Tasmanian NPM National Preventive Mechanism

Expectations on the treatment of people deprived of their liberty in **health and social care**

Aged residential care, disability support and related services

Version 1 – August 2025

Acknowledgment of Traditional Owners

In recognition of the deep history and culture of this Island, we acknowledge Tasmanian Aboriginal people, the original and continuing Custodians of the Land, Waterways, Sea and Sky.

We acknowledge and pay our respects to all Tasmanian Aboriginal people, all of whom have survived invasion and dispossession, and continue to maintain their identity, culture and Aboriginal rights.

We commit to working respectfully to honour their ongoing cultural and spiritual connections to this land.

About the Tasmanian NPM

The **Tasmanian National Preventive Mechanism** (NPM) is an independent statutory body established in accordance with the *OPCAT Implementation Act 2021* (Tas).

The purpose of the Tasmanian NPM is to prevent the torture, cruel, inhuman or degrading treatment or punishment of people deprived of their liberty by embedding best practice human rights. It does this through proactive oversight of places where people are or may be deprived of their liberty, ongoing cooperation with government and relevant authorities, and by providing education and advice.

The Tasmanian NPM works alongside NPM's across Australia to ensure the fulfilment of Australia's obligations under the *Optional Protocol to the Convention against Torture, Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).*

Further information about the Tasmanian NPM and its activities is available at www.npm.tas.gov.au

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Aged residential care, disability support residences and related environments and transport

Detention settings covered by these Expectations	**Aged residential care, disability support residences and related environments and transport in Tasmania.**
Date of publication	**August 2025**

Around Tasmania, people in the community are or may be deprived of their liberty by law while receiving health and social care services. This particularly includes people in aged residential care or who are receiving disability support services, which is the focus of this document. These expectations have been created with the intention of upholding their human rights when this deprivation of liberty occurs. They are designed to prevent torture and other cruel, inhuman or degrading treatment or punishment.

These expectations were prepared between 2023 and 2025, as part of the Tasmanian NPM implementation project. Development of the expectations was led by subject matter expert, Dr Yvette Maker.[1]

The expectations were drawn up in codesign with representative and advocacy organisations of persons with disability, older persons, and group residential aged care and disability support services. They are referenced against international and domestic human rights instruments and were devised in light of relevant Tasmanian and national standards, sources and regulations. They made extensive use of the Expectations and Standards developed for other Tasmanian settings and other jurisdictions, especially the New Zealand Office of the Ombudsman's *OPCAT Expectations for Aged Residential Care* (2024) and *OPCAT Expectations – Intellectual Disability and Community Secure Services* (2024). A complete list of the materials considered and referenced is included at the end of this document.

Preparation of these expectations involved in-person familiarisation visits to Tasmanian operated aged care settings, including the Roy Fagan Centre, King Island District Hospital and Health Centre, and the Flinders Island Multi-Purpose Centre. In addition, to understand the service delivery landscape in Tasmania, the Office of the Tasmanian NPM engaged with the Interim Disability Commissioner

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Tasmania, the National Disability Insurance Scheme (NDIS) Quality and Safeguards Commission, the National Disability Insurance Agency (NDIA), Office of the Senior Practitioner, and many private sector Aged Care and Disability Services providers.

These expectations are published in accordance with section 9(i) of the *OPCAT Implementation Act 2021* (Tas).

What are expectations?

The *Optional Protocol to the Convention against Torture* (OPCAT) provides that the central function of a national preventive mechanism (NPM) is to regularly examine the treatment of persons deprived of their liberty in places of detention with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment. Flowing from this visiting function, the NPM also provides education and advisory services, and engages cooperatively with government, administrators of places of detention, detainees, stakeholders and the public.

Expectations documents are commonly released by NPMs to help people understand some of the matters that will be considered when exercising these functions. They are also working documents; used to support the Tasmanian NPM and its staff when examining different settings. The publication of expectations is a demonstration of the NPM's independence.

To meet Australia's obligations under OPCAT, the Tasmanian NPM exercises its functions to ensure that international human rights standards are met. Expectations documents are created in line with guidance provided by the United Nations Subcommittee on the Prevention of Torture (SPT).

The experience of persons deprived of their liberty is at the heart of each expectations document. They serve as a guide to assist with identifying areas of concern, and not whether a practice or situation may constitute a human rights violation. Following this approach, they are designed to focus on outcomes for the person rather than processes.

Each document is organised into overarching topics, followed by expectations, which are underpinned by a series of indicators. These indicators guide the NPM in making a judgment about whether the corresponding expectation is being met by setting out some of the primary ways this occurs (some of which may be essential safeguards, underpinned by law, or in human rights standards). Importantly, indicators are not designed to be a tick-box exercise for compliance, and do not exclude additional or other ways of achieving the expected outcome for the person deprived of their liberty.

