

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

TALS
TASMANIAN ABORIGINAL
LEGAL SERVICE

Tasmanian Aboriginal Legal Service (“TALS”) Written Submission:
Consultation on the Review of Guidelines for Correctional Practice Australia
November 2024

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

Introduction:

The Tasmanian Aboriginal Legal Service (TALS) welcome the opportunity to provide feedback on the Review of Guidelines for Correctional Practice in Australia.

TALS is a member-based, independent, not-for-profit community legal centre that specialises in the provision of criminal, civil and family law legal information, advice and representation for Aboriginal and Torres Strait Islander peoples across Tasmania. We also have a dedicated service, SiS Tasmania, for victim/survivors of family violence and sexual abuse.

We are an Aboriginal Community Controlled Organisation incorporated under the Office of the Registrar of Aboriginal Corporations. In this submission, any reference to Aboriginal people is understood to also encompass Torres Strait Islander people. TALS provides culturally safe, holistic and appropriate services that are inclusive and open to all Aboriginal Tasmanians. We understand that the most vulnerable people needing access to legal assistance are often also those who face the most difficulties asking for help, and we work hard to ensure everyone can access our services within and outside of traditional legal settings. We also are an advocate for law reform and for justice, equality and human rights for all First Peoples in Tasmania. Our goal is to halve Aboriginal Tasmanians' rate of negative contact with the justice system in a decade.

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

1. Cell Infrastructure, with a Specific Focus on Hanging Points

The current Guiding Principles could be enhanced by specifying safety measures related to hanging points within cells. Regular audits of cell infrastructure should be conducted to identify potential hazards, including hanging points, and implement design features that mitigate suicide risks. Immediate action is necessary to address these safety concerns, particularly in areas designated for women and young people, and where the risk posed by hanging points is particularly acute for vulnerable individuals in correctional environments. The principles should explicitly mandate the identification and mitigation of these risks as a priority.

Suggested Improvement:

To enhance safety within correctional facilities, the Guiding Principles could include targeted measures specifically focused on the mitigation of hanging points and other ligature risks within cell infrastructure. Conducting mandatory, regular safety assessments of cell facilities—particularly during the design, renovation, and periodic inspections—can ensure that these risks are promptly identified and addressed. These assessments should prioritise high-risk areas, such as cells occupied by women and young people, where the incidence of suicide attempts may be elevated.

Beyond physical infrastructure modifications, the wellbeing of individuals in custody must be supported by measures that reduce mental health vulnerabilities associated with confinement. High-risk individuals, especially those with a history of mental health challenges or prior self-harm, should be identified early in their detention. In such cases, safety protocols can include more frequent, specially designed observation checks to reduce isolation and detect signs of distress promptly. Enhanced physical and environmental assessments can also identify areas where high-risk individuals

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

may be more susceptible to self-harm, enabling corrections staff to proactively implement supportive adjustments in cell design and surveillance routines.

By incorporating these structured, infrastructure-focused assessments, correctional facilities can create environments that not only comply with safety standards but also provide a more supportive setting that reduces vulnerability to self-harm.

Hanging Points: The Custody Inspection Report 2018 (Tasmania)¹ highlights the presence of hanging points in day rooms utilised by women and young people at Launceston Reception Prison. Ligature risks identified in several reports underscore the urgency of addressing these issues. For instance, specific ligature points that require immediate attention are noted in the Launceston Reception Prison report, with particular concern over the female day yard. This yard, used to separate prisoners when needed, presents multiple hanging points, including grilles and TV cords. The risk posed by these features must be immediately reassessed for safety. Furthermore, the Mary Hutchinson Women's Prison and Risdon Prison Complex reports highlight ongoing ligature risks requiring corrective measures. Recommendation 8 in the Mary

Hutchinson Women's Prison Inspection Report 2021² calls for actions to eliminate ligature points, further reinforcing the need for proactive safety measures.

Recommendation: The Guiding Principles should explicitly address the elimination and ongoing prevention of ligature points and other self-harm hazards within

¹ Tasmania. Department of Justice. (2018). *Custody inspection report 2018* (pp. 43, 44, 47, 53, 74). Tasmania: Department of Justice. Retrieved from https://www.custodialinspector.tas.gov.au/_data/assets/pdf_file/0020/451613/FINAL-TPS-Care-and-Wellbeing-Inspection-Report-Appendices-30-October-2018-PDF.PDF.

² Tasmania. Department of Justice. (2021). *Mary Hutchinson Women's Prison inspection report 2021* (pp. 11, 34, 35, 68, 72). Tasmania: Department of Justice. Retrieved from https://www.custodialinspector.tas.gov.au/_data/assets/pdf_file/0020/451613/FINAL-TPS-Care-and-Wellbeing-Inspection-Report-Appendices-30-October-2018.

CONTACT US

T 1800 595 162
E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

correctional facility infrastructures, with a particular emphasis on areas frequently used by high-risk populations, such as women and young people. This should involve:

1. Mandatory Design and Retrofitting Standards: Establishing infrastructure guidelines that ensure new and renovated cells, day rooms and other holding areas are designed to minimise self-harm risks. This includes selecting fixtures and materials that reduce the potential for creating hanging points, such as tamper-resistant grilles and secured electrical cords.

2. Regular, rigorous inspections: Requiring correctional facilities to conduct regular and thorough inspections to identify any new or emerging ligature risks, with immediate corrective actions taken as needed. These inspections should prioritise high—risk areas and be carried out by trained personnel to ensure the highest standard of safety.

3. Transparent Accountability Measures: Developing clear reporting and accountability processes, so that identified hazards are tracked, reported, and swiftly addressed, with oversight mechanisms to ensure compliance across facilities.

By embedding these structural standards into the Guiding Principles, correctional facilities can proactively address the physical safety of individuals in custody, reducing their vulnerability to self-harm and suicide through an environment specifically designed for risk prevention.

2. Aspirational Principles for the Management of People with Disabilities

Australia's criminal justice system faces significant challenges in addressing the complex needs of individuals with disabilities, especially when these needs intersect with broader social disadvantages such as trauma, social exclusion, and a lack of support. Indigenous prisoners, who often live with disabilities linked to historical

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

trauma, encounter barriers that underscore the importance of culturally responsive, holistic care within custodial settings.

Suggested Improvement: The well-being of prisoners with disabilities should be addressed through a comprehensive, inclusive approach that reflects aspirational principles of equity, respect, and self-determination. This approach involves acknowledging both biological needs—such as cognitive impairments, physical disabilities, and mental health conditions—and social needs, including a culturally supportive environment that respects individual dignity. As part of this, individualised support plans should be developed to ensure comprehensive medical care, psychosocial support, and culturally relevant therapeutic interventions are provided, helping individuals manage both their disabilities and the broader challenges posed by the prison environment.

Healthcare Access and the Role of Medicare: Medicare can be instrumental in facilitating access to necessary healthcare for prisoners with disabilities, including services like physiotherapy, counselling, psychiatric care, and essential medications. This access should include culturally competent care, particularly for Aboriginal and Torres Strait Islander prisoners, who often face compounded disadvantages tied to intergenerational trauma. To respect cultural identity and promote healing, disability-related care must encompass both medical needs and culturally informed support.

Early Identification and Comprehensive Care Planning: Effective disability care in custody should prioritise early identification of needs and the development of individualised, comprehensive care plans. By incorporating Medicare-funded services, correctional facilities can better support mental health care, culturally sensitive treatment, and ongoing therapeutic interventions, creating an environment that promotes resilience and respect for prisoners from diverse backgrounds.

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

Focus on Culturally Sensitive Support: Special attention must be given to culturally sensitive care for Aboriginal and Torres Strait Islander prisoners, whose disabilities are often linked with historical trauma. Programs should integrate culturally informed practices that not only address the disability but also respect the individual's cultural background, promoting self-determination and long-term healing.

Systemic Reforms and Accountability: Recognising the impact of systemic factors, including rigid sentencing laws and limited access to appropriate care, highlights the need for policy changes that support a fairer, more inclusive system. Reforms that consider alternatives to incarceration for minor offenses and provide support for individuals with disabilities can reduce barriers to equitable treatment. Additionally, creating independent oversight mechanisms helps ensure accountability, protecting the rights and well-being of prisoners with disabilities and promoting transparency in custodial practices.

By adopting a rights-based, culturally responsive approach, the criminal justice system can move towards more equitable treatment for all prisoners, fostering an environment that upholds dignity, health, and resilience. This model honors the principles of self-determination, holistic support, and respect for cultural identity, particularly for First Nations prisoners and those living with disabilities.

Training for Correctional Staff

Correctional staff training should prioritise understanding the diverse social factors—including trauma, intergenerational disadvantage, and past negative experiences with the justice system—that significantly affect the behaviour and well-being of prisoners with disabilities. A culturally competent training approach can help staff appreciate the unique experiences and perspectives of Aboriginal and Torres Strait Islander prisoners and other marginalised groups. This understanding will enable correctional staff to

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

provide more empathetic and tailored support, addressing both the biological and social elements influencing prisoner behaviour.

Additionally, training should ensure staff are well-informed about Medicare-funded programs and other support systems, such as the National Disability Insurance Scheme (NDIS), that can aid prisoners with disabilities. Recognising the available support options can strengthen staff's ability to make appropriate referrals and provide a more integrated care approach, fostering a supportive and inclusive environment within correctional facilities.

