subhumanness for which humane treatment is not required.”⁴ The legal system cannot hope to address sexual violence without reckoning with, and addressing, the ways in which the state perpetrates and enables violence against people in prison.

4. The ALRC’s issues paper poses a number of questions which seek to understand the experiences of victim survivors of sexual violence. While the focus of the ALRC’s issues paper is primarily on victim survivors’ experience of the legal system and on state responses to reported sexual violence, we encourage the Australian Law Reform Commission to also consider the mistreatment of criminalised victim survivors of sexual violence perpetrated and enabled by the state and its agents that governments are allowing to thrive in the darkness behind prison walls.
5. If the ALRC’s inquiry is to promote just outcomes for people who have experienced sexual violence and minimise re-traumatisation as set out in the ALRC’s issues paper, it must consider reforms to end the sexual violence of strip searches, which often goes unreported and for which victim survivors have limited opportunities for recourse in the legal system.
6. Some of the matters covered in this submission have particular relevance to questions posed by the ALRC’s issues paper. Women victim survivors are often exposed to the harms caused by strip searches by virtue of their misidentification as primary aggressors in family violence proceedings and ensuing criminalisation.⁵ This misidentification is of central relevance to the ALRC’s inquiry (Questions 5 – 10). More broadly, strip searching erodes criminalised victim survivors’ trust in the criminal legal system, which in turn can influence future decisions to report violence (Question 1) and engage with the criminal legal system (Questions 11 – 35). Delays in the criminal legal system (Question 34) also mean that people are unnecessarily exposed to the violence of strip searches while locked away in prison in pre-trial detention awaiting trial or sentencing.

While I was at Hopkins correctional, I was sexually assaulted many times. Shortly after one such time, I reported it to the officers.

A few days after this reported incident, I had a contact visit.

After the visit, I was stripped searched by ONE MALE officer. A judge had previously ruled I was transgender in a court. The prison knew this about me. They also knew I had been sexually assaulted recently. The officers standard procedure for every single strip search regardless of gender is always TWO officers perform the search, so to avoid “misunderstandings”.

After this incident I felt very violated, as I was already in a fragile state of mind due to the recent sexual assault. So, I reported this violation by the male officer.

The officers said I was a liar and everything was done as per procedure. The Case was closed.

I was engaged with Fitzroy legal at the time and they demanded to view the security footage.

The general manager did not facilitate this. Instead, he said, upon review, everything Stacey said is true. We will do better in the future. The staff member was not punished. Just told to be more careful. Again, case closed.

Other times I was made to perform what I consider lewd acts in the guise of strip searches. And other times Officers would fart in the booth and then leave me naked in the room while they laughed hysterically at their actions. - Stacey Stokes

⁴ Ibid 171.

⁵ Parliament of Victoria, Inquiry into Victoria’s criminal justice system (2022) 243.

The State as the perpetrator

Flawed rationale for strip searches

7. Strip searching is not simply state-sanctioned; it is also perpetrated by the state, which is responsible for mandating and enforcing strip searches.⁶ Strip searching in prisons across Australia is enabled by overly broad laws that permit its use, a failure to comply with laws when they do attempt to regulate their use and a general lack of accountability for breaching relevant laws. Laws often attempt to justify strip searches as necessary in order to maintain the “security or good order of the prison or prisoners”,⁷ as a contraband control method⁸ and to prevent people in prison obtaining prohibited items.⁹ The vast majority of strip searches that people are subjected to are performed ‘routinely’ – for instance, when a person first enters prison, attends court, is transferred between prisons, attends medical appointments and has visits with family¹⁰ – in the absence of reasonable suspicion and without individual risk assessments.¹¹
8. Despite the state’s refrain that strip searching is needed to maintain the ‘security or good order of the prison’, strip searching is not a conducive means of achieving this aim. In a 2019 review, the Western Australian Office of the Inspector of Custodial Services (**OICS**) found no evidence that strip searching deters people trying to bring contraband into prisons, and indeed no evidence of any relationship between strip search frequency and rates of drug detection.¹²
9. The Victorian Ombudsman and Queensland Human Rights Commission have similarly documented the unnecessary reliance by prison staff on strip searches.¹³ The Victorian Ombudsman’s inspection of one maximum security women’s prison found that only one drug-related contraband item was recovered from the prison’s visitation centre – half a blood pressure tablet – despite a significant number of routine strip searches on women in prison before and after visits with family and friends over the relevant period.¹⁴ The Queensland Human Rights Commission’s recent review of strip searches of women in Queensland prisons (**QHRC Review**) likewise revealed “an absurdly low rate of contraband detection” for strip searches and concluded that they fail to improve prison safety.¹⁵
10. These low rates of contraband detection are reflected in other jurisdictions across Australia. A dataset collected over five years revealed the lowest rate for contraband detection arising out of strip searches: in Western Australia, of 869,000 strip searches conducted from 2014 until 2019, only one in every 1,500 strip searches detected contraband (0.006%), with most of the items recovered not drug- or weapons-related.¹⁵
11. Data obtained by the Human Rights Law Centre via freedom of information legislation confirms that, across Australia, women and children are subjected to excessive rates of strip searching, with minimal amounts of ‘contraband’ detected as a result of those searches.

⁶ Hutchinson, n 3.

⁷ See, eg, Corrections Act 1986 (Vic), s 45(1)(b).

⁸ See, eg, Explanatory Notes, Corrective Services Bill 2006 (Qld) 59-60.

⁹ See, eg, Corrective Services Regulation 2017 (Qld) s 19.

¹⁰ Human Rights Law Centre, Total Control: ending the routine strip searching of women in Victoria’s prisons (2017) 8-9.

¹¹ Queensland Human Rights Commission (**QHRC**), Stripped of our dignity: A human rights review of policies, procedures, and practices in relation to strip searches of women in Queensland prisons (September 2023) 5.