The Tasmanian NPM understands that aged residential care and disability services are provided in diverse and often complex environments, and that services need to comply with a range of Tasmanian and Commonwealth legal requirements. The Tasmanian NPM recognises that care and support service providers are often required to balance multiple rights considerations, such as balancing a service user's right to life and health with their right to make their own decisions, including risky decisions (known as 'dignity of risk'). Services will also at times need to balance competing rights, needs and preferences of multiple service users.

The Tasmanian NPM also recognises that the provision of care and support to children and adults with disability and older persons in congregate or group settings has been characterised by some bodies as inherently incompatible with human rights.[2] In these environments deprivation of liberty can occur in many ways, shaped by both environmental and personal factors. In some circumstances a person may be unaware that their liberty has been deprived, and the duration of this event may also be ongoing or temporary.

Examples include being physically or mechanically restrained, being subject to seclusion or confined to a particular room or area within a building, being placed on/in an object or vehicle from which the person cannot freely remove themselves, being subject to a chemical restraint, or requiring permission to leave.

The Tasmanian NPM's approach to exercising its functions in aged residential care and disability services settings has been informed by guidance from the SPT,[3] the

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[2] For example, Committee on the Rights of Persons with Disabilities, *General Comment No. 5 (2017) on Article 19: Living Independently and Being Included in the Community*, UN Doc CRPD/C/GC/5 (27 October 2017); Office of the High Commissioner for Human Rights, *Getting a Life – Living Independently and Being Included in the Community* (United Nations, April 2012).

[3] Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *General Comment No. 1 (2024) on Article 4 of the Optional Protocol (Places of Deprivation of Liberty)*, 53rd session, UN Doc CAT/OP/GC/1 (4 July 2024) [56]-[57]:

> The Subcommittee notes that many persons with disabilities are presumed to be unable to live independently, or that support to live independently is not available or is tied to specific living arrangements. Although there may be no legal or administrative order confining such persons to a certain facility, the lack of support compels them to remain in living situations that deprive them of their liberty and may subject them to harmful practices. This form of disability-specific deprivation of liberty can occur in family homes and in institutional arrangements, including social care institutions, psychiatric institutions, long-stay hospitals, nursing homes, secure dementia wards, special boarding schools, child welfare institutions, group homes, rehabilitation centres, forensic psychiatric settings, albinism hostels, leprosy colonies, religious communities, family-type homes for children and prayer camps. Therefore, when considering whether a particular place, facility or setting is a place of deprivation of liberty within the meaning of article 4 of the Optional Protocol, it is important that national preventive mechanisms and the Subcommittee ascertain the presence of reasonable accommodation arrangements and support for persons with disabilities. If reasonable accommodation and support are unavailable, the place, facility or setting should be considered a place of deprivation of liberty.

practice of other state NPMs, as well as feedback from community stakeholders, service providers, and relevant government agencies.

In these expectations the Tasmanian NPM is focusing on conditions and treatment in residential settings across our community where deprivation of liberty has been identified as occurring, or where it may be. This includes any associated transport involving deprivation of liberty. Types of residential settings include disability group homes and daytime support centres, specialised disability accommodation residences, closed community-based accommodation and residences for people with disability, aged care facilities (including in hospital/medical centres) and dementia units, and nursing homes. People using supported independent living services may also be included, depending on the nature of services provided and the service user.

The intended scope of this document means that some indicators are likely to be relevant for some service types, but not others. For example, several of the expectations and indicators in 'Topic 1: The living environment' are relevant to services with multiple resident users (such as residential aged care facilities) but not to private households where individuals use disability support services in their home and can exercise choice and control over how their living environment is set up and maintained. The indicators listed against each expectation are not intended to be universally applicable or exhaustive, and all assessments of compliance with these expectations will be conducted by inspectors with knowledge and understanding of the specific context.

The aged residential care, disability support and related services addressed in this expectations document represent just part of the health and social care system in Tasmania. These services may be funded and operated by multiple agencies, organisations and professionals, and the Tasmanian NPM's monitoring and prevention function involves examining and making recommendations on all relevant parts of the system that fall within its jurisdiction, under the *OPCAT Implementation Act 2021* (Tas). Other health and social care settings that may constitute places of detention include secure mental health facilities, hospitals, and education settings providing support to children and young people with disability or where restrictive practices are applied. The Tasmanian NPM has prepared additional expectations materials covering these and other settings.[4]

[4] Available at www.npm.tas.gov.au.

Relationship to Australian laws and standards

This document outlines minimum expectations, established in international law and supporting instruments. These are core materials which set a minimum standard that countries, including Australia, are not to fall below and should aim to exceed. In some instances, Australian and Tasmania law already sets a higher standard, in which case these expectations are not intended to result in any lowering of existing standards.