Relevant Recommendations:

1. Universal Disability Screening

To ensure that all individuals entering the prison system receive the support they need, comprehensive disability screening should be mandatory. This screening should be culturally sensitive, involving Indigenous health workers³ or culturally knowledgeable professionals where possible to provide an accurate, respectful assessment for Aboriginal and Torres Strait Islander prisoners and others from diverse backgrounds.

Through screening, those identified with disabilities can gain access to essential services like the NDIS and Medicare-funded healthcare for managing medical conditions, including specialist care, physiotherapy, and mental health support. This aligns with Australia's commitment to the Convention on the Rights of Persons with Disabilities (CRPD) (Article 12)⁴ and the Mandela Rules (Rule 5),⁵ which mandate

³ Indigenous Health and Policy Framework, n.d. 1.14: *Disability*. Available at: <https://www.indigenoushpf.gov.au/measures/1-14-disability>

⁴ <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>.

⁵ <https://www.un.org/en/>.

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

reasonable accommodations and access to healthcare in prison. Ensuring timely, thorough disability assessments is not only a human rights imperative but also a vital step in creating individualised care plans that reflect prisoners' unique needs, cultures, and lived experiences.

2. Training and Support for Correctional Staff

Regular and mandatory training for correctional staff is essential to equip them with the skills and knowledge to identify and support prisoners with disabilities appropriately. This training should be trauma-informed and culturally competent, emphasising the impact of historical trauma on Indigenous prisoners and ensuring staff understand how factors like identity, cultural background, and past adversity shape the health and behaviour of prisoners.⁶

In alignment with the Mandela Rules (Rule 5), staff training should also address the importance of avoiding punitive measures, such as solitary confinement, that may exacerbate disability-related challenges. Training should include guidance on when and how to engage Medicare-funded mental health and medical services, empowering staff to direct prisoners to these essential supports. By integrating this knowledge, staff can help ensure prisoners with disabilities receive the comprehensive care necessary to support both their medical and cultural well-being.

3. Coronial findings, with a specific focus on services provided by community corrections related to bail assessments, mental health, drug and alcohol services and overall duty of care

⁶ Australian Institute of Health and Welfare (AIHW), 2019. *The health of Australia's prisoners 2018*. Available at: <https://www.aihw.gov.au/getmedia/2e92f007-453d-48a1-9c6b4c9531cf0371/aihw-phe246.pdf.aspx?inline=true>.

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

The findings from coronial reports, including the investigation into the death of Robert Gerard in Risdon Prison, highlight the systemic issues surrounding the provision of mental health care in custodial settings.⁷ Coroner Webster's report, which likely prompted this inquiry, identifies the understaffing in mental health services as a significant factor contributing to Gerard's death. Notably, Coroner Webster referred to two earlier reports, one of which was the Care and Wellbeing Inspection Report 2017,⁸ which highlighted the critical deficiencies in mental health staffing and care. The report noted specific concerns regarding mental health care on page 81,⁹ with numerous recommendations, and Appendix 4 (page 163)¹⁰ features a report by Professor James Ogloff AM, who identified the understaffing of mental health services on page 170.¹¹ These reports underscore the necessity for urgent reforms in mental health services within Tasmanian prisons, which is consistent with broader systemic issues identified across Australia.

Incorporating the findings of coronial reports, particularly those related to suicides in custody, should focus not only on addressing physical risks, such as hanging points, but also on understanding how mental health conditions and social isolation contribute to the risk of self-harm and suicide. The recommendations should prioritise improving the mental health care provided to prisoners and address the underlying factors that contribute to high suicide rates, particularly among vulnerable populations.

⁷ Tasmania Magistrates Court. (2024). *Inquest into the death of Robert Gerard*, Tasmania: Tasmania Magistrates Court. Available at: https://www.magistratescourt.tas.gov.au/_data/assets/pdf_file/0012/757857/Gerard,-Robert-RBW_deidentified_WEB-.pdf.

⁸ Tasmania Department of Justice. (2017). *Care and Wellbeing Inspection Report 2017*. Retrieved from https://www.custodialinspector.tas.gov.au/_data/assets/pdf_file/0020/451613/FINAL-TPS-Care-and-Wellbeing-Inspection-Report-Appendices-30-October-2018-PDF.PDF.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

Key Findings on Deaths in Custody Among Aboriginal and Torres Strait Islander Individuals

Recent coronial findings highlight the disproportionate number of deaths in custody among Aboriginal and Torres Strait Islander individuals, with suicide being the leading cause of death in this population.¹² The majority of these suicides occur in prison settings, although similar trends are observed in police stations and transport facilities, indicating the widespread nature of this issue across different custodial environments.¹³ Young adults, particularly those between the ages of 18-39, are most affected, with the 18-24 and 30-34 age groups experiencing heightened vulnerability.¹⁴

Moreover, the findings suggest that both male and female Aboriginal and Torres Strait Islander prisoners are at heightened risk due to factors such as mental health issues, substance abuse, and social isolation, exacerbated by compounded social and systemic disadvantages.¹⁵ These deaths are notably more prevalent in certain regions, such as New South Wales, Queensland, and Western Australia, which points to possible state-specific contributing factors.¹⁶ The integration of Medicare-funded

¹² Joudo Larsen J 2006. Deaths in custody in Australia 1990-2004. Trends & issues in crime and criminal justice no. 309. Canberra: Australian Institute of Criminology. <https://www.aic.gov.au/publications/tandi/tandi309>; Australian Institute of Criminology, *Deaths in custody in Australia: Real-time dashboard*, available at: <https://www.aic.gov.au/statistics/deaths-custody-australia>.

¹³ Australian Institute of Criminology. (2020). *Deaths in Custody: National Overview*. Australian Institute of Criminology. Retrieved from <https://www.aic.gov.au>

¹⁴ See Footnote 9; Australian Institute of Criminology. (2021). *Suicide in Custody: A Review of Trends and Responses*. Australian Institute of Criminology. Retrieved from <https://www.aic.gov.au>.

¹⁵ Australian Institute of Health and Welfare (AIHW), *Suicide and self-harm among people in contact with the justice system*, Australian Government, <https://www.aihw.gov.au/suicide-self-harm-monitoring/data/populations-age-groups/suicide-and-self-harm-among-people-in-contact-with-the-justice-system>.

¹⁶ Dudgeon, P., McKenna, V., Smith, D., Ketchell, M., Tabuai, K., Tabuai, A., Manado, A., Robotham, J., & Centre of Best Practice in Aboriginal and Torres Strait Islander Suicide Prevention. (2023). *Coronial responses to suicides of Aboriginal and Torres Strait Islander people: Research report*. CBPATSISP, The University of Western Australia. <https://cbpatsisp.com.au/wp-content/uploads/2023/10/Coronial-responses-report.pdf>.

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

health services within custodial settings could address these regional disparities and provide inmates with access to consistent, high-quality mental health care.¹⁷

Mental Health and Substance Abuse

The vast majority of individuals whose deaths were investigated had mental health issues, with many also struggling with substance abuse.¹⁸ The presence of cognitive impairments and other health conditions exacerbates the risk of suicide, highlighting the urgent need for improved mental health care and substance abuse treatment.¹⁹

These findings underscore the systemic gaps in healthcare support available to Aboriginal and Torres Strait Islander individuals in custody, emphasising that mental health services must be expanded and made more accessible within these facilities.²⁰ Leveraging Medicare-funded services would allow for more consistent and high-quality care, addressing these critical health needs.²¹

¹⁷ Australian Institute of Criminology. (2021). *Suicide in Custody: A Review of Trends and Responses*. Australian Institute of Criminology. Retrieved from <https://www.aic.gov.au>; Australian Medical Association. (2024, February). *AMA submission to PBAC meeting agenda item: Access to medicines for people in custodial settings* [PDF]. Australian Medical Association. <https://www.ama.com.au/sites/default/files/2024-02/AMA-Submission-to-PBAC-Meeting-Agenda-Item-Access-to-Medicines-for-People-in-Custodial-Settings.pdf>.

¹⁸ Australian Institute of Health and Welfare (AIHW), *Suicide and self-harm among people in contact with the justice system*, Australian Government, <https://www.aihw.gov.au/suicide-self-harm-monitoring/data/populations-age-groups/suicide-and-self-harm-among-people-in-contact-with-the-justice-system>.

¹⁹ Australian Institute of Health and Welfare. (2023). *The health of people in Australia's prisons 2022*. Retrieved from <https://www.aihw.gov.au/reports/prisoners/the-health-of-people-in-australias-prisons-2022>.

²⁰ Department of Social Services. (2022). *Assessing the disability needs of Indigenous prisoners*. Australian Government Department of Social Services. <https://www.dss.gov.au/disability-and-carers/publications-articles/assessing-the-disability-needs-of-indigenous-prisoners>.

²¹ Australian Medical Association. (2024, February). *AMA submission to PBAC meeting agenda item: Access to medicines for people in custodial settings* [PDF]. Australian Medical Association. <https://www.ama.com.au/sites/default/files/2024-02/AMA-Submission-to-PBAC-Meeting-Agenda-Item-Access-to-Medicines-for-People-in-Custodial-Settings.pdf>.