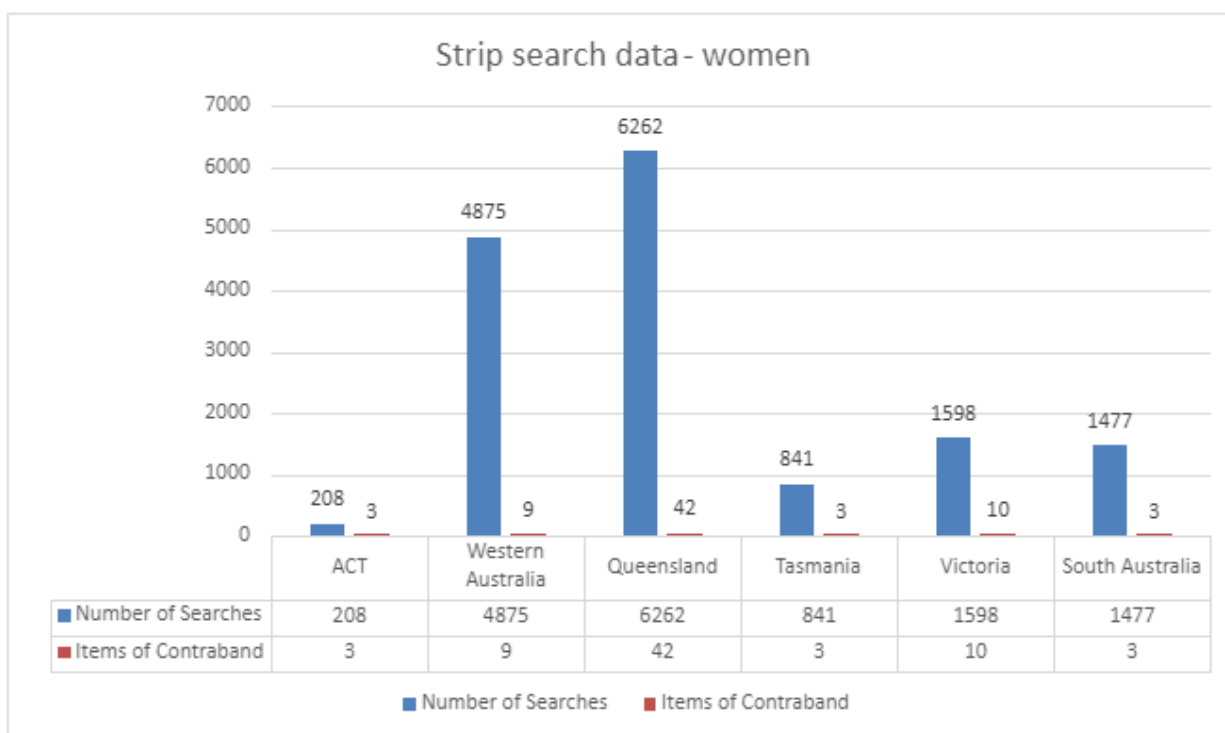
¹² Office of the Inspector of Custodial Services (WA) (**OICS**), Strip searching practices in Western Australian prisons (2019) 8-9.

¹³ Victorian Ombudsman, Implementing OPCAT in Victoria: Report and inspection of Dame Phyllis Frost Centre (2017); QHRC, n 11.

¹⁴ Victorian Ombudsman, n 13 10.

¹⁵ OICS, n 12 7.

TABLE 1: STRIP SEARCH DATA FOR WOMEN IN THE 7-MONTH PERIOD BETWEEN 1 OCTOBER 2020 AND 30 APRIL 2021¹⁶



Notes:

- Western Australia has provided inconclusive data that indicates that the number of items identified could be 5 or 9 items.
- We believe that the elevated number of items identified as contraband in Queensland prisons is due, in part, to how contraband is categorised (and, for example, lip gloss, a piece of paper and coffee and sugar from the kitchen were identified as contraband in circumstances where they are not dangerous). This is consistent with reports to the QHRC Review of people in prison contesting the seriousness of items recorded as contraband, including lollies, coffee, or sugar packets.¹⁷ This also raises serious concerns about whether such contraband could be identified through the use of less invasive search practices.

12. Alarming, in response to the Human Rights Law Centre’s request in NSW, Corrective Services confirmed that they do not have a record of the number of times women are strip searched in prison. There is no register or logbook of strip searches, as there is in other jurisdictions. Strip searches “are mainly conducted as part of centre routine, procedure and policy” but are not recorded each time, in contravention of international human rights standards that provide that prisons keep appropriate records of searches, including reasons for the searches, the identities of those who conducted them and any results of the searches.¹⁸

¹⁶ Queensland only reported 4-months (January 2021 to 30 April 2021) of data for Brisbane Women’s prison, Numinbah prison, Helana Jones prison and Townsville prison that we have adjusted this to reflect a 7-month time period consistent with the other data sets.

Victorian data is for the 7-month period from June 2020 – December 2020.

