Tasmanian Aboriginal Legal Service ("TALS") Written Submission:

Tasmanian National Preventive Mechanism (NPM)

June 2023

Recommendations

Recommendation 1: Before starting monitoring and educative functions, the Tasmanian NPM, in genuine partnership with Aboriginal Community Controlled Organisations, should engage in detailed consultation with Tasmanian Aboriginal communities to develop an understanding of the impacts of racial discrimination and what Aboriginal Tasmanians, including people sitting at the intersection of multiple marginalised identities, consider to be cruel, inhuman or degrading treatment across the full range of detention settings identified as falling within the NPM's purview.

Recommendation 2: Before starting monitoring and educative functions, the Tasmanian NPM should lay out a proactive plan of action not simply to end bad practice, but to instil the highest standards of good practice in the treatment of all Tasmanians deprived of liberty, including Aboriginal Tasmanians, encompassing both behaviours and attitudes.

Recommendation 3: Before starting monitoring and educative functions, the Tasmanian NPM should lay out a clear plan of action to address non-detention settings where people can reasonably feel their liberty to be curtailed, ideally before educative functions start.

Recommendation 4: All aspects of the Tasmanian NPM's work should explicitly take into account the disproportionate Tasmanian Aboriginal experience of judicial detention as a significant focus.

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Recommendation 5: The Tasmanian NPM's investigative and educative functions should explicitly target racism and discrimination against Aboriginal Tasmanians and people sitting at the intersection of multiple marginalised identities, both in settings of detention and in outreach activities, at the level of policy as well as behaviour and attitudes.

Recommendation 6: The Tasmanian NPM's work should take into account the Tasmanian Aboriginal experience of deprivation of liberty due to severe psychological distress, including investigating whether Tasmanian Aboriginal people are at disproportionate risk of this form of detention.

Recommendation 7: The NPM should examine the cultural as well as medical adequacy of health care for Aboriginal Tasmanians in detention settings from the perspective of meeting Australia's OPCAT obligations.

Recommendation 8: Across the full range of settings within the NPM's purview, the NPM should advocate for the establishment of clear and transparent complaints processes, coupled with culturally sensitive, trauma-informed awareness and education campaigns, to assist Aboriginal Tasmanians to report misconduct.

Recommendation 8: Aboriginal expertise should be incorporated in all aspects of the NPM through ongoing genuine engagement and co-design with Tasmania's Aboriginal communities.

Recommendation 9: All Tasmanian NPM staff and practice should be culturally competent and trauma-informed.

Recommendation 10: The Tasmanian NPM's work should be explicitly situated against and respond to the findings and recommendations of the Royal Commission into Aboriginal deaths in custody and the Closing the Gap priority reforms and targets.

Recommendation 11: The Tasmanian NPM, in the spirit of Priority Reform 4 of the Closing the Gap process and in genuine partnership with Tasmanian Aboriginal organisations and communities, should develop a program of public reporting of statistics relating to the NPM's work that are relevant to progress against the Closing the Gap targets and the lives of Aboriginal Tasmanians.

Recommendation 12: The NPM should examine the potential for, and advocate for changes in relation to, barriers that may exist to identifying, preventing and ending ill-treatment across the entire course of a person's engagement with the full range of potentially custodial institutions within the NPM's purview.

Recommendation 13: The Tasmanian NPM should examine any barriers that may exist to prosecution of persons committing torture or ill-treatment in situations of detention in Tasmania.

Recommendation 14: The Tasmanian NPM should ensure, in collaboration with the Tasmanian Commissioner for Children and Young People and through additional research if necessary, that the specific needs and vulnerabilities of Tasmanian children in detention are taken into account in the NPM's work.

Recommendation 15: The NPM should adopt an ecological understanding of the causes of torture and ill-treatment and an ecological approach to their prevention.

Recommendation 16: After consultation with the Tasmanian community, including Tasmania's Aboriginal communities, the NPM should adopt a model that ensures adequate human resourcing to meet the full range of the Mechanism's responsibilities.

Recommendation 17: To support the activities of the Tasmanian NPM, the Tasmanian Government should appoint a dedicated Commissioner for Aboriginal Children and Young People.

Recommendation 18: Funding and resourcing for the NPM (based on their own assessment) should be guaranteed in legislation, with resources provided by government to be in a single, dedicated budget line item to allow the NPM determine its internal budget allocations.

Introduction

Thank you for seeking further submissions in relation to the design and scope of the Tasmanian National Preventive Mechanism (NPM) under the Optional Protocol to the Convention Against Torture (OPCAT).

The Tasmanian Aboriginal Legal Service (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 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.

In this submission, we will address the four questions posed by the consultation paper. As a starting point, however, we wish to address two key aspects of the mission of Tasmania's NPM: the understanding of what constitutes cruel, inhuman or degrading treatment or punishment (CIDT), and the understanding of what falls within the proper scope of prevention.

What does your organisation see as the core issues affecting populations that you represent in places of detention, that the Tasmanian NPM should consider as a matter of priority?

In our submission to the first consultation paper, we identified three overarching issues which we believe are central to Aboriginal Tasmanians and which the Tasmanian NPM should consider as a matter of priority, before visiting functions and educative functions start.

Development of a culturally inclusive understanding of what constitutes cruel, inhuman or degrading treatment that acknowledges the impacts of colonisation and racism on Aboriginal Tasmanian.

As we noted in our earlier submission, the concept of cruel, inhuman or degrading treatment or punishment (CIDT) is sometimes differentiated from the concept of torture through the principle of intentionality: torture is behaviour intended to cause harm, while CIDT can include negligent behaviour which fails to take harm into account.[1] Torture prevention advocates have noted that when negligence persists in the face of clear evidence of its harm, the line between it and intentional harm can become blurred.

[1] https://www.researchgate.net/publication/363614377_Entangling_Intentionality_Reflections_on_Torture_and_Structure_Entangling_Intentionality_Reflections_on_Torture_and_Structure

In contrast to torture, which is clearly defined in the UN Convention Against Torture,[2] CIDT is less clearly codified, although equally clearly prohibited.[3] This fluidity to some extent reflects an understanding in the torture prevention community that a wide range of justice system practices, ranging from police procedures (interrogation practices, searches) to structural practices such as imprisonment, can have differing impacts on different groups, due to:

Differing cultural standards and practices:

The idea of what constitutes CIDT extends from a universal core to a culturally-dependent periphery.[4] While cultural differences can be deliberately exploited in psychological torture,[5] they also can play a more subtle part in disproportionate harm. For example, the UN Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) notes that the culturally specific practice of deprivation of liberty hardly appears in the repertoire of indigenous justice, and that the mere fact of depriving someone of his/her liberty can have an acute negative effect on members of indigenous groups or communities due to the rupturing of links between individuals, communities and ancestral lands and resultant damage to cultural and spiritual identity; as a result, for many indigenous people, deprivation of liberty is a form of double punishment that can constitute CIDT and indeed torture. [6] These observations have been upheld in the Australian Aboriginal context by the final report of the 1991 Royal Commission into Aboriginal Deaths in Custody and supporting research papers, which noted the distinctive and disproportionate psychological and emotional impact of incarceration, and particularly solitary confinement, on Aboriginal people Australia-wide.[7] Deprivation of liberty is not the only situation with culturally distinctive impacts: in the Tasmanian judicial context, for example, we note that Aboriginal people in custody have experienced significant distress at being deprived of the opportunity to participate in a funerals of community members due to cultural obligations associated with "sorry business" accompanying funeral rites.[8]

Differing levels of vulnerability to systemic failures and individual malpractice:

Due to the physical and emotional legacies of the Aboriginal experience of dispossession, dispersal, discrimination and disproportionate incarceration, Aboriginal Tasmanians have the potential for greater vulnerability to a range of situations within settings of detention. For example, studies have shown

[2] https://cti2024.org/resource/un-convention-against-torture-and-other-cruel-inhuman-or-degrading-treatment-or-punishment-and-the-optional-protocol/
[3] https://irct.org/wp-content/uploads/2022/11/Volume-16-No.-3.pdf
[4] For background, see https://www.humiliationstudies.org/documents/evelin/CorePeriphery.pdf
[5] https://www.seattletimes.com/nation-world/guantnamo-bay-female-interrogators-tactics-aired/
[6] https://www.corteidh.or.cr/sitios/observaciones/OC-29/16_SPT_ONU.pdf, cited in https://www.apt.ch/sites/default/files/publications/UN%20Submission_Indigenous%20women_v2.pdf
[7] See for example https://www.researchgate.net/publication/265142700_The_Design_of_Safe_and_Humane_Police_Cells_A_Discussion_of_some_Issues_relating_to_Aboriginal_People_in_Police_Custody, cited in volume 3 of the Royal Commission's report (https://www.austlii.edu.au/cgi-bin/sinodisp/au/other/cth/AURoyalC/1991/3.html?stem=0&synonyms=0&query=Royal%20Commission%20into%20Aboriginal%20Deaths%20in%20Custody#Heading2053)
[8] https://www.abc.net.au/radionational/programs/lifematters/understanding-sorry-business/9421540

Aboriginal adolescents to have higher anxiety about custody than non-Aboriginal adolescents, [9] leaving them more vulnerable to menacing behaviour and the inducing of fear –identified by the UN Special Rapporteur on Torture and CIDT as the most rudimentary and widespread form of psychological torture/CIDT[10] -- on the part of justice system staff and fellow inmates.

Notably, all of these factors can exist in intersection with other vulnerabilities, for example in relation to age, sexual orientation and gender identity.[11] For example, the Chilean Public Criminal Defence Service has noted that indigenous women prisoners suffer doubly in coping with a system designed ideologically, physically and in its normative structure for non-indigenous men; [12] closer to home, the high levels of violence and sexual assault experienced by Aboriginal women prisoners Australia-wide make strip-searching especially traumatic.[13] Meanwhile, people sitting at the intersection of Aboriginal and LGBTI+ identities can face especially high risk of verbal and physical abuse.[14]

Underlying all of these issues is the traumatic legacy of dispossession, dispersal, and discrimination faced by Aboriginal Tasmanian (see below for further discussion). Racial discrimination falls under the definition of degrading treatment and torture – defined as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person … for any reason based on discrimination of any kind " (italics added) – that OPCAT is designed to prevent. The European Court of Human Rights has indeed found that racial discrimination can constitute degrading treatment as prohibited by Article 3 of the European Convention on Human Rights,[15] and the Queensland Human Rights Commission similarly notes that "cruel, inhuman or degrading treatment or punishment," which does not necessarily have to be intentionally inflicted, can include acts – such as 'disparagement humour'[16] -- that debase a person or cause a sense of inferiority.[17]

Recommendation 1: Before starting monitoring and educative functions, the Tasmanian NPM, in genuine partnership with Aboriginal Community Controlled Organisations, should engage in detailed consultation with Tasmanian Aboriginal communities to develop an understanding of the impacts of racial discrimination and what Aboriginal Tasmanians, including people sitting at the intersection of multiple marginalised identities, consider to be cruel, inhuman or degrading treatment across the full range of detention settings identified as falling within the NPM's purview.

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9 https://www.researchgate.net/publication/247495181_Psychological_impact_on_custody_on_the_Aboriginal_adolescent

10 https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/070/73/PDF/G2007073.pdf?OpenElement

11 https://www.apt.ch/sites/default/files/publications/PRI_DMT%20Older%20persons_WEB.pdf ; https://www.apt.ch/sites/default/files/publications/thematic-paper-3_lgbti-persons-deprived-of-their-liberty-en.pdf ; https://www.apt.ch/sites/default/files/publications/thematic-paper-2_women-in-detention-en.pdf

12 https://www.apt.ch/sites/default/files/publications/UN%20Submission_Indigenous%20women_v2.pdf

13 https://www.smh.com.au/national/what-we-can-do-to-stop-indigenous-deaths-in-custody-20210405-p57gnq.html

14 https://theconversation.com/new-research-shows-how-indigenous-lgbtiq-people-dont-feel-fully-accepted-by-either-community-161096

15 https://www.echr.coe.int/Documents/FS_Racial_discrimination_ENG.pdf

16 https://theconversation.com/psychology-behind-the-unfunny-consequences-of-jokes-that-denigrate-63855

17 https://www.qhrc.qld.gov.au/your-rights/human-rights-law/right-to-protection-from-torture-and-cruel,-inhuman-or-degrading-treatment

Articulation of an ambitious understanding of strengthening protection against torture.

As we noted in our earlier submission, the concept of protection against, or prevention of, torture can be interpreted in a minimalist fashion as the prevention of bad practice, or in a more inclusive fashion to embrace the promotion of good practice. For example, we note the functions of New Zealand's NPM, which include (in line with the language of Article 19 of OPCAT itself[18]):

- to make any recommendations it considers appropriate to the person in charge of a place of detention:
    - for *improving* the conditions of detention applying to detainees;
    - for *improving* the treatment of detainees; and
    - for preventing torture and other cruel, inhuman or degrading treatment or punishment in places of detention.[19]

Notably, 'improvement' is not limited here to the cessation of existing bad practice, but to the creation of conditions of good practice that reduce the likelihood of such prohibited behaviour in the future through positive example as well as through sanction.[20] This approach stands in contrast to the current language of the Tasmanian NPM's purpose, which is described as examining with a view to strengthening protections only *if necessary* (emphasis added).

This point is particularly salient for Aboriginal people across Australia, including in Tasmania, as a consequence of the intergenerational legacy and continuing experience of ill-treatment across a range of institutions. Continuous progress towards ensuring that institutions treat people well, rather than simply not treating them badly, will be vital in the creation of institutions that the Tasmanian Aboriginal community can trust.