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

Resourcing and Continuity of Care

The coroner's inquest into the death of Robert Harold Gerard at Risdon Prison in Tasmania revealed critical deficiencies in mental health services, including a lack of continuity in psychiatric care.²² Gerard's tragic suicide occurred after he missed an important psychiatric appointment due to the sole permanent psychiatrist being on leave. This incident illustrates how under-resourcing, and fragmented care can exacerbate mental health crises among prisoners, contributing to preventable deaths.²³

By integrating Medicare-funded services into the prison system, Tasmania and other Australian jurisdictions could benefit from more consistent and high-quality mental health care, ultimately reducing the risks of lapses that often lead to preventable deaths in custody.²⁴

Suggested Improvement

A comprehensive review process should be implemented to ensure that coronial findings lead to actionable reforms within the prison system.²⁵ This review process must focus on enhancing mental health services and addressing the social dynamics that exacerbate vulnerability within prisons, such as isolation, lack of support, and

²² Tasmania Magistrates Court. (2024). *Inquest into the death of Robert Gerard*, Tasmania: Tasmania Magistrates Court. Available at: https://www.magistratescourt.tas.gov.au/_data/assets/pdf_file/0012/757857/Gerard,-Robert-RBW_deidentified_WEB-.pdf.

²³ Tasmania. Department of Justice. (2018). *Custody inspection report 2018*. Tasmania: Department of Justice. Retrieved from https://www.custodialinspector.tas.gov.au/_data/assets/pdf_file/0020/451613/FINAL-TPS-Care-and-Wellbeing-Inspection-Report-Appendices-30-October-2018-PDF.PDF.

²⁴ Australian Medical Association. (2024, February). *AMA submission to PBAC meeting agenda item: Access to medicines for people in custodial settings* [PDF]. Australian Medical Association. <https://www.ama.com.au/sites/default/files/2024-02/AMA-Submission-to-PBAC-Meeting-Agenda-Item-Access-to-Medicines-for-People-in-Custodial-Settings.pdf>.

²⁵ Royal Commission into Aboriginal Deaths in Custody, (1998) Australasian Legal Information Institute · <http://www.austlii.edu.au/au/other/IndigLRes/rciadic/>.

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

histories of trauma. Particular attention should be paid to prisoners who are most at risk, especially Aboriginal and Torres Strait Islander individuals. These groups experience compounded disadvantages, making them especially vulnerable in custodial settings. Expanding access to Medicare-backed mental health services could support the creation of a more resilient system capable of meeting these complex needs.

Furthermore, regular reviews of suicide prevention strategies should incorporate comprehensive psychological assessments and ensure that prisoners have access to both social and mental health interventions. Recommendations should also include enhancing community-based corrections programs, offering mental health services that extend beyond prison walls, and reforming bail assessments to address the root causes of offending.²⁶ Importantly, policies should prioritize the removal of hanging points in cells, especially for high-risk individuals, as part of efforts to prevent deaths by suicide.

Ultimately, integrating coronial findings into prison reform should extend beyond mere physical safety measures to advocate for systemic changes, including robust mental health support.²⁷ Such reforms would create a more humane and effective criminal justice system, addressing the underlying factors contributing to high suicide rates—particularly among Aboriginal and Torres Strait Islander individuals. By incorporating

²⁶ Tasmanian Department of Justice, *Changing lives, creating futures – A Strategic Plan for Corrections in Tasmania 2023*, available at: https://www.justice.tas.gov.au/_data/assets/pdf_file/0013/710014/Changing-lives-creating-futures-A-Strategic-Plan-for-Corrections-in-Tasmania-2023_web-accessible.pdf; Mizzi, J., Hughes, C., Halsey, M., Cleary, J., Deegan, S., & Goodwin-Smith, I., *Beyond Bars: Exploring Challenges and Solutions to the Problem of Short Custodial Stays in Regional South Australia*, July 2024, available at: https://researchnow.flinders.edu.au/files/134717726/Mizzi_Hughes_Halsey_et_al_-_2024_-_Beyond_bars_-_Exploring_challenges_and_solutions_to_the_problem_of_short_custodial_stays_in_regional_SA.pdf.

²⁷ Tasmania Magistrates Court. (2024). *Inquest into the death of Robert Gerard*, Tasmania: Tasmania Magistrates Court. Available at: https://www.magistratescourt.tas.gov.au/_data/assets/pdf_file/0012/757857/Gerard,-Robert-RBW_deidentified_WEB-.pdf.

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

Medicare services into this reform, the system can better meet the mental health needs of incarcerated populations, leading to improved outcomes and a reduction in suicide rates.²⁸

4. Aboriginal and Torres Strait Islander Cultural Safety and Collective Direction on Closing the Gap

The 2018 *Guiding Principles for Corrections in Australia*²⁹ marked a positive shift towards outcome-focused approaches. However, as evidenced by the *Closing the Gap*³⁰ report, there is a pressing need for these principles to place greater emphasis on cultural safety and competence. Aboriginal and Torres Strait Islander peoples continue to be disproportionately represented in the justice system, with incarceration rates for Indigenous Australians continuing to rise.³¹ This growing disparity reflects systemic issues, including mental health challenges, trauma, substance abuse, and ongoing social disadvantage.³² It is critical that these factors are fully addressed within the framework of the *Guiding Principles* to ensure that corrections practices are not only effective but also culturally safe and responsive to the complex needs of Indigenous peoples.³³

TALS strongly supports the implementation of mandatory cultural competency training for all correctional staff. This training should go beyond cultural awareness, equipping staff with the skills needed to address the health, disability, and trauma-related needs

²⁸ Australian Medical Association. (2024, February). *AMA submission to PBAC meeting agenda item: Access to medicines for people in custodial settings* [PDF]. Australian Medical Association.

<https://www.ama.com.au/sites/default/files/2024-02/AMA-Submission-to-PBAC-Meeting-Agenda-Item-Access-to-Medicines-for-People-in-Custodial-Settings.pdf>.

²⁹ <https://apcca.org/guiding-principles-for-corrections-in-australia-2018/>.

³⁰ <https://www.closingthegap.gov.au/>.

³¹ Productivity Commission. (2024, May 28). *Report on government services 2024: C. Justice 6: Police services*.

<https://www.pc.gov.au/ongoing/report-on-government-services/2024/justice/police-services>.

³² See Footnote 28.

³³ Indigenous Health and Policy Framework, n.d. 1.14: *Disability*. Available at:

<https://www.indigenoushpf.gov.au/measures/1-14-disability>.

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

of Aboriginal and Torres Strait Islander individuals. Research shows that many Indigenous detainees face significant health and mental health challenges, and without appropriate cultural competence, these needs are often inadequately addressed.³⁴

Ensuring that correctional staff are well-equipped to support these individuals is crucial to achieving positive outcomes in areas such as health and wellbeing, rehabilitation, and reintegration.

Furthermore, cultural competence must be embedded in daily practices and decision-making processes ensuring that Aboriginal and Torres Strait Islander peoples experience consistent cultural safety in all interactions with the justice system.³⁵

Additionally, TALS advocates for the inclusion of Aboriginal and Torres Strait Islander communities in the development of policies and practices within the correctional system. Indigenous communities are best positioned to provide valuable insights into the solutions needed to reduce over-incarceration and improve justice outcomes. By incorporating Indigenous voices into the policy-making process, the *Guiding Principles* can better reflect the unique challenges faced by these communities and support the long-term goal of closing the justice gap.³⁶ Indigenous-led solutions are essential, and Aboriginal people must be integral to the decision-making processes rather than just

³⁴ Law Council of Australia, The Justice Project (Final Report, August 2018) The Australian OPCAT Network, Submission to The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and The UN Working Group on Arbitrary Detention, The Implementation of OPCAT in Australia (January 2020).

³⁵ Australian Law Reform Commission (2018); *Culturally appropriate programs*; <https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/9-prison-programs-and-parole/culturally-appropriate-programs/>.

³⁶ Closing the Gap. (2024). *Priority Reform One - Formal partnerships and shared decision-making*. National Indigenous Australians Agency. <https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap/6-priority-reform-areas/one>.

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

consulted. This approach would empower Aboriginal communities to take ownership of the reforms that affect them directly.³⁷

The Closing the Gap³⁸ report highlights the ongoing failure of both Tasmanian and Australian governments to fully address key targets related to Aboriginal and Torres Strait Islander peoples' over-representation in detention. Specifically, Tasmania has seen an increase in youth incarceration, despite national improvements in other areas.³⁹ This signals that existing policies, including the CSAC principles, are insufficient and need to be expanded to address the broader systemic issues at play.

Currently, the CSAC guiding principles are too narrow in scope and do not fully capture the complexity of the problem.⁴⁰ They must be broadened to incorporate a more holistic approach that addresses not just the immediate symptoms of over-incarceration but also the underlying causes. This should include a strong focus on social determinants, such as poverty, inadequate housing, and lack of education. These issues are at the heart of the over-representation of Aboriginal and Torres Strait Islander peoples in detention and addressing them is essential to reducing incarceration rates.⁴¹

³⁷ Australian Human Rights Commission, 2024. *Self-determination and Indigenous peoples*. [online] Available at: <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/self-determination-and-indigenous>; Australian Human Rights Commission. (n.d.). *Participation in decision making*. <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/participation-decision-making>; also see Priority Reform One in Closing the Gap at <https://www.closingthegap.gov.au/>.