Where a service provider is of the view that conformity with an expectation in this document would result in a breach of an existing regulatory requirement under Australian or Tasmanian law, then this should be brought to the attention of the NPM. The provider is not to breach any existing requirements. It is the responsibility of the NPM to raise these matters with regulatory bodies and government.

The United Nations Convention against Torture and OPCAT

The General Assembly of the United Nations adopted the *Convention against Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment* in 1984. Australia signed the Convention in 1985 and ratified it in 1989.

People often use the word 'torture' to refer to cases where one person inflicts pain on another person to obtain information. The Convention defines torture more broadly, to mean any form of 'cruel, inhuman or degrading punishment or treatment'. Importantly, a person's treatment can be cruel, inhuman or degrading because of poor conditions, mismanagement or poor processes rather than deliberate acts by another person.

In 2002, the United Nations General Assembly adopted the *Optional Protocol to the Convention against Torture* (OPCAT) and established the Sub-committee on the Prevention of Torture (SPT) to monitor its implementation. Australia signed OPCAT in 2009 and ratified it in 2017. The primary goal of OPCAT is to prevent torture and ill-treatment in places where people are or may be deprived of their liberty ('places of detention').

A critical element in prevention is to have a system for independent visits to all places of detention. In ratifying OPCAT, the Commonwealth government committed the whole of Australia to setting up National Preventive Mechanisms ('NPMs') to visit and inspect all places of detention. The SPT also has the right to visit.

In July 2018, the Commonwealth government appointed the Commonwealth Ombudsman to coordinate Australia's NPM. The States and Territories are

individually responsible for establishing NPMs to inspect places of detention within their jurisdiction. The Commonwealth Ombudsman is responsible for inspecting Commonwealth places of detention. It is also the national coordinating NPM, with responsibility for collating country-wide information and for reporting to the SPT.

In 2021, the Tasmanian Parliament passed the *OPCAT Implementation Act*, establishing Tasmania's NPM legal framework and enabling visits to Tasmanian places of detention by the SPT. In February 2022, the Tasmanian government nominated Mr Richard Connock to be the State's first NPM. To that end, Mr Connock has developed 'expectations' for every place of detention that he will examine as Tasmanian NPM.

For many places where people are deprived of their liberty, OPCAT implementation will be the first time there has been a system of independent, visit-based inspections focused on human rights.

Language used in these expectations

Service users

This expectations document uses the term 'service user' to refer to a person who resides in or uses an aged residential care setting, a disability support setting, or a similar service. The Tasmanian NPM recognises that language is complex and contested, and different people, services and sectors may prefer and use other language to refer to themselves and their communities.

This document refers to the United Nations *Convention on the Rights of Persons with Disabilities* as one source of relevant human rights standards in relation to monitoring of aged residential care, disability support and related settings. While many older persons may have or develop disability or impairment during their lives and may be subject to restrictions or violations of their rights on this basis, the Tasmanian NPM recognises that not all aged residential care service users have (or identify as having) a disability, and that ageing is not necessarily associated with disability.

Staff

This expectations document uses the term 'staff' to refer to the range of persons involved in the provision of aged residential care, disability support or similar services to service users. Depending on the context, this may include care and support workers, health and allied health professionals, agency staff, volunteers, security staff and others

Supporters and substitute decision-makers

The Tasmanian NPM recognises that users of aged residential care, disability support or related services may receive informal support or assistance from one or

more trusted people, such as family members, carers, friends or supporters, including assistance with making and carrying out decisions. They may also use paid or professional supports such as independent advocates, and/or use formal processes to appoint representatives of their choice (such as nominees and authorised representatives). Where relevant, the expectations refer to people chosen by service users to provide support and assistance as 'supporters'.

The Tasmanian NPM further recognises that aged residential care, disability support or related service users may have 'substitute decision-makers' legally appointed by others (such as guardians and administrators appointed by the Tasmanian Civil and Administrative Tribunal). These appointments, and the decisions made by appointees, may or may not be consistent with the will and preferences of the service user, although substitute decision-makers may also be the preferred supporter for a service user.

In these expectations, some references to 'the service user' may apply to both the service user and substitute decision-maker where the latter is legally authorised or required to be involved in processes or decisions, while recognising that human rights standards (and, increasingly, domestic law and guidelines) require respect for the will, preferences and legal capacity of individuals to the maximum possible extent.[5]

This is an evolving document

This is the first version of the Tasmanian NPM's *Expectations on the treatment of people deprived of their liberty in health and social care*. These expectations will be updated in response to ongoing feedback and changes in international and local best practice. The Tasmanian NPM welcomes feedback from all stakeholders, particularly people with lived experience of deprivation of liberty.