In this regard, we note the particular importance of the NPM's educative function, particularly in relation to the training and professional development of police and custodial staff to ensure that the spirit of the Convention Against Torture flows through to situations where people are not detained, but could reasonably feel their liberty to be curtailed (see below). As also detailed below, the NPM's educative and monitoring functions should extend not only to behaviours (torture, ill-treatment) but also to racist attitudes.

Recommendation 2: Before starting monitoring and educative functions, the Tasmanian NPM should lay out a proactive plan of action not simply to end bad practice, but to instil the highest standards of

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[18] https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-against-torture-and-other-cruel

[19] https://www.ombudsman.parliament.nz/resources/expectations-conditions-and-treatment-residents-health-and-disability-places-detention

[20] See, for example, New Zealand Ombudsman (2022), *OPCAT -- expectations for conditions and treatment of residents in health and disability places of detention – aged care*. https://www.ombudsman.parliament.nz/resources/expectations-conditions-and-treatment-residents-health-and-disability-places-detention. See also Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Visit to New Zealand undertaken from 29 April to 8 May 2013: observations and recommendations addressed to the State party. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2FOP%2FNZL%2F1&Lang=en

good practice in the treatment of all Tasmanians deprived of liberty, including Aboriginal Tasmanians, encompassing both behaviours and attitudes.

Development of a plan of action to address ill-treatment in non-detention settings where people could reasonably feel their liberty to be curtailed.

As outlined in our earlier submission, we note that malpractice can occur in situations where people are not formally detained, but could reasonably feel their liberty to be curtailed. As noted above in the discussion of prevention of torture, a move from simple prohibition of bad behaviour towards strong organisational cultures of best practice will be crucial to ensuring that the spirit of the Convention against Torture flows beyond institutional settings of deprivation of liberty to settings where people can reasonably feel their liberty to be curtailed. Foremost among these are:

- *Police stops and searches.* At TALS, we all too frequently encounter disturbing allegations of police behaviour that falls under the definition of degrading treatment but that has occurred in settings outside of detention (strip-searching of women in front of male police officers during home searches, for instance). Effective training of both existing and new staff can help to create organisational cultures that can rein in malpractice across the full range of settings and protect against the deliberate creation of loopholes – for example, questioning of suspects in unofficial locations. [21]

- *Vehicles used to convey people exhibiting mental ill-health*. People exhibiting mental and behavioural disorders who are being conveyed to hospitals or other mental health facilities in vehicles being used or operated by police or other professionals not trained in mental health first aid and management are at risk both of ill treatment and of being disbelieved. Due to high levels of high psychological distress, Aboriginal Tasmanians are at disproportional risk of ending up in such settings (see below).

Recommendation 3: Before starting monitoring and educative functions, the Tasmanian NPM should lay out a clear plan of action to address non-detention settings where people can reasonably feel their liberty to be curtailed, ideally before monitoring and educative functions start.

What does your organisation see as the main barrier(s) to preventing torture and ill-treatment in places of detention, and to people in these places engaging with the Tasmanian NPM?

A range of significant barriers exist to preventing torture and ill-treatment of Aboriginal Tasmanians in places of where they are deprived of liberty (hereafter 'in detention'), including:

The disproportional representation of Aboriginal people in conditions of judicial detention.

Aboriginal people in Australia are the most imprisoned group in any Western democracy, and among the most imprisoned on earth.[22] As a consequence, Aboriginal Tasmanians are at disproportionate risk of torture and ill-treatment simply due to their disproportional presence in conditions of judicial detention.

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21 https://www.researchgate.net/publication/358032099_Human_Rights_Torture_prevention_Police_Strategies_for_Ensuring_Fair_Treatment_of_Persons_in_Police_Custody_Past_Present_and_Future_With_brief_sections_on_Brazil_India_and_Russia

22 As at 30 June 2022, the Australian Aboriginal rate of incarceration was 2,330 prisoners per 100,000 Aboriginal and Torres Strait Islander adult population (https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-

- In 2021-22, Aboriginal Tasmanians made up 24.3% of the Tasmanian prison population, despite making up only around 5.4% of Tasmania's total population.[23]
- On an average day in 2020-21, Tasmanian Aboriginal children and young people made up over a third of children and young people under the supervision of the youth justice system,[24] and nearly 40% of children and young people in detention.[25]

The Tasmanian Government is failing to improve the health and welfare of Tasmanian Aboriginal People – with key Closing the Gap outcomes worsening in 2021-2022. The rate of Aboriginal and Torres Strait Islander adults in incarceration continues to worsen. The rate if Aboriginal children in out-of-home care continues to worsen. The Tasmanian Government does not collect data and report on the number of young Aboriginal and Torres Strait Islander people in detention.

Between 2012-13 and 2021-22, the incarceration rate of adult Aboriginal Tasmanians increased by 68%, from 4.5 times to 6.8 times the rate of non-Indigenous Tasmanians, while the rate for non-Indigenous Tasmanians increased by 11% in the same period.[26]

Recommendation 4: All aspects of the Tasmanian NPM's work should explicitly take into account the disproportionate Tasmanian Aboriginal experience of judicial detention as a significant focus.

Racial and historical discrimination against Aboriginal people.

Discrimination against Aboriginal people in Australia is widespread and widely tolerated. In 2022, 60% of Aboriginal Australians said that they had experienced at least one form of racial prejudice in the last six months, up from 52% in 2020;[27] at the end of 2021, 47% of Aboriginal Australians said that they experienced everyday discrimination (other people acting as if they were better, other people acting as if the respondent were not smart, being treated with less respect and with less courtesy than other people) on a weekly basis, up from 30% in 2017.[28] In the Tasmanian context, up to date statistics on experiences of discrimination are hard to find: the latest state-level figures on discrimination are from 2014 (when 20% of Tasmanian Aboriginal people had experienced discrimination or unfair treatment in the previous 12 months).[29] However, taking attitudes towards reconciliation as a partial proxy, in 2022:

australia/latest-release); meanwhile, the incarceration rate for black males (the most incarcerated group) in the United States (the Western democracy with the highest rates of incarceration) in 2021 was 1,897 per 100,000 (https://www.statista.com/chart/18376/us-incarceration-rates-by-sex-and-race-ethnic-origin/). Outside of Western democracies, Uyghurs in the People's Republic of China have experienced recent rates of incarceration of 3,789 per 100,000 (https://apnews.com/article/china-prisons-uyghurs-religion-0dd1a31f9be29d32c584543af4698955).

[23] ROGS 2023, Justice, Table 8A.6; ABS Census 2021.

[24] https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2020-21/data, Table S136a

[25] https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2020-21/data, Table S136c

[26] ROGS 2023, Justice, Table 8A.6.