³⁸ <https://www.pc.gov.au/inquiries/completed/closing-the-gap-review#report>.

³⁹ Ibid.

⁴⁰ Australians Together (2023) <https://australianstogether.org.au/discover-and-learn/the-wound/indigenous-disadvantage-in-australia/>.

⁴¹ Shelter Tas (2022); *Homelessness in Tasmania: The Facts*; <https://www.hobartcity.com.au/files/assets/public/v/1/community/action-on-homelessness/homelessness-week-2022-fact-sheet.pdf>; Shepherd, S, Spivak, B, Ashford, L, Williams, I, Trounson, J, Paradies, Y (2020); *Closing the (incarceration) gap: assessing the socio-economic and clinical indicators of indigenous males by lifetime incarceration status*; <https://bmcpublichealth.biomedcentral.com/articles/10.1186/s12889-020-08794-3>.

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

To create meaningful and sustainable change, the CSAC guiding principles must evolve to reflect this broader understanding, integrating targeted interventions that tackle both the root causes and the outcomes of systemic disadvantage. By incorporating these considerations into the Guiding Principles, we can begin to forge a path towards long-term reform that is not only reactive but proactive in addressing the underlying social and structural factors contributing to over-incarceration.⁴²

Furthermore, addressing the broader social determinants of Indigenous over-representation in the justice system—such as poverty, inadequate housing, lack of education, and systemic discrimination—is essential. These factors must be incorporated into the *Guiding Principles* to ensure that the principles do not just focus on immediate justice system needs but also contribute to long-term, meaningful change. By adopting a holistic approach, the framework can better address the structural inequalities that lead to over-incarceration.

It is equally critical to note that Indigenous Legal Services, including those in Tasmania, are severely underfunded, which hampers the delivery of essential services needed to reduce Indigenous incarceration and promote better justice outcomes.⁴³

Considering this, TALS strongly recommends that the Guiding Principles for Corrections in Australia be revised to place greater emphasis on cultural safety and competence. This revision should integrate Aboriginal and Torres Strait Islander perspectives into policy development and address the broader social determinants that contribute to Indigenous over-incarceration. These changes will ensure that the principles align more effectively with the needs of Aboriginal and Torres Strait Islander peoples, support the

⁴² Ibid.

⁴³ Attorney-General's Department, 2024. *Independent Review of the National Legal Assistance Partnership 2020-25 – Final Report*. [online] Available at: <https://www.ag.gov.au/legal-system/publications/independent-review-national-legal-assistance-partnership-2020-25>.

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

achievement of Closing the Gap targets and contribute to improved justice outcomes across Australia.

The government's commitment to Closing the Gap will be measured not by rhetoric, but by the tangible actions it takes to support Indigenous communities and the legal services that advocate for their rights. Additionally, the principles should be integrated with broader Closing the Gap initiatives in health, education, and employment to create a coordinated approach that addresses both justice system reforms and socio-economic disparities.

Aboriginal and Torres Strait Islander Deaths in Custody Procedure and Process

Feedback:

A dedicated procedure and process for Aboriginal and Torres Strait Islander deaths in custody must be established as part of the core guiding principles for all correctional facilities. These procedures should ensure that deaths are handled with cultural sensitivity, transparency, and accountability.

Suggested Improvement: Each correctional facility should develop and implement a procedure that clearly outlines the steps to be taken when an Aboriginal or Torres Strait Islander individual dies in custody.⁴⁴ This procedure should include immediate reporting, comprehensive investigations, and the involvement of relevant Aboriginal and Torres Strait Islander community representatives. Importantly, the procedure

⁴⁴ Royal Commission into Aboriginal Deaths in Custody (RCIADIC), 1991. *Royal Commission into Aboriginal Deaths in Custody: National Report*. [PDF] Available at: <https://www.indigenous.gov.au/royal-commission-aboriginal-deaths-custody>.

CONTACT US

T 1800 595 162
E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

should also link to the Custody Notification Service (CNS), ensuring that upon the detainment of an Aboriginal or Torres Strait Islander person, the Aboriginal Legal Service (ALS) is immediately notified.⁴⁵ This will not only guarantee that the individual receives timely legal advice and support but also ensure the appropriate community representatives are engaged.⁴⁶

The CNS program plays a critical role in reducing the risk of deaths in custody by ensuring that Aboriginal and Torres Strait Islander individuals have access to immediate legal support when taken into custody.⁴⁷ Under the current framework, police are required to notify the ALS whenever an Indigenous person is detained. This ensures that systemic issues such as institutional racism are addressed, and legal and cultural needs are met. The ALS, as part of the broader sector, is uniquely positioned to provide culturally sensitive support and monitor the welfare of individuals in custody.

Therefore, aligning the internal procedures for handling deaths in custody with the broader CNS framework ensures that deaths are not only reported promptly but are investigated with cultural sensitivity and legal oversight. This approach fosters greater transparency and accountability within correctional facilities, reinforcing the importance of legal and community collaboration in safeguarding the rights of Aboriginal and Torres Strait Islander people in custody.

Recommendation: The Guiding Principles should mandate that every correctional facility establish an Aboriginal and Torres Strait Islander Deaths in Custody procedure and process. This should be a mandatory requirement within the policies of all

⁴⁵ Attorney-General's Department, 2024. *Independent Review of the National Legal Assistance Partnership 2020-25 – Final Report*. [online] Available at: <https://www.ag.gov.au/legal-system/publications/independent-review-national-legal-assistance-partnership-2020-25>.

⁴⁶ See Footnote 44.

⁴⁷ Ibid.

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

custodial institutions, ensuring that ATSI deaths in custody are handled with the utmost care and accountability.

5. LGBTIQ+, women and complex mental health:

It is of note to TALS that the only reference in the current Guiding Principles to criminalised LGBTIQ+ community or criminalised women is in relation to their physical health care in the prison setting, which is commendable but sorely lacking. The needs of these communities must be considered more broadly than in relation to their physical health care. Further, the term “complex mental health” is not mentioned at all in the current guiding principles documentation, this is also of concern to TALS due to its prevalence in the prison environment.

LGBTQIA+:

The LGBTQIA+ community are overrepresented within the Australian prison system, this is particularly so for LGBTQIA+ people of colour and LGBTQIA+ people from low socio-economic communities.⁴⁸ Studies are beginning to indicate this population group are placed at the highest risk of violence, of all forms, when in the prison environment.

“Prison systems based on cis- and hetero-normative conceptions result in structural discrimination against LGBT people, with their unique needs frequently overlooked. The social dynamics within prisons often form a hierarchy that can be influenced by factors such as sexual orientation and gender identity. Within this context, LGBT people often find themselves marginalised and relegated to the lower strata of the social hierarchy. This can exacerbate the

⁴⁸ Walters, R., Antojado, D., Maycock, M., & Bartels, L. (2024). *LGBT people in prison in Australia and human rights: A critical reflection*. *Alternative Law Journal*, 49(1), 40-46. <https://doi.org/10.1177/1037969X241231007>

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

difficulties they face in society more generally, including their vulnerability to harassment, abuse and isolation.”⁴⁹

Individual prison environments need to consider the ways in which they perpetuate heteronormative values and as such consider these issues in their day to day running of prison facilities. For example, a maximum-security male facility due to its inherent nature for command and control, may seriously overlook the needs of the LGBTQIA+ community in its endeavour maintain control and security.

Protections of the LGBTQIA+ peoples in prison varies from state to state and as such Tasmania needs to address its treatment of this demographic within its own jurisdiction. It is TALS understanding that the guiding principles for the LGBTQIA+ community incarcerated in Tasmania is largely ignored, aside from the existence of a Director’s Standing Order (DSO) 2.15 in relation to the reception and placement of Transexual, Transgender or Intersex prisoners.⁵⁰ Upon analysis, the DSO seems to largely exist as a protection for the Tasmanian Prison Service in relation to the placement of prisoners in regards to sex and gender, rather than a meaningful strategy to support and engage the incarcerated LGBTQIA+ community. As such, TALS strongly encourages the Tasmanian Prison Service and the Department of Justice to engage with and hear directly from the LGBTQIA+ community in relation to greater support while incarcerated. Staff should also receive specific training in relation to the overrepresentation and vulnerabilities of this cohort in order to provide a safer and more inclusive environment.

Women:

According to the Australian Institute of Health and Welfare, that despite making up a much smaller number of the incarcerated population, the rate of women being

⁴⁹ Ibid.

⁵⁰ Tasmanian Government, *Tasmanian Prison Service: Director’s Standing Order, Transgender, Transexual and Intersex Prisoners* 2018 https://www.justice.tas.gov.au/_data/assets/pdf_file/0020/562016/2-15-Transgender-Prisoners-DSO_VER-2.pdf

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

incarcerated is growing rapidly in comparison to rates of growth in male populations.⁵¹ In Australia, 33% of incarcerated women are Aboriginal or Torres Strait Islander⁵². Tasmania is no exception, in September 2024 30% of incarcerated women were Aboriginal. The way women are interacted with and supported in a custodial environment must be addressed as a matter of urgency. This support should be considered best practice, holistic and tailored to the unique needs of each individual.