[5] For further discussion, see Committee on the Rights of Persons with Disabilities, *General Comment No. 1 (2014) on Article 12: Equal Recognition Before the Law*, UN Doc CRPD/C/GC/1 (19 May 2014).

Summary of expectations

Topic 1: The living environment

The physical living environment is safe, welcoming, comfortable and tailored to the individual; it promotes the dignity, autonomy, privacy and wellbeing of all service users.

1.1 Service users live in a safe, clean and well-maintained environment.

1.2 Service users can move freely around areas in the service, including outdoors.

1.3 The living environment is comfortable.

1.4 Design and resourcing ensure the living environment is appropriate for the varied individual needs of service users and enables them to enjoy dignity, autonomy, privacy and other rights.

1.5 Service users' bedrooms are private, comfortable and personalised.

1.6 Children and young people live in an age-appropriate environment that promotes their rights, safety and wellbeing.

Topic 2: Procedural safeguards

All processes and safeguards relating to service users' deprivation of liberty are accessible, fair and transparent in their nature and application and are applied rigorously. Service users are presumed to be the primary decision-makers in matters, processes and decisions that affect them, and are supported and facilitated to express their views, preferences and choices.

2.1 Service users are free to come and go unless there is a clear, justified and documented reason for their deprivation of liberty.

2.2 Information about the reason service users are in a secure placement or otherwise deprived of liberty is recorded and communicated to the service user in a clear and accessible way.

2.3 Service users receive effective communication, including communication about their rights.

2.4 Service users can access effective complaints and feedback mechanisms.

2.5 Service users can freely access their legal representatives, supporters and advocates.

2.6 Service users' consent, consultation and participation in decision-making (including supported decision-making) are facilitated and prioritised.

2.7 Service users' privacy and confidentiality are respected and preserved.

Topic 3: Healthcare

Service users enjoy the highest attainable standard of physical and mental health, including access to healthcare services and treatment on an equal basis with others in the community that promotes their wellbeing, dignity, privacy and autonomy and meets their individual needs and preferences.

3.1 Service users make their own choices about healthcare and treatment wherever possible, and can access support to make decisions.

3.2 Physical and mental health needs of service users are assessed appropriately by suitably qualified professionals.

3.3 Service users can access a range of services to support holistic, person-centred, culturally appropriate and trauma-informed healthcare.

3.4 Service users' medical confidentiality and privacy is upheld.

3.5 Service users are supported and encouraged to optimise their health and wellbeing through preventive healthcare practices.

3.6 Service users dealing with substance misuse are identified and can access support through joined-up, comprehensive services and pathways.

Topic 4: Care and support

Service users live in an enabling environment that supports their autonomy and self-determination; they have access to high quality, person-directed, culturally and life-course appropriate care and support that meets their needs, will and preferences and maintains their dignity.

4.1 Service users make their own choices about care and support to the fullest extent possible.

4.2 The care and support needs of service users are assessed and addressed appropriately by suitably qualified workers.

4.3 Service users can access a range of services, workers and other supports to provide holistic, person-centred, culturally appropriate and trauma-informed care and support.

4.4 Service users are supported and encouraged to optimise their health and wellbeing through accessing early intervention and rehabilitation.

4.5 Discharge or transition planning is proactive and comprehensive with a view to ensuring service users are not deprived of liberty, or stay in the service, for longer than is necessary.

Topic 5: Connection to the community

Service users are encouraged and supported to be part of the community and maintain contacts and connections that are important to them through a range of measures they freely choose

5.1 Service users are connected with and part of the community, and are engaged as citizens.

5.2 Service users regularly have time away from their residence.

5.3 Service users live as close as reasonably possible to their community and support networks.

5.4 Service users can communicate freely, with their privacy respected, and with support where needed. Any restrictions on contact are individually justified, proportionate and fully explained.

5.5 The fullest visiting arrangements possible are facilitated. Visits are as comfortable and easy as possible for service users and visitors.

Topic 6: Diversity, equality and non-discrimination

The diversity of the service user group is recognised and welcomed. The distinct and individual needs of service users are identified and fully met in relation to disability, age, Aboriginal and Torres Strait Islander background, culture, gender, sex, sexuality, gender identity, nationality, religion or spirituality, and other grounds. Organisational policies, culture, processes and practices ensure service users are not subject to discrimination, bullying or harassment.

6.1 Service users are respected and valued as individuals; their individual needs and preferences are identified and met.

6.2 Aboriginal and Torres Strait Islander service users can exercise their cultural rights and live in a culturally safe service.

6.3 Service users from culturally and linguistically diverse backgrounds, including Deaf community and culture, can exercise their cultural rights and live in a culturally safe service.