[27] https://www.reconciliation.org.au/wp-content/uploads/2022/11/Australian-Reconciliation-Barometer-2022.pdf

[28] https://inclusive-australia.s3.amazonaws.com/files/2021-22-Social-Inclusion-Index-website-final.pdf ; https://inclusive-australia.s3.amazonaws.com/files/Inclusive-Australia-Social-Inclusion-Index-WEB.pdf

[29] AIHW analysis of National Aboriginal and Torres Strait Islander Social Survey, Table 5.7.2. https://www.aihw.gov.au/reports/indigenous-australians/atsi-adolescent-youth-health-wellbeing-2018/contents/table-of-contents

- Only 49% of Tasmanians –the lowest level in the nation -- felt that the relationship between First Nations and non-indigenous Australians was very important, and 10% -- the second-highest level in the nation -- felt that it was unimportant.
- Only 55% of Tasmanians felt that it was very important for Aboriginal people to have a voice in matters affecting them – the lowest level in the nation.
- Nearly 70% (67%) of Tasmanians felt that they had low knowledge of the histories of Aboriginal Australians – the highest level in the nation.
- Only 43% of Tasmanians felt that it was very important to learn about past issues of settlement and government affecting Aboriginal Australians – the lowest level in the nation.[30]

The Royal Commission into Aboriginal Deaths in Custody noted that racist attitudes underpinned a large proportion of instances of physical and mental ill-treatment of Aboriginal prisoners as well as their family and kin, both among perpetrators and among those who excused them or turned a blind eye.[31] In 2021, the UN High Commission for Human Rights reported widespread concerns, including on the part of the Special Rapporteur on Indigenous Peoples, that racism towards indigenous people remained embedded in the Australian criminal justice system.[32] As noted in our earlier submission, TALS and other community sector organisations also hear disturbing allegations of staff members in a range of Tasmanian government-funded settings, including schools, engaging in racist behaviours that are prohibited at the level of organisational policy, but sanctioned by organisational subcultures.

As noted above, racial discrimination not only interferes with preventing torture and ill-treatment, but itself falls under the definition of degrading treatment and torture that OPCAT is designed to prevent.

Recommendation 5: The Tasmanian NPM's investigative and educative functions should explicitly target racism and discrimination against Aboriginal Tasmanians and people sitting at the intersection of multiple marginalised identities, both in settings of detention and in outreach activities, at the level of policy as well as behaviour and attitudes.

The disproportional representation of Aboriginal people in severe psychological distress.

In 2018-19, nearly a third (30.9%) of Aboriginal Tasmanians reported high to very high psychological distress,[33] a rate 2.3 times that of non-Indigenous Tasmanians (13.4%) in 2017-18.[34] These figures are notable given the 'dose effect' association of psychological distress with experiences of racism and 'disparagement humour': Beyond Blue notes that the risk of high or very high levels of psychological distress increases as the volume of racism increases.[4]

As noted above, severe psychological distress puts people at disproportionate risk of being deprived of liberty for mental health treatment. In this context, we note that in 2018-19, the rate per 100,000 of emergency department presentations for mental and behavioural disorders in Tasmania was 1,695.6 for Aboriginal Tasmanians, compared to 1159.9 for Tasmanians as a whole.[35]

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[30] https://www.reconciliation.org.au/wp-content/uploads/2022/11/2022-Australian-Reconciliation-Barometer-FULL-Report.pdf
[31] https://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol2/100.html
[32] https://openresearch-repository.anu.edu.au/bitstream/1885/229826/2/WP_140_Anthony_et_al_2021.pdf
[33] ABS 4715.0 National Aboriginal and Torres Strait Islander Health Survey, Australia, 2018-19, Table 3.3
[34] ABS 4364.0, National Health Survey: first results, 2017-18, Tasmania, Table 8.1
[35] PHIDU Social Health Atlas of Australia, Aboriginal and Torres Strait Islander Social Health Atlas of Australia.

We note this issue as a potential area of research for the NPM. As we have discussed in our earlier submission, globally, NPMs identify root causes of torture and other forms of ill-treatment and gaps in law and practices, make recommendations to the authorities and establish dialogue and cooperation with them on the implementation of their recommendations.[36] In the context of this function, NPMS have the ability to engage in intersectional research around vulnerable populations, including indigenous people, that can strongly inform policy across a range of areas.

Recommendation 6: The Tasmanian NPM's work should take into account the Tasmanian Aboriginal experience of deprivation of liberty due to severe psychological distress, including investigating whether Tasmanian Aboriginal people are at disproportionate risk of this form of detention.

The disproportional experience of ill-health among Aboriginal Tasmanians.

Aboriginal people across Australia report worse health than non-indigenous people, with lower rates of self-reported good/excellent health (44.5% compared to 56.4%) and higher rates of fair/poor health (23.9% compared to 14.7%).[37] Higher-than-average levels of ill health leave Tasmanian Aboriginal people in detention more vulnerable to inadequate provision of health care in detention, particularly in the absence of culturally appropriate healthcare – both of which have been cited as a factor in Aboriginal deaths in custody and a potential breach of Australia's OPCAT obligations.[38]

Recommendation 7: The NPM should examine the cultural as well as medical adequacy of health care for Aboriginal Tasmanians in detention settings from the perspective of meeting Australia's OPCAT obligations.

Lack of trust.

For the NPM to be effective in identifying and responding to ill-treatment, it must have the trust of people with lived experience of detention and their surrounding communities. Among our Aboriginal Tasmanian clients, however, trust in complaints mechanisms, is low. For example, in our submission to the Commission of Inquiry into the Tasmanian Government's response to child sexual abuse in institutional settings, we noted that, based on information from young people who have previously been at the Ashley Youth Detention Centre (AYDC), we did not feel that young people would feel comfortable and safe in disclosing sexual abuse within the current setting, particularly where there is a perceived and/or legitimate imbalance of power. We also noted our significant concerns about the effectiveness of complaints mechanisms for Aboriginal children and young people in contact with the youth justice system, where a lack of trust in authority and institutions remains a serious issue for our Aboriginal clients.

Recommendation 8: Across the full range of settings within the NPM's purview, the NPM should advocate for the establishment of clear and transparent complaints processes, coupled with culturally

[36] https://www.apt.ch/sites/default/files/publications/apt_briefin_unsrt_061114.pdf
[37] https://www.abs.gov.au/statistics/health/health-conditions-and-risks/self-assessed-health-status/latest-release ; https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/national-aboriginal-and-torres-strait-islander-health-survey/latest-release#self-assessed-health-status
[38] https://nit.com.au/01-02-2022/2636/justice-advocates-note-lack-of-progress-on-opcat-as-anniversary-lingers ; https://www.researchgate.net/publication/355629131_Europe_Monitoring_Bodies_for_the_Prevention_of_Ill_Treatment

sensitive, trauma-informed awareness and education campaigns, to assist Aboriginal Tasmanians to report misconduct.