Prisons are historically patriarchal and perpetuate harm experienced by women.⁵³ There are an array of social factors that result in the criminalisation of women such as; socio economic status, education, mental health illness, homelessness etc⁵⁴, many of which are not able to be effectively addressed in prison; hence Australia's overreliance on prison only results in higher rates of recidivism. However, while focusing on correctional standards of practice, these factors should be considered when staff are being trained and while they are interacting with incarcerated women.

Two out of three women have a diagnosed mental illness, and 52% of women reported high to very high levels of psychological stress upon entry to prison. Furthermore, 54% of women report having at least one dependent child upon entering custody, which

⁵¹ Australian Institute of Health and Welfare, *The Health and Welfare of Women in Australia's Prisons* (2020) <https://www.aihw.gov.au/getmedia/32d3a8dc-eb84-4a3b-90dc-79a1aba0efc6/aihw-phe-281.pdf.aspx?inline=true>

⁵² Ibid.

⁵³ Breuer, E., Remond, M., Lighton, S. et al. *The needs and experiences of mothers while in prison and post-release: a rapid review and thematic synthesis* (2021) *Health Justice* 9, 31. <https://doi.org/10.1186/s40352-021-00153-7>

⁵⁴ Australian Bureau of Statistics, *Measures of Australia's Progress: Crime in Australia* (2010) [https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/1370.0~2010~Chapter~Crime%20in%20Australia%20\(4.4.5\)#::~:~:text=In%20Australia%2C%20high%20crime%20rates,high%20levels%20of%20drug%20use.](https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/1370.0~2010~Chapter~Crime%20in%20Australia%20(4.4.5)#::~:~:text=In%20Australia%2C%20high%20crime%20rates,high%20levels%20of%20drug%20use.)

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

increases the likelihood of child removal.⁵⁵ Child removal has greatly been underplayed in relation to its impacts of women, children and their families.

“Separation from their children is a major stressor, and according to professionals “for most mothers ... is the worst aspect of incarceration. This separation disrupts the mother-child relationship children and as a result, mothers feel hopelessness and frustration leading mothers to feel hopelessness and frustration. While visitation from children and family may alleviate some of the pain of separation, mothers are frequently subjected to other forms of trauma, including strip searches, before obtaining visitation rights. Even where mothers live with their children in Mother and Children units, they often experience fear of imminent removal of their children and this fear is compounded by the strain of feeling that their mothering is surveilled. In addition to the needs described above, mothers need culturally appropriate and trauma informed support.”⁵⁶

It is a matter of concern to TALS that institutional practices in relation to child removal continue to disproportionately effect incarcerated Aboriginal women.⁵⁷ These practices perpetuate harm caused by historical practices which continue to impact and harm Aboriginal communities. TALS would like to stipulate that Tasmania is not the exception to this, in 2020-2021 Aboriginal children made up 35.7% of children in the state’s out of home care system, the third highest rate in the country.⁵⁸

⁵⁵ Newton, B. *Aboriginal parents’ experiences of having their children removed by statutory child protection services*, (2024) *Child & Family Social Work*, [s. l.], v. 25, n. 4, p. 814–822, 2020. DOI 10.1111/cfs.12759.

⁵⁶ Breuer, E., Remond, M., Lighton, S. *et al. The needs and experiences of mothers while in prison and post-release: a rapid review and thematic synthesis*. *Health Justice* 9, 31 (2021). <https://doi.org/10.1186/s40352-021-00153-7>

⁵⁷ Newton, B. *Aboriginal parents’ experiences of having their children removed by statutory child protection services*, (2024) *Child & Family Social Work*, [s. l.], v. 25, n. 4, p. 814–822, 2020. DOI 10.1111/cfs.12759.

⁵⁸ SNAICC, *Reviewing Implementation of the Aboriginal and Torres Strait Islander child placement Principle: Tasmania* (2021) <https://www.snaicc.org.au/wp-content/uploads/2024/04/ATSICPP-Implementation-Review-TAS-2021.pdf>

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

In recent research by the Queensland Human Rights Commission, it was established that the use of strip searches, particularly in relation to women were not only ineffective in its intended purpose of prison safety but also left women feeling assaulted. Incarcerated women were quoted as saying the use of strip searched often meant they delayed seeking medical treatment, attending court in person and visits with family.⁵⁹ The avoidance of all of these activities has undeniable impacts on incarcerated women's; health, legal status and wellbeing more generally. As such the use of strip searches should immediately cease.

Complex Mental Health:

According to the Australian Institute of Health and Welfare about half the prison population live with a diagnosed mental health illness⁶⁰. However, TALS would like to point out that gaining a diagnosis of a mental health illness can be incredibly difficult, particularly in Tasmania. In the community this relates to lack of aptly qualified specialists, access to GP's and Mental Health Care Plans, wait times for times for professionals and lack of services, especially in remote areas.⁶¹ In prison, similar issues are relevant. The impact of socio-economic status is widely recognised as being a contributing factor in the process of criminalisation and as such, it should be acknowledged that socio economic status presents its own issues in relation to the diagnosis and treatment of mental illness⁶². It is therefore apparent that many people entering the prison system may be living with the symptoms of mental health illness without having received adequate treatment in the community prior to incarceration.

⁵⁹ Queensland Human Rights Commission (2023) *Stripped of our dignity: a human rights review of policies, procedures, and practices in relation to strip searches of women in Queensland prisons.*

<https://www.qhrc.qld.gov.au/about-us/reviews/strip-searching>

⁶⁰ Australian Institute of Health and Welfare, *The Health of People in Australia's Prisons 2022 (2023)*

<https://www.aihw.gov.au/reports/prisoners/the-health-of-people-in-australias-prisons-2022/contents/mental-health-and-self-harm/mental-health-condition>

⁶¹ Mental Health Council of Tasmania, (2023), *Access and Affordability: Mental Health Services in Tasmania,*

<https://mhct.org/wp-content/uploads/2023/07/MHCT-Access-and-Affordability-Report-2.pdf>

⁶² Ibid.

Further, it is nearly impossible to receive a diagnosis and treatment for a mental health illness in the custody of the Tasmanian Prison Service- a notable trend we see amongst our client group, which has been further evidenced in recent reports from the Tasmanian Custodia Inspector's Office.⁶³

“Mr Connock made a total of 117 recommendations to improve inmates' mental and physical health, while noting that just 12 out of the 46 recommendations from the 2017 report had been completed.”

TALS encourages that an understanding of mental health illness and the impacts of trauma, particularly the prevalence of complex mental illnesses such as complex PTSD and illnesses where psychosis is a feature, be embedded in the training and ongoing learnings of correctional staff. Often, we see maladaptive behaviours used as coping strategies for undiagnosed mental health illness and as such there can be significant consequences for the way correctional staff interpret and respond to such behaviour. Poor understanding and subsequent responses impact peoples experience in prison and places them at higher risk of punishment and confinement.

Feedback: There is a need for tailored approaches that address the specific vulnerabilities of LGBTIQ+ individuals, incarcerated people with complex mental health issues and women in correctional settings. The intersectionality of identity plays a critical role in shaping the experiences of these populations.

Suggested Improvement:

- Introduce specific policies that recognise the intersectionality of identity, providing appropriate support, including trauma-informed care and dedicated

⁶³ L, McDonald, *Tasmania's prison service under fire as report into inmate's health makes 117 recommendations*, 19 July 2024, Australian Broadcasting Company <https://www.abc.net.au/news/2024-07-19/tasmanian-custodial-inspector-report-prison-health/104114410>

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

services for LGBTIQ+ individuals and women in correctional settings. Such measures will ensure that the unique vulnerabilities of these groups are adequately addressed.

- Medicare can be integral in providing access to specialised healthcare for LGBTIQ+ individuals, women, and those with complex mental health issues, particularly in the justice system. This includes access to gender-affirming care, mental health services, trauma-informed care, and substance use treatments. Medicare's role in ensuring that these groups receive appropriate healthcare.
- Correctional staff receive standardised best practice training in relation to complex mental health issues, particularly mental health illnesses where trauma and psychosis are a feature.
- Immediately cease the use of personal searches on women, LGBTQIA+ prisoners and prisoners with complex mental health issues.
- Correctional staff receive standardised, ongoing best practice training in relation to working with and supporting incarcerated women, LGBTQIA+ and people with complex needs. This needs to be a matter of priority.
- A development of a dynamic approach to working with incarcerated people, rather than a one size fits all approach we generally observe currently.

6. Higher risk practice, including bodily searches, use of force and instruments of restraint and separations/segregation:

Bodily searches:

There is a large amount of highly regarded evidence that suggests the use of bodily searches to maintain order and control in the prison environment is a practice that

often causes significant harm whilst often not providing the desired outcomes.⁶⁴ It is of concern to TALS that the use of bodily searches in the Tasmanian context is governed by DSO 1.10 and states that personal searches can be used at any time a senior officer deems it appropriate. A personal search is defined as being:

- “Full Personal Search (half/half technique) – a visual search of a person which involves the removal of all items of clothing and the bending at the waist and parting of the buttocks cheeks.”⁶⁵

If a prisoner chooses not to comply with a personal search, force can be used against the prisoner to have them comply.

The harm caused using personal searches, also known as strip searches, is well documented. In 2021, the Independent Broad-based Anti-corruption Commission (IBAC) of Victoria exposed that there was serious misconduct in relation to the management and conduct of strip searching in Victorian prisons, with a senior Victorian prison official, reporting that the use of strip searches was ‘one of the options available to assert control’.⁶⁶ These issues are likely to be perpetuated throughout Australia, however, many Australian jurisdictions do not have this level of independent oversight. Currently, it is too easy for strip searches/personal searches to be used in an ad hoc manner without significant scrutiny and oversight.