6.4 LGBTIQA+ service users are supported to understand, explore and express their identity in a safe and supportive environment.

6.5 Service users live in an environment where tolerance, understanding and respect are actively promoted.

6.6 Service users live in an environment where discriminatory conduct, bullying and harassment are not tolerated and any instances are challenged.

6.7 Service users are treated fairly and swift action is taken to address any evidence of discriminatory processes and conduct.

6.8 Reasonable adjustments and other accommodations are made to ensure equality of access and treatment of people with disability.

Topic 7: Safety, order, discipline, and restrictive practices

Service users feel safe and are free from all forms of harm or maltreatment. Service users' safety is secured, and their needs met, via alternatives to restriction to the maximum possible extent. All aspects of safety and security are informed by an understanding of individual needs, characteristics and experiences, including experiences of trauma.

7.1 The service takes a holistic, trauma-informed, person-centred and proactive approach to maintaining a safe environment for all service users.

7.2 The service responds promptly and appropriately to concerns or allegations (including potential concerns or indications) about exploitation, violence, abuse, coercion, neglect or other forms of harm to service users.

7.3 Alternatives to restriction are prioritised and implemented effectively.

7.4 Staff are trained in trauma-informed practice and least restrictive practice, and have adequate resources, to respond to potentially harmful or risky incidents and behaviour.

7.5 Any use of restraint or seclusion is conducted with proper legal authority, used only as a last resort and for the shortest time possible, and causes the minimum interference with the person's autonomy, dignity and privacy.

7.6 The service provides a safe and secure environment which reduces the risk of self-harm and suicide. Service users at risk of self-harm or suicide are identified at an early stage and given the necessary support.

7.7 The service provides a safe and secure environment which reduces the risk of self-harm and suicide. Service users at risk of self-harm or suicide are identified at an early stage and given the necessary support.

7.8 Any searches are undertaken with proper legal authority, are proportionate to an identified risk and carried out with due regard to, and respect for, dignity and privacy.

Topic 8: Daily life

The living situation in the service promotes dignity, respect, autonomy, wellbeing and rights of all service users; service users have choice and control over their everyday lives to the fullest extent possible, and care and support facilitates this.

8.1 Service users are welcomed and well-oriented when they arrive at the service.

8.2 Service users are the primary decision-makers in relation to day-to-day life decisions, and their dignity, autonomy and wellbeing is fostered.

8.3 Service users are treated with dignity and respect.

8.4 Service users have access to meaningful activities and are encouraged and supported to engage in activities of their choice.

8.5 Service users can freely practice their culture, religion and spirituality.

8.6 Service users have access to adequate amounts of water and nutritious food which promote their health and wellbeing.

8.7 Service users have access to appropriate clothing and laundry facilities.

8.8 Service users have access to personal possessions and property.

Topic 9: Leadership and culture

The leadership, culture and staffing of residential services promotes and protects the rights of service users.

9.1 Service users and representative organisations are involved in governance and decision-making processes.

9.2 Leaders and staff promote, operationalise and demonstrate a human rights-based approach to providing the service to service users.

9.3 Leaders are committed to and take responsibility for promoting and providing high quality care and support, and continuous quality improvement.

9.4 Leaders are committed to, and promote, policies, practices, strategies and behaviours which respect diversity and create an inclusive service and organisational culture.

9.5 The service emphasises its commitment to service users' rights, safety and wellbeing when advertising for, recruiting and screening staff and volunteers.

9.6 Staff are equipped with the resources, knowledge, skills and awareness to protect and promote service users' rights.

9.7 Ongoing supervision and people management is focused on promoting the safety, dignity, rights and wellbeing of service users.

Expectations and indicators

Topic 1: The living environment

Overarching expectation: The physical living environment is safe, welcoming, comfortable and tailored to the individual; it promotes the dignity, autonomy, privacy and wellbeing of all service users

Expectations	Indicators
1.1 Service users live in a safe, clean and well-maintained environment.	• All buildings and grounds are appropriate for service users and their accessibility and support requirements. • All areas are in a good state of repair, regularly cleaned and well-decorated. • Regular cleaning, maintenance and replacement schedules are documented and followed. • Sleeping, washing and communal areas are organised in a way that ensures the safety of service users. Appropriate measures are used to address risks or vulnerabilities and ensure all service users' physical, sexual and psychological safety, including with regard to gendered spaces. • Washing and toilet facilities are sufficient for the number of service users. They are accessible, in good working order, ensure privacy, and are clean and hygienic. • Service users and staff can raise an alarm in the case of emergency (such as fire or flood), and staff respond promptly. • Documented policies and procedures exist to report and manage emergencies, disasters and major incidents, including personalised emergency plans where required. • Staff responses to emergencies, disasters and major incidents are documented and reviewed. • Service users and staff can access appropriate supports following an emergency event, disaster or major incident.
1.2 Service users can move freely around areas in the service, including outdoors	• Service users can access different areas of the service or residence on a regular basis and are facilitated to do so. • The service or residence has areas for leisure and communal time as well as quiet time.