Meanwhile, we reiterate the importance of the NPM engaging with Aboriginal Tasmanians in detention settings across the full range of the NPM's purview, their families and communities, Aboriginal people with lived experience of detention, Aboriginal representative bodies and legal services, and more broadly, all Tasmanian Aboriginal communities, in order to build the mutual trust that will be necessary for Aboriginal people (and communtiies) to have confidence that they can approach, inform and interact with the NPM and to benefit from the expertise embodied in people's lived experience. We note that in order for this engagement to be fruitful, it will be necessary for all NPM staff and activities to be culturally competent – a concept that, as discussed in the North Australian Aboriginal Justice Agency's submission to the Australian Human Rights Commission consultation on OPCAT, requires the consideration of Aboriginal and Torres Strait Islander peoples' needs, strengths, knowledge and worldview in all aspects of detention.[39] As with all entities in contact with Aboriginal Tasmanians, the office of the NPM requires staff who are trauma-informed and trained in culturally appropriate support, with people who identify as Aboriginal available to support them as required.

Recommendation 8: Aboriginal expertise should be incorporated in all aspects of the NPM through ongoing genuine engagement and co-design with Tasmania's Aboriginal communities.

Recommendation 9: All Tasmanian NPM staff and practice should be culturally competent and trauma-informed.

Are there any international obligations or other materials missing from this consultation paper that your organisation considers the Tasmanian NPM should have regard to when exercising its functions?

We believe that the NPM's work should be explicitly situated against and responsive to:

The findings and recommendations of the Royal Commission into Aboriginal deaths in custody.

We note that the 2018 Deloitte review into the implementation of the Royal Commission's recommendations found that the Tasmanian government had the highest level of non-implementation and partial completion, and the lowest level of completion, of any state or territory,[40] with the state particularly falling behind in relation to Aboriginal disadvantage, self-determination, health and education, and cycle of offending. Notably, the Deloitte report was limited to looking at whether actions had been taken on the recommendations, not what outcomes those actions achieved.[41]

Tasmania	Coronial matters	The justice system	Aboriginal disadvantage	Non-custodial approaches	Prison safety	Self-determination	Cycle of offending	Health and education	Equal opportunity	Reconciliation, land needs and international obligations
Complete	24	8	3	18	42	7	6	18	8	8

[39] North Australian Aboriginal Justice Agency (July 2017), Submission to the Australian Human Rights Commission consultations on OPCAT, p8, https://humanrights.gov.au/sites/default/files/45.%20NAAJA%20Sub%2031%20July%202017.pdf, accessed 15 September 2021.

[40] https://www.niaa.gov.au/sites/default/files/publications/appendix-b.pdf

[41] https://openresearch-repository.anu.edu.au/bitstream/1885/229826/2/WP_140_Anthony_et_al_2021.pdf

Mostly complete	5	2	0	4	11	0	2	5	2	0
Partially complete	7	0	5	12	8	10	10	20	5	1
Not implemented	7	2	2	5	5	6	7	3	3	0

Particularly salient recommendations that had not been implemented at the time of the review, and that still do not appear to have been implemented in full, are listed in Appendix A. Meanwhile, other recommendations that the Deloitte review lists as "completed" are worth keeping in mind. For example, Recommendation 188 provides that governments "negotiate with appropriate Aboriginal organisations and communities to determine guidelines as to the procedures and processes which should be followed to ensure that the self-determination principle is applied in the *design and implementation of any policy or program or the substantial modification of any policy or program which will particularly affect Aboriginal people* (italics added)," defining self-determination to include '*Aboriginal [and Torres Strait Islander] control over the decision-making process as well as control over the ultimate decision* (italics added) about a wide range of matters including political status, and economic, social and cultural development;' the Deloitte review claims that this is 'fully implemented' across all jurisdictions, a point that the NPM might wish to keep in mind in formulating engagement with Aboriginal organisations and communities.

The Closing the Gap priority reforms and targets, particularly targets 10 and 11.

The Closing the Gap reform process is an important background against which to situate work, even if, as noted above, its targets do not always capture actual disproportionalities. In particular, we urge the NPM to keep track of the Tasmanian Government's progress against its Implementation Plan 2021-23,[42] particularly in reference to targets 10 and 11, and to participate in the development of the next iteration of the Implementation Plan.

Recommendation 10: The Tasmanian NPM's work should be explicitly situated against and respond to the findings and recommendations of the Royal Commission into Aboriginal deaths in custody and the Closing the Gap priority reforms and targets.

We also urge the NPM to use its status to collect and publicly release data in relation to the Supporting Indicators for targets 10 and 11 (see Appendix B). We note Priority Reform 4 of the Closing the Gap process: Increase the number of regional data projects to support Aboriginal and Torres Strait Islander communities to make decisions about Closing the Gap and their development.[43] Accompanying indicators for this reform include:

- Number of formal data sharing partnerships established between government agencies and Aboriginal and Torres Strait Islander people/organisations;
- Number of comprehensive regional data profiles created;
- Number of government initiatives established to make data more accessible and usable for Aboriginal and Torres Strait Islander communities and organisations; and

[42] https://www.dpac.tas.gov.au/__data/assets/pdf_file/0027/228852/Closing-the-Gap-Tasmanian-Implementation-Plan-August-2021.pdf
[43] https://www.pc.gov.au/closing-the-gap-data/dashboard/priority/reform4

- Number of government agencies working in partnership with Aboriginal and Torres Strait Islander communities and organisations to build expertise in data collection and analysis.[44]

Although the Tasmanian Government's Implementation Plan 2021-23 has three actions against this Priority Reform, with timeframes ranging from June 2022 to December 2022,[45] TALS has not been apprised of the results of any of these actions and has not been asked to participate in any consultations or planning processes. Meanwhile, we frequently struggle to obtain data that would help us in planning services and responding to government calls for submissions, particularly in light of the short timeframes for many consultations, the long wait times for Right to Information requests, and the fact that publicly-available state-level information often is not broken down by Indigenous status.

As previously outlined, it is difficult to know how Aboriginal communities are supposed to effectively partner with the Tasmanian Government in developing strategic policies and programs to address Aboriginal disadvantage, and how the capacity of Aboriginal services to address Aboriginal disadvantage is supposed to grow, if communities and services are denied access to the basic statistical information required to determine levels of need for their services, trend lines, etc.

TALS has already called on the Tasmanian Government to develop, in genuine partnership with Tasmanian Aboriginal Communities, an Aboriginal Dashboard providing annual updates of key statistics relevant to progress against the Closing the Gap targets and the lives of Aboriginal Tasmanians.

Recommendation 11: The Tasmanian NPM, in the spirit of Priority Reform 4 of the Closing the Gap process and in genuine partnership with Tasmanian Aboriginal organisations and communities, should develop a program of public reporting of statistics relating to the NPM's work that are relevant to progress against the Closing the Gap targets and the lives of Aboriginal Tasmanians.