⁶⁴ Queensland Human Rights Commission (2023) *Stripped of our dignity: a human rights review of policies, procedures, and practices in relation to strip searches of women in Queensland prisons*. <https://www.qhrc.qld.gov.au/about-us/reviews/strip-searching>

⁶⁵ Tasmanian Government, *Tasmanian Prison Service: Director’s Standing Order, Searching* https://www.justice.tas.gov.au/_data/assets/pdf_file/0005/439421/1-10-Searching-Redacted-July-2019.pdf

⁶⁶ Lachs, A, *Strip searches in prison are traumatising breaches of human rights. So, why are governments still allowing them?* (2022) Australian Privacy Foundation, <https://privacy.org.au/2022/02/21/strip-searches-in-prison-are-traumatising-breaches-of-human-rights-so-why-are-governments-still-allowing-them/>

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

TALS is of the belief that due to all the factors mentioned above, strip/personal searches should not be used in any Australian jurisdiction. We further encourage that at the very least, Australian corrections practice fall into line with the UN's Mandela Rules, with particular focus on Rule 52(1).⁶⁷

Use of force and instruments of restraint:

The Mandela Rules confirm that the use of restraints is inherently degrading and should only be used when 'absolutely necessary'. Dr. Anita McKay notes that the current guidelines are out of step with the Mandela Rules in relation to use of restraints, and that there have been concerning instances of restraints being used during childbirth and while accessing medical treatment in prisons across Australia.⁶⁸ Coronial findings have further highlighted the issues of use of restraints particularly in the medical setting.⁶⁹ Similar to the use of strip searches, there is difficulty monitoring the appropriate use of restraints in the prison environment, as there is currently little restriction or independent oversight regarding their application.

The excessive use of force and restraints in prison settings has significant negative consequences for the rehabilitation of incarcerated individuals. Research suggests that prolonged exposure to physical restraint and force contributes to an increased sense of powerlessness and trauma, which in turn can escalate feelings of anger, distrust, and isolation. These emotional and psychological consequences hinder the rehabilitation process and may increase the likelihood of recidivism. Incarcerated individuals

⁶⁷ United Nations Office on Drug and Crime (2015), *The United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules)* https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf

⁶⁸ Mackay, A. (2021). *Human rights guidance for Australian prisons: Complementing implementation of the OPCAT*. *Alternative Law Journal*, 46(1), 20-26. <https://doi-org.esproxy-f.deakin.edu.au/10.1177/1037969X20962863>

⁶⁹ *ibid*

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

subjected to excessive force may also experience long-term mental health issues, including PTSD, anxiety, and depression, which can significantly impair their ability to reintegrate into society upon release

As the National Prevention Mechanisms roll out across the country, it suggests there is a higher level of expectation from the community about the standards of care and treatment experienced by prisoners. The use of force is highlighted as an area of concern because it can escalate into instances of excessive use of force.⁷⁰ Recently, the Tasmanian Custodial Inspector suggested all prison incident response teams wear body worn cameras to ensure that in instances where force is used there is some level of accountability and accuracy in reporting.⁷¹ It is difficult for incarcerated people to assert their narrative as they are often not supported or believed, particularly if it contradicts written accounts of corrections staff.

The absence of independent oversight and the secrecy surrounding policies related to the use of force and mechanical restraints also complicate efforts to ensure humane treatment of prisoners. TALS is concerned that all policies guiding the use of force and restraints in Tasmania are confidential, making it impossible for the public and relevant human rights organisations to hold authorities accountable. It is the position of TALS that these policies should be made publicly available, as is the case in other jurisdictions, to support transparency and accountability.

⁷⁰ Australian Human Rights Commission, *Current Issues in Prison Management: Submission to United Nations Special Rapporteur on Torture* (2023)
https://humanrights.gov.au/sites/default/files/16.11.23_submission_to_the_united_nations_special_rapporteur_on_torture_002_0.pdf

⁷¹ Office of the Custodial Inspector Tasmania, *Adult Health Care Inspection Report 2023*,
https://www.custodialinspector.tas.gov.au/_data/assets/pdf_file/0004/769018/Adult-Health-Care-Inspection-Report-2023.pdf

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

Addressing the excessive use of force and restraints is not just a matter of upholding human rights—it is also critical to achieving long-term rehabilitation outcomes and reducing recidivism. Evidence from international best practices suggests that

environments that prioritise safety, well-being, and rehabilitation over punitive measures lead to better outcomes in terms of prisoner reintegration and reduced reoffending. In jurisdictions like Norway, where the prison system places emphasis on treatment and personal development, the use of force is minimised, contributing to a more positive prison environment that fosters rehabilitation. The implementation of similar practices in Australia, supported by transparency and proper oversight, can pave the way for more effective correctional outcomes that reduce the cycle of reoffending.

Use of separation/segregation- let's call it what it is though, solitary confinement:

TALS notes the increasing use of sanitised terms like 'separation' or 'segregation' to describe solitary confinement, a practice that remains essentially unchanged but is now less scrutinised. These terms are misleading, as they conceal the true nature of the practice and reduce accountability.

The Mandela Rules, specifically Rules 44 and 45, clearly state that solitary confinement should only be used in 'exceptional cases' and as a 'last resort.'⁷² Dr. McKay highlights the concerning gap between the Mandela Rules and current practices, noting:

"In contrast, the Principles neither discourage the use of solitary confinement nor prohibit prolonged solitary confinement. The Principles refer to 'segregation,'

⁷² United Nations Office on Drug and Crime (2015), *The United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules)* https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

with Principle 3.3.6 requiring mental health to be ‘recognised and considered’ when segregation is ‘continued.’ Furthermore, the entitlement to one hour per day outside is weakly worded- ‘weather permitting’-which allows prison managers to avoid providing this minimal access.”⁷³

Dr. McKay’s concerns are not theoretical; research by Human Rights Watch reveals the frequent use of solitary confinement across Australian jurisdictions.⁷⁴ The Australian Human Rights Commission also warns that solitary confinement can “increase or exacerbate trauma, contribute to mental health deterioration, and limit participation in rehabilitative programs,” particularly for vulnerable individuals, including those with mental illness or cognitive disabilities.”⁷⁵

TALS calls for greater alignment with Mandela Rules 44 and 45 and urges increased scrutiny of solitary confinement practices across all Australian jurisdictions.

Feedback: The current guiding principles should establish clear protocols regarding the use of force, restraint, and segregation to safeguard the rights and safety of all individuals, with a focus on vulnerable populations, including Aboriginal and Torres Strait Islander peoples.

Suggested Improvement:

- Develop stringent guidelines for the use of restraints and segregation, ensuring these measures are employed only as a last resort. Protocols must prioritise

⁷³ Mackay, A. (2021). *Human rights guidance for Australian prisons: Complementing implementation of the OPCAT*. *Alternative Law Journal*, 46(1), 20-26. <https://doi-org.esproxy-f.deakin.edu.au/10.1177/1037969X20962863>

⁷⁴ *ibid*

⁷⁵ Australian Human Rights Commission, *Follow Up Procedures to Australia's Sixth Periodic Review Submission to the Committee Against Torture* (2023) https://humanrights.gov.au/sites/default/files/ahrc_-_follow-up_to_un_cat_concluding_observations_15.09.23_0.pdf

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

- minimising harm, especially for high-risk groups, including Aboriginal and Torres Strait Islander individuals.
- Immediately discontinue the use of ‘personal searches’ or ‘strip searches,’ particularly against vulnerable incarcerated cohorts such as women, Aboriginal and Torres Strait Islander, and LGBTQIA+ prisoners.
- Establish an independent body to oversee the enforcement and implementation of policies and procedures related to the use of force and restraints.
- Implement body-worn cameras for all tactical response staff to enhance transparency and accountability.
- Ensure that the Guiding Principles align directly with the Mandela Rules, as supported by Dr. Anita McKay's research.

7. System ambition and future vision, including technology, community reintegration, living experience engagement, trauma informed practices, case management and the role of staff in promoting rehabilitation outcomes:

The Australian prison system is currently failing to produce desirable outcomes, with recidivism rates remaining unacceptably high. In Tasmania, for instance, the recidivism rate stands at approximately 52%.⁷⁶ While community factors play a significant role in this statistic, the prison environment itself can either support or hinder rehabilitative efforts. Prison settings are not merely places of detention but environments that can shape offenders’ futures. How we treat people within this system can either perpetuate criminal behaviour or foster positive change.

⁷⁶ Productivity Commission, *Report on Government Services: Justice* (2024) Australian Government, <https://www.pc.gov.au/ongoing/report-on-government-services/2024/justice>

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

Current prison practices particularly in Australia have been heavily criticised. Reports from the Australian Human Rights Commission highlight numerous issues, including the denial of access to UN investigators, which was described as a breach of Australia's obligations under OPCAT.⁷⁷ At the time, the New South Wales Minister of Corrections responded dismissively,

“The whole role of our jail system is to keep people safe, protect us from the criminals that we lock up every day. It’s not to allow people just to wander through at their leisure. [The UN] should be off to Iran looking for human rights violations there.”⁷⁸

This reflects a fundamental misunderstanding of the role prisons should play and the process of criminalisation.