	• Safe, green outdoor areas (with seating and shelter) are readily accessible to service users for exercise, social interaction and engaging with the natural environment to the fullest extent possible. • Any signage and other wayfinding information is appropriate to the setting and presented in languages, formats and locations suited to service users' and visitors' needs. • Toilet and washing facilities are accessible (with adaptation where necessary) for all residents.
1.3 The living environment is comfortable	• Occupancy levels are appropriate and the service environment is not crowded. • All living areas have natural light and access to fresh air. • All living areas are at an appropriate temperature, with heating, cooling and ventilation where needed. • If a residential service, the service looks and feels home-like, including through appropriate fixtures, fittings, furniture and decoration.
1.4 Design and resourcing ensure the living environment is appropriate for the varied individual needs of service users and enables them to enjoy dignity, autonomy, privacy and other rights	• Service users, supporters and representative organisations have opportunities to have input into the design of the living environment and contribute to decisions about the living environment to the greatest extent possible. • Service users can physically access all areas they have a right to be in. • Each service user's mobility, physical, sensory and learning needs are accommodated. • Accessible facilities for faith, worship and cultural practices are provided for all service users. • The sensory environment and its design features are appropriate to individual service users and minimise stress and distress. • Service users can access areas that provide a sanctuary from stress or over-stimulation, where they can experience their feelings, seek or avoid sensory input as needed, and relieve discomforts in private. • There are sufficient multi-purpose and single-purpose activity rooms and spaces to meet the need for

	programs, visits, recreation, leisure, education and other activities. • Service users enjoy physical, visual, auditory, and personal privacy to the fullest extent possible. Any infringement on privacy is justified and proportionate. • Service users are not required to share accommodation unless they choose to do so.
1.5 Service users' bedrooms are private, comfortable and personalised	• Service users have a dedicated and comfortable bedroom to sleep, securely store their belongings, and relax in privacy. • Bedrooms have adequate floor space to meet service users' accessibility and health requirements. • Bedrooms have natural light and service users can control lighting including blinds or curtains. • Bedrooms and surrounding areas are quiet and calm to promote rest and sleep. • Bedroom temperatures are appropriate and can be adjusted to meet service users' health and wellbeing needs. • Service users have their own room and are able to lock the door independently of staff, unless individual circumstances require otherwise. • Service users can personalise their bedrooms, including with their own possessions and items familiar or important to them, and are supported to do so where necessary. • Bedrooms include an adequately sized place for service users to securely store their belongings. • Hygienic, clean and private sanitary and washing facilities in good working order are available to all service users. • Spouses who wish to live together can be accommodated together.

1.6 Children and young people live in an age-appropriate environment that promotes their rights, safety and wellbeing	• Children and young people are supported and facilitated to reside with family to the maximum extent possible. • Children and young people feel and are safe in the service, including in bedrooms and communal areas. • Setting-appropriate safeguards are documented and followed to ensure all children are kept and feel safe. • Communal areas meet the needs of children and are supervised by staff. • Staff undertake regular, unobtrusive supervision of sleeping areas to ensure children's safety.

Explanatory note

The physical environment in aged residential care, disability support and related environments is crucial to service users' comfort, safety, wellbeing and rights enjoyment. The design, maintenance and use of the service's buildings and facilities must prioritise service users' individual needs, access, dignity, privacy, autonomy and participation.

This requires, for example, clean, hygienic and comfortable residences that are easy to access and navigate for the full diversity of service users, and private and personalised bedrooms. Universal design principles, which promote the design of environments and services that are accessible and usable by all people to the greatest extent possible, can support the design of rights-compliant services for persons with disability and older persons (CRPD, articles 2, 4(f)).

Specific standards and sources

International

- *International Covenant on Economic, Social and Cultural Rights* (ICESCR) articles 11, 12.
- *International Covenant on Civil and Political Rights* (ICCPR) articles 7, 9, 17.
- *Convention on the Rights of Persons with Disabilities* (CRPD) articles 2, 3, 4(f), 9, 14, 15, 17, 19, 22, 25, 28.
- *Convention on the Rights of the Child* (CRC) articles 16, 24, 27, 37.
- *Convention on the Elimination of all Forms of Discrimination Against Women* (CEDAW) article 12.
- *United Nations Principles for Older Persons*, GA Res 46/91 (Adopted 16 December 1991) [1], [5], [13], [14].
- *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, GA Res 43/173 (Adopted 9 December 1988), Principle 1.
- United Nations General Assembly, *Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (on protecting persons with disabilities from torture, and solitary confinement)*, 63rd session, UN Doc A/63/175 (28 July 2008) [52]-[54].
- Committee on the Rights of Persons with Disabilities, *Guidelines on Article 14 of the Convention on the Rights of Persons with Disabilities* (2015), [17], [18].
- Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), *Prevention of Torture and Ill-treatment of Women Deprived of their Liberty*, 27th session, UN Doc CAT/OP/27/1 (18 January 2016) [28]-[30], [43]-[44].