Are there any examples of best practice in preventing torture and ill-treatment that you consider the Tasmanian NPM should have regard to during the development of its operating policies and procedures?

General approaches to preventing torture and ill-treatment

Globally, the prevention of torture and ill-treatment has tended to focus on the actions of individual entities: individual actors, individual institutions, and individual sectors. This approach, global studies have found, has had some success, although results vary from context to context and can be difficult to quantify. One of the most recent and comprehensive of these studies, encompassing 16 countries across 30 years, has offered up eight key insights in relation to judicial settings:

1. Torture prevention is needed everywhere and at all times.
2. Good laws are necessary but not sufficient.
3. Effective safeguards from the outset of deprivation of liberty are crucial.
4. All forms of unofficial detention must be ended.
5. Moving away from confession-based systems reduces the risk of torture.
6. Law enforcement practices and cultures need comprehensive review and reform.

[44] https://www.pc.gov.au/closing-the-gap-data/dashboard/priority/reform4

[45] https://www.dpac.tas.gov.au/__data/assets/pdf_file/0027/228852/Closing-the-Gap-Tasmanian-Implementation-Plan-August-2021.pdf

7. A culture of impunity sustains the practice of torture.
8. Independent monitoring of detention is instrumental in preventing torture.[46]

Timing is an important factor in the prevention of ill-treatment in settings of detention. In judicial settings, the most preventative activities and mechanisms identified by the study above are the safeguards that should be applied in the first hours and days after a person is taken into custody, including that:

- Individuals are held only in lawful, documented places of detention;
- Their families or friends are promptly notified of their arrest;
- They have prompt access to a lawyer (prior to any interviewing), as well as to a medical examination by an independent Doctor;
- They are brought promptly before a Judge.[47]

In this regard, we note delays experienced in obtaining bail for many of our clients who need to wait for a Court sitting. In the last month, a TALS client under the age of 14 was held for 24 hours in an adult custodial facility until they were released. The cut off for out of hours Court was missed, requiring him to stay overnight. He did not appear until after lunch the next day and was not released until later in the day. We are also concerned about Justices of the Peace deciding the question of people's liberty of outside of hours, with no legal training.

This focus on the earliest stages of detention may not be as applicable, however, outside of judicial settings. In the case of social care residents, for instance, ill-treatment may not begin until families of the detained person relax their vigilance as their trust in the institution deepens, or a person's physical and/or cognitive capacities decline.

Recommendation 12: The NPM should examine the potential for, and advocate for changes in relation to, barriers that may exist to identifying, preventing and ending ill-treatment across the entire course of a person's engagement with the full range of potentially custodial institutions within the NPM's purview.

We also note, however, this study's finding that the second most preventative factor is consistent prosecution of perpetrators. In this regard, we note the almost complete lack of prosecutions in association with revelations around ill-treatment in Tasmanian adult and youth detention facilities, despite provisions in the Criminal Code against assault, actions intended to cause grievous bodily harm, bullying, and ill-treatment of a child.[48]

Recommendation 13: The Tasmanian NPM should examine any barriers that may exist to prosecution of persons committing torture or ill-treatment in situations of detention in Tasmania.

[46] https://www.apt.ch/sites/default/files/publications/apt-briefing-paper_yes-torture-prevention-works%20%281%29.pdf
[47] https://www.apt.ch/sites/default/files/publications/apt-briefing-paper_yes-torture-prevention-works%20%281%29.pdf
[48] https://www.legislation.tas.gov.au/view/html/inforce/current/act-1924-069#JS1@GS192@EN

Cohort-specific approaches to preventing torture and ill-treatment

As we have argued in our current and earlier submissions, a one-size-fits-all approach to torture prevention is likely to miss the vulnerabilities of marginalised groups and vulnerable populations. As noted in our earlier submission, NPMs globally have the ability to engage in intersectional research around vulnerable populations, including indigenous people, that can strongly inform policy across a range of areas, for instance in relation to children deprived of liberty.[49]

In this regard, in addition to the need for a specific approach to the treatment of Aboriginal Tasmanians, we note the need for a specific approach to the treatment of children across Tasmanian settings of detention. Among our own clients, for example, we note multiple instances where young people under the age of 14 have had to be held in adult facilities in the south of the state while waiting to be heard in court due to there being no holding cells or facilities specifically for young people in that jurisdiction, exposing them to multiple risks. Collaboration with the Tasmanian Commissioner for Children and Young People will be a vital part of identifying and addressing specific needs and vulnerabilities of children and young people across the full range of settings falling under the NPM's purview.

Recommendation 14: The Tasmanian NPM should ensure, in collaboration with the Tasmanian Commissioner for Children and Young People and through additional research if necessary, that the specific needs and vulnerabilities of Tasmanian children in detention are taken into account in the NPM's work.

Ecological approaches to preventing torture and ill-treament

Torture as a practice is both individual and systemic. As laid out in Danielle Celermejer's magisterial *The Prevention of Torture: An Ecological Approach,*[50]an ecological approach to preventing torture expands prevention from a focus on the actions of individual actors, institutions and sectors to an examination of the physical, institutional, cultural and normative conditions that permit, facilitate, authorise, legitimise and create opportunities for such actions. Such an approach is particularly salient when torture and ill-treatment are committed against background cultural conditions of:

- Prejudice such as racism, ageism, ableism, or prejudice against people with mental health conditions, where maltreatment is normalised in institutional settings through 'canteen culture,' small talk at the operational level, the development of opaque or euphemistic language to solidify relationships between the perpetrator ingroup and shield them from detection.
- An association in the public mind, such as exists in many Western democracies, of 'torture' with spectacular violence such as waterboarding or electric shocks, while routine violence ("a few slaps" against "hardened criminals" or "nutters") that technically falls under the definition of torture is discussed in terms such as 'abuse' that subtly strip it of moral gravity and political importance.[51]

Prevention in these contexts can be particularly challenging. In this regard, Celermajer's examples of promising work emphasise bottom-up approaches that give the 'rank and file' the opportunity to be the source of ideas (often the most useful received) about what needs to be changed and how, thus giving

[49] https://www.apt.ch/sites/default/files/publications/apt_briefin_unsrt_061114.pdf
[50] https://www.cambridge.org/core/books/prevention-of-torture/B520C29BAF814E48FEDB1F543BC89D7D
[51] Ibid., p. 3

them a sense of ownership and active voice.[52] Most importantly, however, in the quest to formulate an approach to preventing torture and ill-treatment that is able to articulate and operationalise responses to the complex interplay of their individual, systemic and structural causes and conditions, the job of an NPM, per Celermajer, is in part to create a clearing where it is possible to address this complexity without triggering strong feelings about morality, agency, and responsibility.[53]

Recommendation 15: The NPM should adopt an ecological understanding of the causes of torture and ill-treatment and an ecological approach to their prevention.