TALS advocates for a paradigm shift in Australia's correctional system, moving away from punitive, "command-and-control" models toward a more rehabilitative, well-being-focused approach. International best practices, such as those implemented in Norway's Halden Prison, demonstrate that a system prioritising safety, personal development, and well-being results in better outcomes for both inmates and society. Halden is not only about better infrastructure—it's about shifting the entire focus of the prison system to mimic community life, allowing inmates to develop life skills in a humane, supportive environment.⁷⁹

⁷⁷ United Nations Human Rights Office of the High Commissioner, 2002. *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*. Available at: <https://www.ohchr.org/en/professionalinterest/pages/opcat.aspx>.

⁷⁸ T Rose, *UN accuses Australia of 'clear breach' of human rights obligations as it suspends tour of detention facilities*, October 2023, The Guardian, <https://www.theguardian.com/australia-news/2022/oct/23/un-accuses-australia-of-clear-breach-of-human-rights-obligations-as-it-suspends-tour-of-detention-facilities>

⁷⁹ Subramanian R, *How Some European Prisons are Based of Dignity Rather Than Dehumanisation*, 2021, The Brennan Center for Justice; <https://www.brennancenter.org/our-work/analysis-opinion/how-some-european-prisons-are-based-dignity-instead-dehumanisation>

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

A recent report from the Tasmanian Custodial Inspector underscored the importance of this shift. It highlighted concerns with the management style of the prison, particularly the Senior Management team's "proud" adherence to a command-and-control approach. This management style, which is evident throughout the operations of the prison, including the extensive use of restraints, limits the potential for rehabilitative success.⁸⁰ TALS believes that a significant shift is required across many Australian jurisdictions in terms of how we view the purpose and mission of prison environments.

For instance, a shift away from this rigid command-and-control model in Tasmania, towards an approach that prioritises well-being and self-development, as seen in Halden, could yield swift and noticeable improvements in rehabilitation outcomes. Research into Halden highlights the positive impacts of such a change. A *New York Times* article, which interviewed several inmates from Halden, reported that the environment in the prison was notably calm and non-violent, with inmates experiencing a sense of safety and stability that is rare in other correctional facilities.⁸¹ This atmosphere is fostered by a system that emphasises trust, personal development, and community integration, rather than simple control.

Future Vision: A Shift Towards Well-being and Development

To drive meaningful change, Australian correctional facilities must integrate key elements into their daily operations:

1. **Trauma-Informed Practices:** Recognising that many incarcerated individuals have experienced significant childhood trauma, correctional staff must receive

⁸⁰ Office of the Custodial Inspector Tasmania, *Adult Health Care Inspection Report 2023*, https://www.custodialinspector.tas.gov.au/_data/assets/pdf_file/0004/769018/Adult-Health-Care-Inspection-Report-2023.pdf

⁸¹ Benko, J, *The Radical Humanness of Norway's Halden Prison* (2015) The New York Times, <https://www.nytimes.com/2015/03/29/magazine/the-radical-humaneness-of-norways-halden-prison.html>

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

training in trauma-informed care. This approach can reduce aggressive behaviour and help staff respond appropriately to inmate needs.

- 2. Technological Integration:** Technology can play a crucial role in rehabilitation by providing access to educational programs, mental health support, and individualised rehabilitation plans. Virtual platforms can facilitate therapy sessions or online education programs, helping inmates develop skills that aid reintegration.
- 3. Community Reintegration Focus:** Rehabilitative efforts must extend beyond prison walls. Australian prisons should adopt a model where inmates are prepared for life post-incarceration, with a focus on developing social skills, vocational training, and mental health support. Case management should include planning for reintegration into society before release.
- 4. Shift in Staff Roles:** Staff should be seen not just as enforcers of rules, but as active participants in an inmate's rehabilitation process. This requires ongoing training in de-escalation, understanding the impacts of adverse childhood experiences, substance dependence, and the Mandela Rules. Staff development should also focus on providing emotional support to vulnerable inmates, helping to mitigate the effects of vicarious trauma.

Actionable Recommendations:

1. Move Away from Command-and-Control Models: Australian prisons must transition from a punitive "command-and-control" model to one focused on rehabilitation, emphasising personal development and well-being.

- **Implement Trauma-Informed Practices:** Ensure that all correctional staff receive training in trauma-informed care, de-escalation techniques, and vicarious trauma management. This will not only improve inmate behaviour but also foster a more supportive environment conducive to rehabilitation.

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

- **Integrate Technology for Rehabilitation:** Use technology to provide tailored rehabilitation programs, including access to therapy, education, and job training. Virtual learning platforms and digital counselling can bridge the gap between institutional constraints and rehabilitation needs.
- **Ensure Staff Development and Supervision:** Correctional staff should engage in ongoing professional development, including supervision that supports their ability to handle the emotional and psychological demands of working with vulnerable populations. This should include training on the impacts of childhood developmental trauma, adverse childhood experiences (ACEs), and other behavioural issues.

Learn from International Best Practices: Emulate successful international models, such as Halden Prison in Norway, where the focus is on rehabilitation and well-being rather than simply containment. By adopting a similar philosophy, Australian prisons can begin to see significant improvements in inmate outcomes.

By addressing these areas, Australian prisons can move toward a model that fosters rehabilitation, reduces recidivism, and better prepares inmates for reintegration into society. This will not only lead to better outcomes for those incarcerated but also contribute to safer communities.

Feedback:

The integration of technology and trauma-informed practices has the potential to significantly enhance rehabilitation outcomes, particularly for vulnerable populations. However, to ensure these approaches are consistently effective, a more structured and systematic vision is required for their incorporation into correctional settings.

CONTACT US

T 1800 595 162
E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

Suggested Improvements:

Move Away from Harmful Traditional Practices: Traditional command-and-control approaches to prison management undermine the safety and care of incarcerated individuals. It is essential to shift away from this punitive model in favour of one that prioritises rehabilitation and well-being.

Adopt a Rehabilitation-Centered Model: Prisons should transition from a command-and-control management style to a model focused on safety, personal well-being, and self-development. This shift should be underpinned by a commitment to rehabilitation, allowing individuals to address the underlying causes of their criminal behaviour.

Align Practices with International Best Standards: Australian correctional practices should be reformed to align with internationally recognised standards, drawing inspiration from successful global models that prioritise rehabilitation, such as those in Scandinavian countries like Norway.

Ongoing Staff Training: Correctional staff should undergo continuous professional development in key areas, including:

- The impacts of childhood developmental trauma
- De-escalation techniques
- Vicarious trauma and adverse childhood experiences (ACEs)
- Substance dependence, maladaptive behaviours, and the Mandela Rules.

Enhance Staff Supervision and Support: In addition to training, correctional staff should participate in supervision programs that promote their professional development and support their ability to manage the complex needs of vulnerable individuals in custody.

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

Conclusion

As the Tasmanian Aboriginal Legal Service, we appreciate the opportunity to provide feedback on the review of the Guiding Principles for Corrections in Australia. We recognise the importance of addressing the critical issues outlined, particularly those related to Aboriginal and Torres Strait Islander cultural safety and the Closing the Gap initiatives. We strongly advocate for the inclusion of measures that ensure cultural competence, trauma-informed practices, and improved mental health services for Aboriginal and Torres Strait Islander peoples in correctional settings. Additionally, we emphasise the need for reforms that promote a holistic and equitable approach to justice, focusing on rehabilitation, community reintegration, and the dignity of individuals. We hope that the review of these guiding principles leads to meaningful, sustained improvements in the correctional system that respect the rights and wellbeing of our communities. We look forward to the outcomes of this consultation and the continued engagement of all relevant stakeholders to ensure positive change.

If you have any questions or would like to discuss anything in the contents of this report, please reach out to Jake Smith (TALS – CEO) or Lee-Anne Carter.

This is submitted on behalf of TALS CEO Jake Smith.

Warmest regards.



Lee-Anne Carter

Policy and Programs Manager

Ph: [1800 595 162](tel:1800595162) | Mobile: 0490 520 480 | Email: lcarter@tals.net.au

Level 1, Office 1A, 67-69 Brisbane St, Launceston

GPO Box 161, Launceston TAS 7250

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

References

Australian Bureau of Statistics. (2010). *Measures of Australia's Progress: Crime in Australia*. Available at:

[https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/1370.0Chapter~Crime%20in%20Australia%20\(4.4.5\)](https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/1370.0Chapter~Crime%20in%20Australia%20(4.4.5)).

Australian Human Rights Commission. (2024). *Self-determination and Indigenous peoples*. Available at: <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/self-determination-and-indigenous>.

Australian Human Rights Commission. (2023). *Current Issues in Prison Management: Submission to United Nations Special Rapporteur on Torture*. Available at: https://humanrights.gov.au/sites/default/files/16.11.23_submission_to_the_united_nations_special_rapporteur_on_torture_002_0.pdf.

Australian Institute of Criminology. (2020). *Deaths in Custody: National Overview*. Available at: <https://www.aic.gov.au>.

Australian Institute of Health and Welfare. (2019). *The health of Australia's prisoners 2018*. Available at: <https://www.aihw.gov.au/getmedia/2e92f007-453d-48a1-9c6b4c9531cf0371/aihw-phe246.pdf.aspx?inline=true>.