- World Health Organization, *WHO QualityRights Tool Kit: Assessing and Improving Quality and Human Rights in Mental Health and Social Care Facilities* (2012) Annex 4, Standard 1.
- *Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity* (2006), Principles 9, 14.
- *Yogyakarta Principles Plus 10: Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles* (10 November 2017) Principle 35.

Topic 2: Procedural safeguards

Overarching expectation: All processes and safeguards relating to service users' deprivation of liberty are accessible, fair and transparent in their nature and application and are applied rigorously. Service users are presumed to be the primary decision-makers in matters, processes and decisions that affect them, and are supported and facilitated to express their views, preferences and choices.

Expectations	Indicators
2.1 Service users are free to come and go unless there is a clear, justified and documented reason for their deprivation of liberty[6]	• Staff receive training on, and understand, the range of practices that may constitute the deprivation of liberty of a service user. • Service users who are not subject to approved restrictive practices or other lawful deprivation of liberty can freely come and go without requiring approval to leave. • Appropriate procedures and supports are in place to ensure service users can enter and exit freely unless there is a legally authorised restriction on their movement. • Any instance of deprivation of liberty without lawful authority is documented and reported to appropriate authorities in a timely manner.
2.2 Information about the reason service users are in a secure placement or otherwise deprived of liberty is recorded and communicated to the service user in a clear and accessible way	• Clear and comprehensive medical and legal records are maintained for all service users. • The correct processes for authorisation and monitoring of any deprivation of liberty of each service user are followed and documented. • The factual and legal basis for service users being deprived of liberty is recorded and explained to the service user and supporters. • Service users and supporters are informed of the length of time the deprivation of liberty will continue and the criteria for its potential extension or termination. This explanation is given in a timely manner and in a way the service user understands. • The factual and legal basis for supporters, substitute decision-makers, and/or others to be involved in

[6] See also expectation 7.5.

	decision-making and consent processes for service users is documented and regularly reviewed. • If service users who were admitted voluntarily subsequently withdraw their consent, or are no longer able to give consent, this is recorded. In this circumstance, deprivation of liberty processes and safeguards are initiated and followed.
2.3 Service users receive effective communication, including communication about their rights	• Service users' communication needs are assessed and discussed when the service user arrives at the services and are reviewed regularly. Adjustments or accommodations are considered and planned for, including identifying any need for funding and funding sources and responsibilities. • Service users are communicated with in a manner that meets their communication needs and preferences and provides necessary adjustments. • Planning for and meeting service users' communication needs and adjustments involves consideration of factors including disability, impairment, age, difficulties with reading or writing, gender, religion or belief, cultural background, and preferred languages other than English. • Staff receive regular training to develop and maintain the skills necessary to meet service users' individual communication needs and styles. • Interpreters are made available and chosen based on their appropriateness to individual need. • Service users and supporters have access to a person independent of the service to assist them to understand their rights, self-advocate and raise complaints and feedback. • Service users who are subject to deprivation of liberty or treatment or restrictive practices, and their supporters, are given clear, accurate, timely and comprehensive information about their right to seek review, and access legal representation. • Service users and supporters are given clear, accurate, comprehensive, and timely information

	about their right to make complaints and give feedback. • Service users and supporters are given clear, accurate, comprehensive, and timely information about available avenues to give feedback and make complaints, recognising that these may vary depending on the nature of the complaint and the regulatory and funding frameworks that apply to the service and service user. • Information about service users' rights is provided in multiple and accessible formats (including both orally and in writing), in a way the service user and supporters can understand and use. • Service users are reminded of their rights on a regular basis and at crucial milestones (such as when their placement or living situation changes or when a behaviour support plan is made or amended). • Staff regularly check that service users have understood information provided. If necessary, staff adapt the information or make other arrangements to facilitate understanding, such as arranging for the presence of a supporter or independent advocate.
2.4 Service users can access effective complaints and feedback mechanisms	• Complaints policies and procedures are documented followed, and regularly reviewed. • Service users and supporters are aware of, and know how to use, accessible avenues to raise concerns, make complaints or give feedback. • All service users have a nominated staff member to turn to if they have a problem or complaint, and they can easily access or contact that person. • Service users and supporters can make complaints independently of staff and without fear of negative consequences or reprisals. • When they raise concerns and complaints, service users and supporters are listened to, taken seriously, and responded to in a manner appropriate for the complaint and the service user. • Outcomes of complaints are transparent, fair, timely, documented, and in line with a policy of full disclosure.