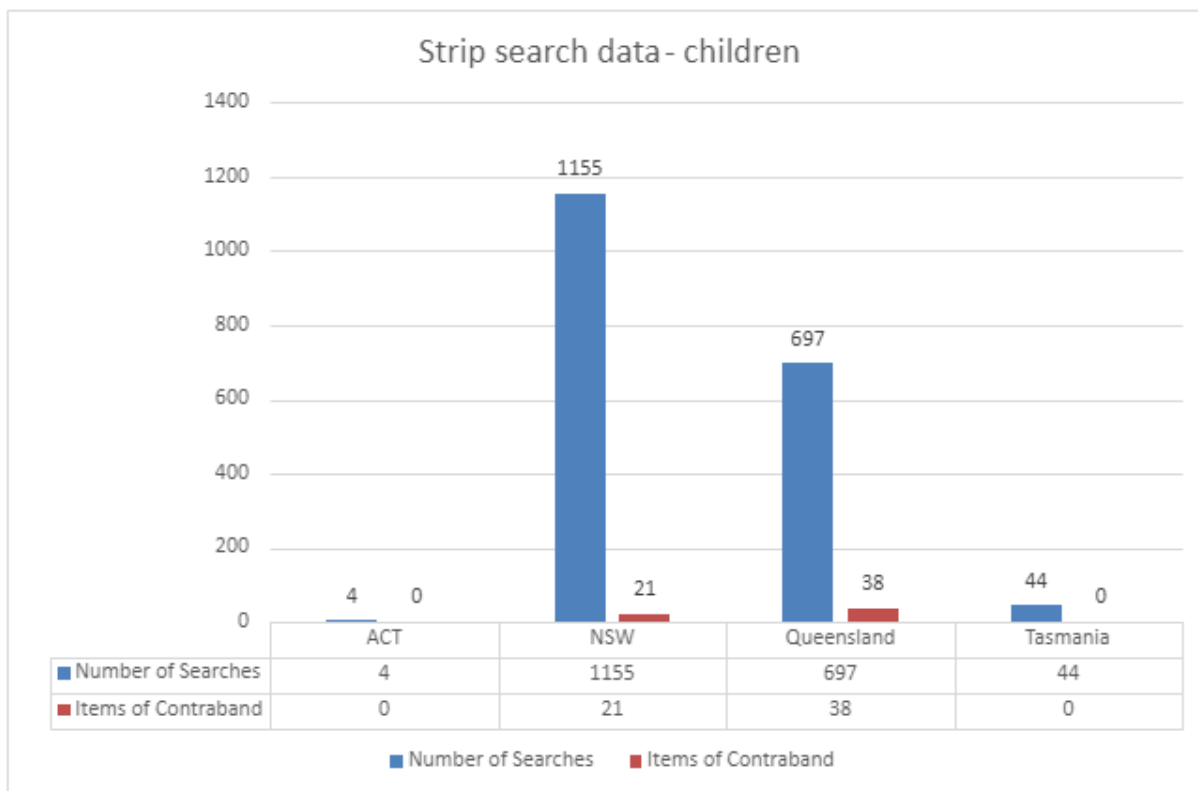
The NT provided the following data:

- Over a 15-month period between May 2020 – June 2021, there were 100 strip searches conducted on women held in sector 4 at Darwin Correctional Centre. Only one item of contraband (a wooden shiv) was identified.
- Over a 4-month period between March 2021 – June 2021, there were 664 strip searches conducted on women upon reception to Darwin Correctional Centre. Only one item of contraband, being “papers with address on” was identified.
- Over a 9-month period between September 2020 – May 2021, there were 5,367 strip searches conducted on men and women at Darwin Correctional Centre due to visitations. Only 3 items of contraband were identified; the type of contraband was not listed or was redacted. There was no way to disaggregate this data on the basis of gender.

¹⁷ QHRC, n 11 43.

¹⁸ United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) UN Doc E/CN.15/2015/L.6/Rev (17 December 2015) rule 51.

TABLE 2: STRIP SEARCH DATA FOR CHILDREN IN THE 7-MONTH PERIOD BETWEEN 1 OCTOBER 2020 AND 30 APRIL 2021¹⁹



Notes:

In response to the Human Rights Law Centre’s FOI requests for the 7-month period between 1 October 2020 and 30 April 2021:

- NT, WA and South Australia have said that there were no strip searches in Don Dale and Alice Springs youth prisons, Banksia Hill youth prison and the Adelaide Youth Training Centre youth prison for the period of 1 October 2020 and 30 April 2021:
 - NT said it was not their policy to conduct personal searches routinely and accordingly no personal searches had been undertaken since approximately 2017;
 - WA denied the FOI request on the basis that any registers or records of strip searches do not exist; and
 - SA stated that a review of documents indicated that no strip searches took place at the Adelaide Youth Training youth prison.
 - Victoria has commenced publishing strip search data on a quarterly basis, beginning from January 2023.²⁰ While it has committed to publishing retrospective data from 1 July 2020, it has yet to do so.
13. Previously, the Human Rights Law Centre reviewed six months of strip search register entries from two women's prisons in Victoria in 2017, which revealed that out of over 6,200 strip searches, six items were found. These included tobacco or nicotine products, a small quantity of gum, and one unidentified object. One search was recorded as ‘inconclusive’. This data formed the basis of the *Total Control: Ending the routine strip searching of women in Victoria’s prisons* report published by the Human Rights Law Centre in 2017, with assistance from Flat Out.

¹⁹ NSW reported 1 month (April 2021) worth of data for Frank Baxter and Cobham Youth prisons that we have adjusted this to reflect a 7-month time period consistent with the other datasets.

²⁰ Department of Justice and Community Safety (Vic), Youth justice reviews and reporting (accessed 21 May 2024) <<https://www.justice.vic.gov.au/justice-system/youth-justice/youth-justice-reviews-and-reporting>>.