Australian Institute of Health and Welfare. (2023). *The health of people in Australia's prisons 2022*. Available at: <https://www.aihw.gov.au/reports/prisoners/the-health-of-people-in-australias-prisons-2022>.

Australian Law Reform Commission. (2018). *Culturally appropriate programs*. Available at: <https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/9-prison-programs-and-parole/culturally-appropriate-programs/>.

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

Benko, J. (2015). *The Radical Humanness of Norway's Halden Prison*. *The New York Times*. Available at: <https://www.nytimes.com/2015/03/29/magazine/the-radical-humaneness-of-norways-halden-prison.html>.

Breuer, E., Remond, M., Lighton, S. et al. (2021). The needs and experiences of mothers while in prison and post-release: A rapid review and thematic synthesis. *Health Justice*, 9, 31. <https://doi.org/10.1186/s40352-021-00153-7>.

Closing the Gap. (2024). *Priority Reform One - Formal partnerships and shared decision-making*. National Indigenous Australians Agency. Available at: <https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap/6-priority-reform-areas/one>.

Dudgeon, P., McKenna, V., Smith, D., Ketchell, M., Tabuai, K., Tabuai, A., Manado, A., Robotham, J., & Centre of Best Practice in Aboriginal and Torres Strait Islander Suicide Prevention. (2023). *Coronial responses to suicides of Aboriginal and Torres Strait Islander people: Research report*. CBPATISIP, The University of Western Australia. Available at: <https://cbpatsisp.com.au/wp-content/uploads/2023/10/Coronial-responses-report.pdf>.

Kilmer, A. & Abdel-Salam, S. (2022). *Pretty and Punitive*. *Inquest*. Available at: <https://inquest.org/pretty-and-punitive/>.

Law Council of Australia. (2018). *The Justice Project (Final Report)*. Available at: <https://www.lawcouncil.asn.au/>.

Lachsz, A. (2022). *Strip searches in prison are traumatising breaches of human rights. So, why are governments still allowing them?* Australian Privacy Foundation. Available at: <https://privacy.org.au/2022/02/21/strip-searches-in-prison-are-traumatising-breaches-of-human-rights-so-why-are-governments-still-allowing-them/>.

McDonald, L. (2024). *Tasmania's prison service under fire as report into inmate's health makes 117 recommendations*. Australian Broadcasting Company, 19 July. Available at: <https://www.abc.net.au/news/2024-07-19/tasmanian-custodial-inspector-report-prison-health/104114410>.

Mackay, A. (2021). Human rights guidance for Australian prisons: Complementing implementation of the OPCAT. *Alternative Law Journal*, 46(1), 20-26. <https://doi.org.esproxy-f.deakin.edu.au/10.1177/1037969X20962863>

Mental Health Council of Tasmania. (2023). Access and Affordability: Mental Health Services in Tasmania. <https://mhct.org/wp-content/uploads/2023/07/MHCT-Access-and-Affordability-Report-2.pdf>

Mizzi, J., Hughes, C., Halsey, M., Cleary, J., Deegan, S., & Goodwin-Smith, I. (2024, July). Beyond Bars: Exploring Challenges and Solutions to the Problem of Short Custodial Stays in Regional South Australia. Available at: https://researchnow.flinders.edu.au/files/134717726/Mizzi_Hughes_Halsey_et_al_-_2024_-_Beyond_bars_-_Exploring_challenges_and_solutions_to_the_problem_of_short_custodial_stays_in_regional_SA.pdf

Newton, B. (2024). Aboriginal parents' experiences of having their children removed by statutory child protection services. *Child & Family Social Work*, 25(4), 814-822. <https://doi.org/10.1111/cfs.12759>

Office of the Custodial Inspector Tasmania. (2023). Adult Health Care Inspection Report 2023. https://www.custodialinspector.tas.gov.au/_data/assets/pdf_file/0004/769018/Adult-Health-Care-Inspection-Report-2023.pdf

Productivity Commission. (2024). *Report on Government Services: Justice*. Australian Government. <https://www.pc.gov.au/ongoing/report-on-government-services/2024/justice>

Productivity Commission. (2024, May 28). *Report on Government Services 2024: C. Justice 6: Police services*. <https://www.pc.gov.au/ongoing/report-on-government-services/2024/justice/police-services>

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

Queensland Human Rights Commission. (2023). Stripped of our dignity: A human rights review of policies, procedures, and practices in relation to strip searches of women in Queensland prisons. <https://www.qhrc.qld.gov.au/about-us/reviews/strip-searching>

Royal Commission into Aboriginal Deaths in Custody (RCIADIC). (1991). *Royal Commission into Aboriginal Deaths in Custody: National Report*. Available at: <https://www.indigenous.gov.au/royal-commission-aboriginal-deaths-custody>

Royal Commission into Aboriginal Deaths in Custody. (1998). *Australasian Legal Information Institute*. <http://www.austlii.edu.au/au/other/IndigLRes/rciadic/>

Shelter Tas. (2022). Homelessness in Tasmania: The Facts. <https://www.hobartcity.com.au/files/assets/public/v/1/community/action-on-homelessness/homelessness-week-2022-fact-sheet.pdf>

Shepherd, S., Spivak, B., Ashford, L., Williams, I., Trounson, J., & Paradies, Y. (2020). Closing the (incarceration) gap: Assessing the socio-economic and clinical indicators of indigenous males by lifetime incarceration status. *BMC Public Health*. <https://bmcpublichealth.biomedcentral.com/articles/10.1186/s12889-020-08794-3>

SNAICC. (2021). Reviewing Implementation of the Aboriginal and Torres Strait Islander child placement principle: Tasmania. <https://www.snaicc.org.au/wp-content/uploads/2024/04/ATSICPP-Implementation-Review-TAS-2021.pdf>

Submission to the Committee Against Torture. (2023). https://humanrights.gov.au/sites/default/files/ahrc_-_follow-up_to_un_cat_concluding_observations_15.09.23_0.pdf

Subramanian, R. (2021). How some European prisons are based on dignity rather than dehumanisation. *The Brennan Center for Justice*. <https://www.brennancenter.org/our-work/analysis-opinion/how-some-european-prisons-are-based-dignity-instead-dehumanisation>

T. Rose. (2023, October). UN accuses Australia of ‘clear breach’ of human rights obligations as it suspends tour of detention facilities. *The Guardian*. <https://www.theguardian.com/australia-news/2022/oct/23/un-accuses-australia-of-clear-breach-of-human-rights-obligations-as-it-suspends-tour-of-detention-facilities>

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

Tasmania Department of Justice. (2017). *Care and Wellbeing Inspection Report 2017*.

Retrieved from

https://www.custodialinspector.tas.gov.au/_data/assets/pdf_file/0020/451613/FINAL-TPS-Care-and-Wellbeing-Inspection-Report-Appendices-30-October-2018-PDF.PDF

Tasmania Magistrates Court. (2024). *Inquest into the death of Robert Gerard, Tasmania*.

Available at:

https://www.magistratescourt.tas.gov.au/_data/assets/pdf_file/0012/757857/Gerard,-Robert-RBW_deidentified_WEB-.pdf

Tasmania Department of Justice. (2018). *Custody Inspection Report 2018*. Tasmania:

Department of Justice. Retrieved from

https://www.custodialinspector.tas.gov.au/_data/assets/pdf_file/0020/451613/FINAL-TPS-Care-and-Wellbeing-Inspection-Report-Appendices-30-October-2018-PDF.PDF

Tasmania Department of Justice. (2021). *Mary Hutchinson Women's Prison Inspection Report 2021* (pp. 11, 34, 35, 68, 72). Tasmania: Department of Justice. Retrieved from

https://www.custodialinspector.tas.gov.au/_data/assets/pdf_file/0020/451613/FINAL-TPS-Care-and-Wellbeing-Inspection-Report-Appendices-30-October-2018

Tasmanian Department of Justice. (2023). *Changing lives, creating futures – A Strategic Plan for Corrections in Tasmania*. Available at:

https://www.justice.tas.gov.au/_data/assets/pdf_file/0013/710014/Changing-lives-creating-futures-A-Strategic-Plan-for-Corrections-in-Tasmania-2023_web-accessible.pdf

Tasmanian Government. (2018). *Tasmanian Prison Service: Director's Standing Order, Transgender, Transsexual and Intersex Prisoners*.

https://www.justice.tas.gov.au/_data/assets/pdf_file/0020/562016/2-15-Transgender-Prisoners-DSO_VER-2.pdf

Tasmanian Government. (2019). *Tasmanian Prison Service: Director's Standing Order, Searching*.

https://www.justice.tas.gov.au/_data/assets/pdf_file/0005/439421/1-10-Searching-Redacted-July-2019.pdf

United Nations Human Rights Office of the High Commissioner. (2002). *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Available at:

<https://www.ohchr.org/en/professionalinterest/pages/opcat.aspx>

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

United Nations Office on Drugs and Crime. (2015). *The United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules)*.

https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf

Walters, R., Antojado, D., Maycock, M., & Bartels, L. (2024). LGBT people in prison in Australia and human rights: A critical reflection. *Alternative Law Journal*, 49(1), 40-46.

<https://doi.org/10.1177/1037969X241231007>