Structures adequate to the adoption of cohort-specific and ecological approaches

In order to effectively engage in intersectional research and make recommendations on laws, policies and practices around the needs of Tasmania's Aboriginal communities and Tasmanian children and around the ecological conditions surrounding ill-treatment in conditions of detention in the state, an NPM needs to be able not only to monitor places where people are deprived of their liberty but also to conduct interviews, cooperate with a range of stakeholders, and draw on professional knowledge across a wide range of fields.[54] This requires a scope of activities across an extensive range of contexts that would appear to be well beyond the capacity of any individual.

As we have noted in our earlier submission, and has been observed in consultation papers, in other jurisdictions, inspection and monitoring responsibilities have been spread across multiple offices. A detailed examination of the suitability of a range of models to the Tasmanian context and to the adoption of cohort-specific and ecological approaches to torture prevention will be necessary before the NPM settles on its final form.

Recommendation 16: After consultation with the Tasmanian community, including Tasmania's Aboriginal communities, the NPM should adopt a model that ensures adequate human resourcing to meet the full range of the Mechanism's responsibilities.

In this context, we renew our call for the Tasmanian Government, in acknowledgment of the special needs and vulnerabilities of Aboriginal children and young people as well as Tasmanian Aboriginal communities' right to self-determination, to appoint a dedicated Commissioner for Aboriginal Children and Young People who could serve as a component of the NPM. The creation of such an independent statutory position would ensure that the importance of Aboriginal culture to all areas of policy, including child protection, receives due recognition, and that proactive engagement and oversight in promoting and advocating for the rights and wellbeing of Aboriginal children and young people, including in relation to child protection, are done in a culturally safe and respectful manner. A new dedicated Commissioner could serve as a component of the NPM, as well as providing support and guidance for the management of new youth justice facilities.

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[52] See, for example, Scottish Human Rights Commission, Human Rights in a Health Care Setting: Making It Work. An Evaluation of a Human Rights-Based Approach at the State Psychiatric Hospital (Edinburgh: Scottish Human Rights Commission, 2009); [52] Rachel Neild, Police Training: Themes and Debates in Public Security Reform: A Manual for Civil Society (Washington, DC: Washington Office on Latin America, 1998).

[53] Citing the example of "tough on crime" approaches to youth justice, Celermajer notes that "people's affective attachments to blame and punishment tend to be sticky." Ibid., p. 10.

[54] https://www.apt.ch/sites/default/files/publications/apt_briefin_unsrt_061114.pdf

Recommendation 17: To support the activities of the Tasmanian NPM, the Tasmanian Government should appoint a dedicated Commissioner for Aboriginal Children and Young People.

Funding concerns.

We reiterate concerns raised in earlier submissions (both the earlier submission re the NPM and TALS' submission on the draft OPCAT Implementation Bill 2021) around funding for the NPM. We note that the current Tasmanian Custodial Inspector (who is also the Tasmanian Ombudsman) has highlighted across the years resourcing and staffing constraints impeding their ability to perform the crucial functions of their office, including conducting on-site inspections and the timely publication of reports; the NPM must not replicate this situation. Funding and resourcing for the NPM should be independently determined by the NPM based on its assessment of what resources are required to carry out its functions. These resources should be guaranteed in legislation and provided by the government in a single, dedicated budget line item, with the NPM determining its internal budget allocations according to its own work plan.

Recommendation 18: Funding and resourcing for the NPM (based on their own assessment) should be guaranteed in legislation, with resources provided by government to be in a single, dedicated budget line item to allow the NPM determine its internal budget allocations.

Thank you for the opportunity to comment on the National Preventive Mechanism. Please do not hesitate to be in contact if any points require clarification or elaboration.

Yours faithfully,

Hannah Phillips
Acting State Manager
Tasmanian Aboriginal Legal Service

Appendix A: Royal Commission into Aboriginal Deaths in Custody: Recommendations not implemented by the Tasmanian Governments as of 2018.[55]

Rec 2:
That subject to the adoption by governments of this recommendation and the concurrence of Aboriginal communities and appropriate organisations, there be established in each State and Territory an independent Aboriginal Justice Advisory Committee to provide each Government with advice on Aboriginal perceptions of criminal justice matters, and on the implementation of the recommendations of this report. The Aboriginal Justice Advisory Committee in each State should be drawn from, and represent, a network of similar local or regionally based committees which can provide the State Advisory Committee with information of the views of Aboriginal people. It is most important that the views of people living outside the urban centres be incorporated. The terms of reference of each State, local or regional Advisory Committee is a matter to be negotiated between governments and Aboriginal people. The Commission suggests however that matters which might appropriately be considered include, inter alia:

a. The implementation of the recommendations of this report, or such of them as receive the endorsement of the Government;

b. Proposals for changes to policies which affect the operation of the criminal justice system; c. Programs for crime prevention and social control which enhance Aboriginal self-management and autonomy; d. Programs which increase the recruitment of Aboriginal people to the staff of criminal justice agencies; and e. The dissemination of information on policies and programs between different agencies, and between parallel bodies in different States.

Non-custodial approaches
Rec 87:
That:

a) That all Police Services should adopt and apply the principle of arrest being the sanction of last resort in dealing with offenders;
b) Police administrators should train and instruct police officers accordingly and should closely check that this principle is carried out in practice;
c) That administrators of Police Services should take a more active role in ensuring police compliance with directives, guidelines and rules aimed at reducing unnecessary custodies and should review practices and procedures relevant to the use of arrest or process by summons and in particular should take account of the following matters:
    i. all possible steps should be taken to ensure that allowances paid to police officers do not operate as an incentive to increase the number of arrests;
    ii. a statistical data base should be established for monitoring the use of summons and arrest procedures on a Statewide basis noting the utilisation of such procedures, in particular divisions and stations;
    iii. the role of supervisors should be examined and, where necessary, strengthened to provide for the overseeing of the appropriateness of arrest practices by police officers;
d) efficiency and promotion criteria should be reviewed to ensure that advantage does not accrue to individuals or to police stations as a result of the frequency of making charges or arrests; and

[55]https://www.niaa.gov.au/sites/default/files/publications/appendix-b.pdf

e) procedures should be reviewed to ensure that work processes (particularly relating to paper work) are not encouraging arrest rather than the adoption of other options such as proceeding by summons or caution; and
f) Governments, in conjunction with Police Services, should consider the question of whether procedures for formal caution should be established in respect of certain types of offences rather than proceeding by way of prosecution.