Strip searching as a tool of coercive control

14. Being subjected to strip searching can be humiliating and degrading for any person. While use of the practice does nothing to further its purported aims, strip searching functions as a very powerful tool of coercive control – a form of violence comprising a pattern of behaviours designed to intimidate, isolate and control victim survivors.
15. Arbitrary and ‘routine’ strip searching that continues despite the availability of scanning technology indicates that the practice is used for purposes other than detection of contraband. This is the anecdotal evidence of women to Flat Out - that prison officers rely on strip searching to assert power and control, despite official policy stipulating that the practice is not to be used to punish or control.
16. This was confirmed by Victoria’s Independent Broad-based Anti-corruption Commission (**IBAC**) in its 2021 Special report on corrections, which relayed that the General Manager of Port Phillip Prison told investigators that strip searches were “one of the options available to assert control” over people in prison.²¹ Similarly, the Western Australian OICS found that 15% of staff reported that they had seen strip searching used to modify behaviour, suggesting that strip searching may have often been used as a means of punishment or control.²² The state’s use of strip searching in this way also legitimises tactics of abuse and control, enhancing the criminogenic effects of incarceration.
17. Further, the QHRC Review received evidence that strip searching mirrors the power dynamics in violent and abusive relationships, leading to a loss of bodily autonomy and a sense of being ‘owned’ by the system.²³ Many people in prison who spoke with the QHRC Review perceived strip searches as an additional punishment used to control and demean them.²⁴
18. Common examples of coercive and controlling behaviour include enforcing rules which humiliate, degrade or dehumanise a person, isolating them from their friends and family and sexual assault or threats of sexual assault. As people in prison are often subjected to strip searching before and/or after visits, with some children being subjected to searches when meeting their incarcerated parents, strip searching can function as a barrier to people in prison maintaining relationships with their children and other family members.²⁵ In relation to professional visits, strip searching can deter people in prison from seeking legal advice and having their health needs met.²⁶
19. As in a violent family setting, people in prison are required to conform to the demands of perpetrators, no matter how arbitrary and degrading. In some jurisdictions, the continued use of humiliating search methods, such as ‘squat and cough’, is enabled by the significant discretion afforded by current strip search laws and policies. The QHRC Review documented examples of such search methods, leading to women in prison feeling targeted and victimised when a strip search is conducted more invasively than it had been previously.²⁷
20. Women also reported to the QHRC Review concerns that raising complaints about inconsistent strip search practices between staff members would lead to more invasive practices becoming official policy.²⁸ More generally, fear of disciplinary breaches or repercussions deterred women in prison from asking questions or raising concerns during a strip search.²⁹
21. The QHRC Review also received evidence of the use of force on women in prison who resisted strip searching, including the case of a victim survivor of sexual abuse who panicked when left with four male prison staff and was consequently grabbed, smashed on the ground, ‘hog carried’ and restrained while her clothes were removed.³⁰

²¹ Independent broad-based anti-corruption commission Victoria (**IBAC**), Special report on corrections: IBAC Operations Rous, Caparra, Nisidia and Molaro (June 2021) 53.

²² OICS, n 12 4-5.

²³ QHRC, n 11 61.

²⁴ Ibid 62.

²⁵ Cultural Review of the Adult Custodial Corrections System, Safer Prisons, Safer People, Safer Communities (December 2022) 657.

²⁶ Sisters Inside, Women and girls’ experience of the criminal ‘justice’ system: Sisters Inside’s response to Discussion Paper 2, Women’s Safety and Justice Taskforce, Queensland (2021) 8

<https://www.womenstaskforce.qld.gov.au/___data/assets/pdf_file/0004/692662/wsjt-submission-dp2-sisters-inside.pdf>

²⁷ QHRC, n 11 127, citing Sisters Inside Inc consultation (Townsville), 16 May 2023.

²⁸ Ibid 127.

²⁹ Ibid 122.

³⁰ Ibid 132.

22. The ACT Inspector of Correctional Services investigated a similar, forcible strip search of an Aboriginal woman in Canberra’s Alexander Maconochie prison in 2021.³¹ The woman was a victim survivor of rape, had mental health and medical conditions, and was heavily menstruating when several officers in full military gear restrained and handcuffed her, and cut her clothes off.³²
23. The use of force and varying, invasive methods in strip searching highlights the fact that state-sanctioned violence deters challenge because practices like strip searches are backed up by the state’s coercive powers to inflict more harm, as well as deny accountability. This is reflected in the small number of complaints made about strip searching – for instance, the WA’s OISC reported that between 1 January 2014 and 12 July 2018, just 14 complaints were received about strip searching.³³

Strip searching as sexual abuse

24. Coercive control may include sexual violence. As a result of sustained advocacy in past decades,³⁴ there has been increasing recognition of strip searching as sexual abuse, with currently and formerly incarcerated women highlighting that abuse behind prison walls mimics sexual violence by their partners and others.³⁵ Strip searches can often cause emotional distress, mental ill health and “trauma and humiliation, similar to the experiences of victims of sexual abuse and rape.”³⁶ Women reported to the QHRC Review that being strip searched was akin to “being raped”,³⁷ or “officially abused”.³⁸ Except while strip searches are presently authorised and perpetrated by the state, other forms of sexual assault are criminalised.
25. Strip searches can be particularly harmful for women and children in prison. The exceptionally high rates of sexual and family violence perpetrated against women and girls means that the re-traumatising impact of strip searching is particularly acute for them. Many women in prison were abused as children by people in positions of authority or trust. Strip searching revictimises women and children by exposing them to sexual violence inflicted by prison staff under threat of consequence, including the use of force and other harmful prison practices like solitary confinement and loss of privileges.³⁹ The QHRC Review was informed of instances where male officers intruded on strip searches when the person in prison was undressed: “If we resist, it’s not a female who comes in”.⁴⁰ Ongoing reports of the presence of male prison staff during strip searches, in the vicinity or watching on camera, contrary to policy, exacerbates distress for people with histories of sexual or domestic abuse perpetrated by men.⁴¹
26. The harms caused by strip searching also represent a continuation of abuse for those women who are in prison because of gender-based violence. Regular failures by police to identify women as the primary victim in family violence matters continue to result in victim survivors being criminalised. Despite family violence being gendered and women being the vast majority of victim survivors,⁴² a substantial number of women are misidentified as perpetrators of family violence and named as respondents on protection orders.⁴³ Misidentification can have lifelong impacts, including a criminal record as a consequence of breaching the protection order or entrenchment in the legal system.⁴⁴

³¹ ACT Inspector of Correctional Services, Report of a review of a critical incident: Use of force to conduct a strip search at the Alexander Maconochie Centre on 11 January 2021 (2021).

³² *Ibid* 4.

³³ OISC, n 12 3.

³⁴ Debbie Kilroy and Tabitha Lean, n 1.

³⁵ Hutchison, n 3 170.

³⁶ Daphne Ha, Blanket Policies for Strip Searching Pretrial Detainees: An Interdisciplinary Argument for Reasonableness, 79 *Fordham L. Rev.* (2011), 2725.

³⁷ QHRC, n 11 59.

³⁸ *Ibid* 60.

³⁹ Hutchinson, n 3 163.

⁴⁰ QHRC, n 11 61.

⁴¹ *Ibid*.

⁴² Australian Institute of Health and Welfare, Sexual Violence (12 April 2024).

⁴³ Nancarrow, H., Thomas, K., Ringland, V., & Modini, T, Accurately identifying the “person most in need of protection” in domestic and family violence law (2020) 103.

⁴⁴ *Ibid* 31.

Discriminatory impacts of strip searching

27. The (re-)traumatising effects of strip searching are overwhelmingly and acutely felt by people who are disproportionately criminalised, as well as those who are at greater risk of (re-)victimisation by prison staff due to multiple and compounding forms of discrimination.

Aboriginal and Torres Strait Islander women

28. Aboriginal and Torres Strait Islander women are disproportionately over-criminalised due to successive government failures to reckon with the ongoing impacts of colonisation and intersecting forms of race-based and gender-based discrimination in the criminal legal system.
29. Alarming, consecutive sets of data – that set out above, as obtained by the Human Rights Law Centre, as well as data released as a result of follow up inquiries made by the ABC for the ACT – demonstrate that, even accounting for their over-representation in prisons, First Nations women are subjected to strip searches at higher rates than non-Indigenous women in prison.⁴⁵
30. Aboriginal and Torres Strait Islander women also experience disproportionately high rates and more severe forms of violence compared to non-Indigenous women,⁴⁶ exacerbating the re-traumatising effects of strip searching.

Women with disability and unmet health needs

31. Women with cognitive, intellectual and/or physical disabilities and unmet health needs – a cohort of particular interest to the ALRC's inquiry – are also over-criminalised by the criminal legal system. People in prison with disability are also at greater risk of violence and abuse by prison officers because their complaints are less likely to be believed.⁴⁷
32. Despite the harm that can be caused by strip searching women with cognitive, intellectual and/or physical disabilities and health issues, they continue to be subjected to these practices, which can contribute to an increased risk of self-harm in prison.⁴⁸

Trans and gender diverse people

33. Trans and gender diverse people are disproportionately criminalised and experience greater rates of interpersonal violence, including identity-based and sexual violence.⁴⁹
34. As a bare minimum requirement, trans and gender diverse people in prison should have the right to choose, on the basis of gender, which prison staff will search their bodies.⁵⁰ Strip searching policies in Victoria, New South Wales, Tasmania, ACT and Western Australia generally appear to allow people in prison to choose the gender of the officer conducting searches upon them,⁵¹ though in practice there continue to be issues with prison staff complying with these policies.⁵²
35. In other jurisdictions, including Queensland, the practice is for searches to be conducted by prison staff of the same sex at birth of the incarcerated person. This discriminatory practice exacerbates the distress of those trans and gender diverse people in prison who are seeking but cannot access gender affirming treatment. In the case of people in prison who have received gender affirming healthcare, strip searches performed by prison staff not of their identified sex can be equally distressing.⁵³

⁴⁵ Jake Evans, Indigenous women strip-searched twice as often inside Canberra's jail in recent months (*ABC News*, 2 July 2021) <<https://www.abc.net.au/news/2021-07-02/act-indigenous-women-strip-searched-twice-as-often-jail/100259182>>.

⁴⁶ For instance, Aboriginal and Torres Strait Islander women are 34 times more likely to be hospitalised due to family violence related assaults than non-Indigenous women: Steering Committee for the Review of Government Service, Coalition of Australian Governments, Framework for Reporting on Indigenous Disadvantage: Report on Consultations (2006); Australian Law Reform Commission and New South Wales Law Reform Commission, Family Violence – A National Legal Response, (ALRC Report No 114, NSWLRC Report No 128, 2010) 24.27.

⁴⁷ Human Rights Watch, 'I needed help, instead I was punished': Abuse and neglect of prisoners with disabilities in Australia (2018) 3.

⁴⁸ Anna Bogdanic, Strip-Searching of Women in Queensland Prisons (2007) 10.

⁴⁹ Mitchell, M., McCrory, A., Skaburskis, I. and Appleton, B, Criminalising Gender Diversity: Trans and Gender Diverse People's Experiences with the Victorian Criminal Legal System, *International Journal for Crime, Justice and Social Democracy*, (2022) 11(4), 99-100.

⁵⁰ United Nations Office of Drugs and Crime, Technical Brief: Transgender People and HIV in Prisons and Other Closed Settings, 5 [6].

⁵¹ Winter C. Correctional policies for the management of trans people in Australian prisons. *Int J Transgend Health*. 2023 Aug 14;25(2): 141.

⁵² See, eg. Rebecca Peppiatt, Transgender woman kept in Perth prison for men (*WAtoday*, 17 March 2023) <<https://www.watoday.com.au/national/western-australia/perth-judge-in-sentencing-dilemma-as-transgender-woman-complains-of-treatment-in-male-prison-20230316-p5cst9.html>>.

⁵³ QHRC, n 11 108.

36. This is compounded by the fact that most trans and gender diverse people are detained in prisons that do not align with their gender. Trans women continue to be locked away in men's prisons and subject to vilification, violence and other harmful prison practices such as solitary confinement.⁵⁴