Rec 91:
That governments, in conjunction with Aboriginal Legal Services and Police Services, give consideration to amending bail legislation: a. to enable the same or another police officer to review a refusal of bail by a police officer; b. to revise any criteria which inappropriately restrict the granting of bail to Aboriginal people; and c. to enable police officers to release a person on bail at or near the place of arrest without necessarily conveying the person to a police station.
Rec 96: That judicial officers and persons who work in the court service and in the probation and parole services and whose duties bring them into contact with Aboriginal people be encouraged to participate in an appropriate training and development program, designed to explain contemporary Aboriginal society, customs and traditions. Such programs should emphasise the historical and social factors which contribute to the disadvantaged position of many Aboriginal people today and to the nature of relations between Aboriginal and non-Aboriginal communities today. The Commission further recommends that such persons should wherever possible participate in discussion with members of the Aboriginal community in an informal way in order to improve cross cultural understanding. (Partially complete)

Rec 97:
That in devising and implementing courses referred to in Recommendation 96 the responsible authorities should ensure that consultation takes place with appropriate Aboriginal organisations, including, but not limited to, Aboriginal Legal Services.

Prison safety
Rec 127:
That Police Services should move immediately in negotiation with Aboriginal Health Services and government health and medical agencies to examine the delivery of medical services to persons in police custody. Such examination should include, but not be limited to, the following:
a) The introduction of a regular medical or nursing presence in all principal watchhouses in capital cities and in such other major centres as have substantial numbers detained;
b) In other locations, the establishment of arrangements to have medical practitioners or trained nurses readily available to attend police watch-houses for the purpose of identifying those prisoners who are at risk through illness, injury or serf-harm at the time of reception;
c) The involvement of Aboriginal Health Services in the provision of health and medical advice, assistance and care with respect to Aboriginal detainees and the funding arrangements necessary for them to facilitate their greater involvement;
d) The establishment of locally based protocols between police, medical and paramedical agencies to facilitate the provision of medical assistance to all persons in police custody where the need arises;
e) The establishment of proper systems of liaison between Aboriginal Health Services and police so as to ensure the transfer of information relevant to the health, medical needs and risk status of Aboriginal persons taken into police custody; and

f) The development of protocols for the care and management of Aboriginal prisoners at risk, with attention to be given to the specific action to be taken by officers with respect to the management of:
    I. intoxicated persons;
    II. persons who are known to suffer from illnesses such as epilepsy, diabetes or heart disease or other serious medical conditions;
    III. persons who make any attempt to harm themselves or who exhibit a tendency to violent, irrational or potentially self-injurious behaviour;
    IV. persons with an impaired state of consciousness; v. angry, aggressive or otherwise disturbed persons;
    V. persons suffering from mental illness;
    VI. other serious medical conditions;
    VII. persons in possession of, or requiring access to, medication; and
    VIII. such other persons or situations as agreed.

Rec 145:
That:

a) In consultation with Aboriginal communities and their organisations, cell visitor schemes (or schemes serving similar purposes) should be introduced to service police watch-houses wherever practicable;
b) Where such cell visitor schemes do not presently exist and where there is a need or an expressed interest by Aboriginal persons in the creation of such a scheme, government should undertake negotiations with local Aboriginal groups and organisations towards the establishment of such a scheme. The involvement of the Aboriginal community should be sought in the management and operation of the schemes. Adequate training should be provided to persons participating in such schemes. Governments should ensure that cell visitor schemes receive appropriate funding;
c) Where police cell visitor schemes are established it should be made clear to police officers performing duties as custodians of those detained in police cells that the operation of the cell visitor scheme does not lessen, to any degree, the duty of care owed by them to detainees; an
d) Aboriginal participants in cell visitor schemes should be those nominated or approved by appropriate Aboriginal communities and/or organisations as well as by any other person whose approval is required by local practice.

Rec 146:
That police should take all reasonable steps to both encourage and facilitate the visits by family and friends of persons detained in police custody.

149:
That Police Services should recognise, by appropriate instructions, the need to permit flexible custody arrangements which enable police to grant greater physical freedoms and practical liberties to Aboriginal detainees. The Commission recommends that the instructions acknowledge the fact that in appropriate circumstances it is consistent with the interest of the public and also the well being of detainees to permit some freedom of movement within or outside the confines of watch-houses.

Cycle of Offending
Rec 220:

That organisations… which are actively involved in providing voluntary support for community policing and community justice programs, be provided with adequate and ongoing funding by governments to ensure the success of such programs. Although regional and local factors may dictate different approaches, these schemes should be examined with a view to introducing similar schemes into Aboriginal communities that are willing to operate them because they have the potential to improve policing and to improve relations between police and Aboriginal people rapidly and to substantially lower crime rates.

Rec 225:
That Police Services should consider setting up policy and development units within their structures to deal with developing policies and programs that relate to Aboriginal people. Each such unit should be headed by a competent Aboriginal person, not necessarily a police officer, and should seek to encourage Aboriginal employment within the Unit. Each unit should have full access to senior management of the service and report directly to the Commissioner or his or her delegate.

Rec 229:
That all Police Services pursue an active policy of recruiting Aboriginal people into their services, in particular recruiting Aboriginal women. Where possible Aboriginal recruits should be taken in groups.

Appendix B: Closing the Gap Targets 10 and 11, Supporting Indicators

Target 10: By 2031, reduce the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15 per cent.[56]

Supporting Indicators

Driver

- Proportion of Aboriginal and Torres Strait Islander people charged by police
- Proportion of Aboriginal and Torres Strait Islander people convicted and sentenced
  - By offence and type of sentence
- Aboriginal and Torres Strait Islander prisoner by offence type and number of offences
  - Most serious and other offences
- Proportion of prisoners by legal status
  - Sentenced vs unsentenced and by sentence length
- Number and rate of unique alleged offenders processed by police
- Proportion of prisoners previously incarcerated
  - Number of unique episodes of incarceration
- Mental health, substance abuse issues, family history of incarceration, employment post release, history of victimisation
- Entry rate to incarceration
  - Newly sentenced to prison

Contextual information

- Rates of death in prison custody of Aboriginal and Torres Strait Islander prisoners
  - By cause of death
- Proportion spending greater periods of time on remand
- Progress towards parity

Target 11: By 2031, reduce the rate of Aboriginal and Torres Strait Islander young people (10-17 years) in detention by at least 30 per cent.[57]

Supporting Indicators

Driver

- Un-sentenced detention rates
- Average time in detention for unsentenced youth
- Proportion of young alleged offenders (10-17 years) involved in police proceedings
  - Including charges and summons, cautions, diversions
- Proportion of young people convicted and sentenced
  - By type of sentence (community supervision, detention)
- Entrant rate to detention
  - Newly sentenced to youth detention

[56] https://www.pc.gov.au/closing-the-gap-data/dashboard/socioeconomic/outcome-area10
[57] https://www.pc.gov.au/closing-the-gap-data/dashboard/socioeconomic/outcome-area11

- Proportion of youth under community supervision transitioning to detention
- Young people returning to detention or community supervision
- Proportion of young people first coming into youth justice system aged 10-13
    Offending and courts data, first entry to detention

Contextual information

- Community supervision trends
    Proportion of young people in detention who had received child protection services (including out-of-home care)
- Proportion exiting detention
    By reason
- Progress towards parity