Children

37. No child belongs in prison. Yet, across Australia, Aboriginal and Torres Strait Islander children;⁵⁵ children with disabilities, mental health needs, complex trauma and drug and alcohol dependencies;⁵⁶ and girls with histories of physical and sexual abuse⁵⁷ are over-criminalised, over-incarcerated and disproportionately subjected to strip searching in youth prisons.
38. In relation to Aboriginal and Torres Strait Islander children, data obtained by the Human Rights Law Centre in 2018 showed that a disproportionately high number of Aboriginal and Torres Strait Islander children were being subjected to strip searching, accounting for over 50% of the strip searches undertaken in Tasmania during a 6-month period in 2018.
39. For children in prisons, strip searching is a particularly stark "manifestation of power relations",⁵⁸ involving adult staff forcing children to undress in front of them. Despite the breadth of powers granted to prison staff to strip children, a culture of impunity in youth prisons has enabled practices in excess of these powers to proliferate. For instance, the Northern Territory Royal Commission into the abuses at the Don Dale youth prison found that girls had been inappropriately physically handled, restrained and stripped of their clothing by male prison staff,⁵⁹ and that children were being subjected to random strip-searching following family visits without any justification.⁶⁰
40. Perpetrators of child sexual abuse have also exploited the operationalisation of strip searching as an opportunity to groom and sexually abuse children in youth prisons, with the Royal Commission into Institutional Responses to Child Sexual Abuse documenting victim survivors' accounts of prison staff exploiting strip searches to digitally penetrate, touch and sexualise them.⁶¹
41. Strip searching, and the abuses of power connected to it, cause trauma to incarcerated children and compound previous trauma arising out of child abuse or neglect, institutional abuse, family violence and sexual violence. Inflicting trauma on children can activate a toxic stress response which, since experienced at a time when their brains are undergoing critical development, can lead to lifelong problems in learning, behaviour and physical and mental health.⁶²
42. In recognition of the harmful impact of strip searches on children in youth prisons, the ACT has recently updated its youth prison standards to provide that strip searching should not be used, and that body scanners or direct observations should be used as alternatives.⁶³

⁵⁴ Flat Out Inc, Transgender Victoria, Zoe Belle Gender Collective and Fitzroy Legal Service, Joint statement from LGBTIQ+ rights advocates and allies on the treatment of transgender women in the Victorian prison system (12 August 2022) <<https://static1.squarespace.com/static/5f3a46e3dff8f36701099cf/t/637eb140287ff4075f95e2ed/1669247297101/20220812+Media+Statement+prisons%2C+human+rights%2C+sensationalism.pdf>>.

⁵⁵ Australian Institute of Health and Welfare, Youth justice in Australia, 2020-21 (31 March 2022).

⁵⁶ Standing Council of Attorneys-General, Age of Criminal Responsibility Working Group Report (September 2023) 21-22.

⁵⁷ Lúcia Forsythe and Kerryn Adams, Mental Health, Abuse, Drug Use and Crime: Does Gender Matter? (Trends and Issues in Crime and Criminal Justice, No 384, Australian Institute of Criminology, 2009) 5.

⁵⁸ Lord Carlisle of Berriew QC, An independent inquiry into the use of physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children's homes, The Howard League for Penal Reform (2006) 58, <<http://howardleague.org/wp-content/uploads/2016/03/Carlisle-Report-pdf.pdf>>.

⁵⁹ Royal Commission into the Protection and Detention of Children in the Northern Territory (Final Report, 2018) 447.

⁶⁰ Ibid 257.

⁶¹ Royal Commission into Institutional Responses to Child Sexual Abuse (Final Report, 2017) 93.

⁶² Royal Commission into the Protection and Detention of Children in the Northern Territory, n 60 134.

⁶³ ACT Inspector of Correctional Services, ACT Standards for Youth Detention Places (2024) 37.

Strip searching violates human rights

43. Like other forms of sexual violence, arbitrary strip searching may amount to inhuman and degrading treatment.⁶⁴ Strip searching also constitutes a serious and unjustified limitation on the rights of people in prison, which are protected under international law and domestic human rights laws. Relevant rights include the right to:
- humane treatment in detention;
 - freedom from cruel, inhumane and degrading treatment or punishment;
 - non-interference with privacy, including bodily integrity;
 - protection of families and children; and
 - equality.
44. The above rights are protected in international human rights treaties to which Australia is a party, including the International Covenant on Civil and Political Rights,⁶⁵ the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,⁶⁶ and the Convention on the Elimination of All Forms of Discrimination Against Women.⁶⁷ These rights are also enshrined in domestic human rights legislation in the ACT, Victoria and Queensland.⁶⁸
45. The Mandela Rules – which set the minimum standards for the treatment of people in prisons around the world – further provide that intrusive searches, including strip searches, should be undertaken only if absolutely necessary.⁶⁹ Searches should not be used to harass, intimidate or unnecessarily intrude on privacy, and records should be kept of the searches, the reason for the searches, who conducted them, and the results of the search.⁷⁰
46. The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders additionally set out human rights obligations for women in prison and require alternative screening methods, such as scans, to be developed to replace strip searches, in order to avoid the harmful impacts they cause.⁷¹
47. Laws and policies permitting strip searching continue to operate with little regard to these standards, despite Australia’s ratification of international human rights obligations. Further compounding this, prison guidelines, policies and procedures are often not available to people in prison or their advocates so it is not possible to identify potential human rights breaches.
48. Recognising that prisons are primarily the responsibility of states and territories, Australia is also in need of robust human rights protections in every state and territory. At present, international human rights law may be considered in interpreting the human rights protected in the ACT, Victoria and Queensland. An example of this is the Victorian case of *Thompson v Minogue* [2021] VSCA 358 where the Court of Appeal held that the practice of routinely strip-searching people in prison who are undergoing urine testing is in breach of privacy and dignity rights protected by the *Charter of Human Rights and Responsibilities Act 2006* (Vic).
49. Even in domestic jurisdictions with human rights legislation, there remain significant barriers to people enforcing their rights. In Victoria and Queensland, claims under their human rights laws must ‘piggyback’ another primary claim, preventing standalone human rights challenges.⁷² The

⁶⁴ See, for instance, the European Court of Human Rights’ decision in *Van der Ven v. the Netherlands* (50901/99), 61 – 63. The Queensland Human Rights Commission similarly recognised that strip searches may violate the prohibition on inhuman and degrading treatment in section 17 of the *Human Rights Act 2019* (Qld): Queensland Human Rights Commission, *Stripped of our dignity: a human rights review of policies, procedures, and practices in relation to strip searches of women in Queensland prisons* (September 2023) 65.

⁶⁵ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force on 23 March 1976).

⁶⁶ *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).

⁶⁷ *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981).

⁶⁸ *Human Rights Act 2004* (ACT), *Charter of Human Rights and Responsibilities Act 2006* (Vic), *Human Rights Act 2019* (Qld).

⁶⁹ United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) UN Doc E/CN.15/2015/L.6/Rev (17 December 2015) rule 52.

⁷⁰ *Ibid*, rule 51.

⁷¹ *Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules)*, GA Res 3/65, 65th sess, Agenda Item 105, UN Doc A/C.3/65/L.5 (6 October 2010), rule 20.

⁷² *Charter of Human Rights and Responsibilities Act 2006* (Vic), s 39; *Human Rights Act 2019* (Qld) s 59(1).

remedies available for breaches of human rights are also limited in the ACT, Victoria and Queensland, which do not permit the recovery of damages.⁷³ In jurisdictions without human rights legislation, people are deprived of effective mechanisms to enforce their human rights.

50. A culture of impunity within prisons additionally thrives because of the current lack of independent oversight and monitoring of places of detention, as mandated by the United Nations' anti-torture treaty, the Optional Protocol to the Convention Against Torture (**OPCAT**). Although ratified by the Australian government, OPCAT's implementation by the states and territories is inconsistent, with the Victorian, NSW and Queensland Governments having failed to implement this bare minimum safeguard to protect against mistreatment in prisons.
51. This is all compounded by the limited access to legal advice and representation for people in prison who want to shed light on, and demand accountability for, human rights abuses that they have been subjected to in prisons. While dedicated legal services for people in prison exist in New South Wales and Queensland, all state and territory governments should create and properly resource independent legal and advocacy services for people in prison and support Aboriginal Legal Services to provide such services to Aboriginal and Torres Strait Islander people in prison (to the extent such services do not already exist), to reduce impunity for mistreatment.

Recommendations and alternatives

Decarceration

52. Escalating imprisonment rates and over-crowding create a culturally corrosive environment, exacerbating the risk of people in prisons being subjected to violence and human rights abuses.⁷⁴ The rate at which governments funnel women into prisons continues to rise, and a staggering 44% of women locked away in prisons and subjected to harmful practices like strip searching are unsentenced for the alleged offending that they were arrested for.⁷⁵ Work towards decarceration – reducing the number of people locked away in prisons – is urgently needed.
53. Governments across Australia must work towards closing, rather than opening new and expanding current prisons. This starts with raising the minimum age of criminal responsibility to at least 14 years old and repealing reverse onus bail laws that pipeline too many people into prisons.
54. Prisons are sites of trauma and re-traumatisation, rather than rehabilitation. This is particularly acute for cohorts who are over-criminalised due to successive government failures to support them, including women with lived experience of violence, Aboriginal and Torres Strait Islander women, women with disability and unmet health needs, trans and gender diverse people as well as children entangled in the net of the criminal legal system.
55. Governments must also work to address the underlying factors that result in criminalisation in the first place, and provide culturally safe, community-based supports. Money being funnelled by governments into prisons should be reallocated to housing and culturally safe services that meet the needs of people at risk of criminalisation and divert people away from the criminal legal system.

⁷³ *Human Rights Act 2004* (ACT), s 40C(4); *Charter of Human Rights and Responsibilities Act 2006* (Vic), s 39(3); *Human Rights Act 2019* (Qld), s 59(3).

⁷⁴ Independent Broad-based Anti-corruption Commission, Special report on Corrections: IBAC Operations Rous, Caparra, Nisidia and Molarra (June 2021) 83.

⁷⁵ Australian Bureau of Statistics, Prisoners in Australia (2023) table 30 <<https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/latest-release#prisoner-characteristics-australia>>.

RECOMMENDATIONS:

The ALRC recommend that the federal, state and territory governments work towards closing current prisons, and commit to a plan of action to do so. Money being funnelled into prisons should be reallocated to housing and culturally safe services that meet the needs of people at risk of criminalisation and divert people away from the criminal legal system.

To end the over-imprisonment of, and acute harms caused to, particular cohorts of people disproportionately locked away in prisons across Australia, the ALRC recommend that the federal, state and territory governments raise the minimum age of criminal responsibility to at least 14 years old without exception and repeal reverse onus provisions in bail laws.

Law reform and alternatives

56. Laws in each state and territory should be amended to prohibit the strip searching of people in prisons. There is no reason to repeatedly subject people in prison to a practice that can scar them for life when prison authorities can use less intrusive alternatives, including wands and body scanners.
57. Unlike strip searching, these technologies can be an effective means of detecting contraband, and their use as alternatives to strip searching does not result in any increase in contraband entering prisons. In the United Kingdom, following the 2007 Corston Report recommending the replacement of drug-related strip searches with a pilot of ion scan machines in women's prisons,⁷⁶ the ensuing 18-month pilot across five prisons did not result in any increase in contraband entering the.⁷⁷
58. Alternative search methods should remain a last resort and should not be used as punishment or for any other improper purpose. They may not even be necessary at all given other strategies of control already imposed on people in prisons (like direct observations and saliva swab testing).
59. Alternative approaches are consistent with the recommendation made by the Royal Commission into Institutional Responses to Child Sexual Abuse, that state and territory governments consider implementing strategies for detecting contraband, such as risk assessments or body scanners, to minimise the need for strip searching of children, as well as the recent change in approach in the ACT to end strip searching and alternatively use body scanners or direct observations.⁷⁸
60. A number of scanners are already available in prisons across the country. By way of example, in Victoria, the introduction of scanning technology at one maximum security women's prison led to a reduction of 20,000 strip searches over the 18 months preceding January 2020.⁷⁹ Nonetheless, given the over-reliance on and normalisation of strip searching in the prison environment, routine strip searching remains the default approach in Victoria.⁸⁰ Similarly, inspectors at one of NSW's biggest maximum-security prisons found that the body scanner was under-utilised and people in prison were routinely being strip-searched.⁸¹
61. This evidence points to the entrenched, arbitrary use of strip searching as a tool of coercive control by prison staff, and the need for wholesale cultural change in prisons. In this regard, the Cultural Review of the Adult Custodial Corrections System in Victoria noted that inappropriate strip searching "may also be symptomatic of a more pervasive culture of disrespect."⁸² Relatedly, Corrections Victoria told the QHRC Review that staff were initially reluctant to reduce the number of searches or adopt alternative technologies, purportedly because to do so would involve accepting that a practice they had inflicted "hundreds or thousands of times throughout their whole career, was in fact unnecessary".⁸³

⁷⁶ Baroness Jean Corston, *The Corston Report: Review of Women with Particular Vulnerabilities in the Criminal Justice System* (Report, Home Office, Government of the United Kingdom, 2007) [3.18].

⁷⁷ Human Rights Law Centre, *Total Control: ending the routine strip searching of women in Victoria's prisons* (2017) 24, based on correspondence received from Operational Security Group, Her Majesty's Prison and Probation Service, 15 and 18 August 2017.

⁷⁸ Royal Commission into Institutional Responses to Child Sexual Abuse (Final Report: Contemporary detention environments (Volume 15)) 117–188 and recommendation 15.4.

⁷⁹ Member for Mill Park District, Lily D'Ambrosio, *New gatehouse to boost security and keep people safe* (Media Release, 15 January 2020).

⁸⁰ Cultural Review of the Adult Custodial Corrections System, n 25 656.

⁸¹ Inspector of Custodial Services (NSW), *Inspection of the Metropolitan Remand and Reception Centre* (February 2024) 7-8 <<https://www.parliament.nsw.gov.au/tp/files/187589/Inspection%20of%20MRRC%20Report%20-%209FEB24%20.pdf>>

⁸² Cultural Review of the Adult Custodial Corrections System, n 25 375.

⁸³ QHRC, n 11 44.

62. Scanners and other alternatives should not be deployed by prison staff in the same manner as strip searches – that is, for control or other improper purposes, resulting in the loss of bodily autonomy, privacy and dignity of people in prison. Alternatives must be combined with reformed policies and practices so that the use of less invasive practices and scanning technology are a last resort, and must be based on absolute necessity, documented reasonable intelligence of a specific and identified risk, an individual risk assessment and relevant human rights considerations. The individual risk assessment must take into consideration Aboriginal and Torres Strait Islander status, gender, age, disability and unmet health needs, mental health, culture, language, religion, trauma history and whether the person is pregnant, breastfeeding or has children with them in custody.

RECOMMENDATIONS:

The ALRC recommend that state and territory governments urgently enact law reform to cease and prohibit the practice of strip searching of people in prisons.

The ALRC recommend that state and territory governments urgently implement safer and less invasive alternatives such as body scanners.

The ALRC recommend that use of scanners and any other alternative search methods only ever be used as a last resort when absolutely necessary, after less intrusive alternatives have been exhausted, an individual risk assessment has been completed and there remains objectively reasonable grounds to believe that the person is carrying dangerous contraband.

The ALRC recommend that the reasons for any less invasive search – including the risk assessment, the basis of reasonable belief, the nature of any intelligence and relevant human rights considerations – be documented, together with any items identified by the search.

The ALRC recommend that state and territory governments publicly report on rates of strip searching in prisons on a regular basis.

The ALRC recommend that relevant guidelines, policies and procedures for strip searching be made publicly available documents.

The ALRC recommend that state and territory governments should create and properly resource independent legal and advocacy services for people in prison, and support Aboriginal Legal Services to provide such services to Aboriginal and Torres Strait Islander people in prison (to the extent such services do not already exist).

Preventing mistreatment

63. Given the ongoing and egregious breaches of existing laws and policies governing strip searching, as well as the major cultural change needed to cease this practice, any law reform must be accompanied by adequate safeguards to prevent the mistreatment of people in prison.
64. Governments must establish and adequately resource independent National Preventive Mechanisms dedicated to overseeing conditions and the treatment of people in prisons as part of implementing Australia's obligations pursuant to OPCAT.
65. The Australian federal government signed OPCAT in 2009 and ratified the protocol in 2017. OPCAT guides countries in how to meet their obligations under the Convention Against Torture to prevent torture and cruel, inhuman or degrading treatment. It requires the designation of independent oversight and monitoring bodies to carry out inspections of all places of detention.
66. While most states and territories have taken steps to implement OPCAT, earlier this year - 20 January 2024 - marked one year since the Victorian, NSW and Queensland Governments failed to implement this bare minimum safeguard to protect against mistreatment in prisons.
67. We understand it is the position of these governments that the Federal Government, as signatory to the protocol, should provide funding for independent detention oversight. So long as this funding standoff persists, people in prison will remain at risk of being subjected to mistreatment.

RECOMMENDATION:

The ALRC recommend that the federal government resolve the funding standoff with the states and that the Victorian, NSW and Queensland governments implement Australia's obligations pursuant to OPCAT as a priority.

Human rights reform

68. If expressly legislated and rendered enforceable through accessible accountability mechanisms, human rights protections can be invoked to guard against the excesses of state power, including strip searching, which breaches people's rights without serving any legitimate aim.
69. Given the current, inconsistent protection of human rights across Australia, robust human rights laws are needed in every state and territory, in addition to a national Human Rights Act, to give people in prison recourse to hold governments to account for failures to uphold peoples' human rights and provide them with effective remedy, as well as guide government decision making.

RECOMMENDATION:

The ALRC recommend that the federal government enact an accessible and legally enforceable human rights framework in the form of a national Human Rights Act, and recommend that all states and territories to do the same. In the ACT, Victoria and Queensland, where human rights protections have already been legislated, the ALRC recommend that these laws be strengthened to allow people in prisons to hold governments to account for breaches of their rights.