	• Outcomes of complaints are communicated to service users and supporters in a way they understand. • The issues raised in complaints or feedback are addressed to the fullest extent possible. • If issues raised in complaints or feedback are not fully resolved, the service user, supporters or other complainant are given an explanation why and given clear options for escalating their complaint. • Service users and supporters can make complaints to independent oversight bodies and receive responses which are timely, effective, and transparent. • Service users can make complaints in a format that meets their communication needs. • Service users are aware of, and can access, assistance or support within the service in relation to making or dealing with complaints, concerns, feedback, or other matters. • Service users are aware of, and can access, assistance or support outside the service in relation to complaints, concerns, feedback, or other matters. • Efforts are made, through trauma-informed and culturally aware processes, to build trust in complaints processes to ensure all service users and others are able and motivated to report misconduct or other concerns. • There are quality assurance arrangements in place to assess the effectiveness of complaints and feedback processes.
2.5 Service users can freely access their legal representatives, supporters and advocates	• Aboriginal and Torres Strait Islander service users are supported to access advocacy and/or legal advice from representative organisations. • Service users have the option to have a family member or other supporter with them when desired. Service users are reminded of this option at appropriate times. • Service users and supporters are informed of the availability of independent advocates and advocacy services, legal representatives and other forms of independent assistance and support.

	• Contact between service users and their chosen independent advocates and legal representatives is regular, timely and available anytime the service user requests. • The service arranges regular visits from independent advocacy services for service users who, for any reason, cannot choose, contact and/or access independent advocates and legal representatives without assistance from the service or their other supporters or substitute decision-makers.
2.6 Service users' consent, consultation and participation in decision-making (including supported decision-making) are facilitated and prioritised	• Service users are assumed to be the primary decision-makers in all matters, processes and decisions concerning themselves. • Supported decision-making is the predominant model and substitute decision-making is avoided to the maximum extent possible within legal frameworks.[7] • Service users' involvement in decisions affecting them is encouraged and facilitated. • Staff respect the advance directives of service users when providing care, support and treatment. • If they wish to do so, service users are supported and facilitated to make advance directives for any reasonably foreseeable circumstances in which they may not have decision-making capacity. • Service users are invited to identify one or more trusted supporters, including independent advocates, to help them make and carry out decisions. • Service users can involve supporters, including independent advocates in decisions or actions that affect the service user.

[7] Supported decision-making has been defined by the Committee on the Rights of Persons with Disabilities as a form of support that is chosen by the supported person and, gives primacy to that person's will and preferences and upholds their human rights, including their right to legal capacity (CRPD article 12). This is contrasted with substitute decision-making regimes, which remove legal capacity from the person and enable the appointment by a third party of someone else to make decisions on the basis of the affected person's 'best interests' (regardless of the views, will or preferences of the affected person): Committee on the Rights of Persons with Disabilities, *General Comment No. 1 (2014) on Article 12: Equal Recognition Before the Law*, UN Doc CRPD/C/GC/1 (19 May 2014) [27]-[29]

	• Information about service users' chosen supporters, including independent advocates, is recorded and communicated to relevant staff and kept up-to-date. Service users can change or delete this information upon request. • Staff respect the authority of nominated supporters to participate in and communicate the decisions of the supported service user. • Service users who have no listed supporters and wish to appoint one are assisted to access appropriate support or advocacy. • Service users' informed consent is sought for all medical treatment, restrictive or other related practices, and appropriately recorded. Informed consent is sought from service users themselves even if a refusal may, according to law, be overridden. • Staff understand the distinction between consent to admission and consent to treatment. • Where a service user's capacity to consent or make decisions is legally restricted, the duration of the restriction is as limited as necessary in the circumstances, documented, and opportunity exists for regular review. • If a service user's consent cannot be obtained, and a substitute decision-maker is authorised to consent on the service user's behalf, the substituted consent is obtained and documented. • Except in emergency circumstances, if a service user's consent cannot be obtained and there is no substitute decision-maker, or all avenues of contact have been reasonably exhausted and documented, appropriate guardianship authorisation is obtained and documented. • Feedback from service users is actively sought, considered and used to inform and improve service planning and delivery. • Feedback from service users' supporters and representatives, and from representative organisations of service users, is actively sought, considered and

	used to inform and improve service planning and delivery.[8]
2.7 Service users' privacy and confidentiality are respected and preserved	• All service user information is kept securely to preserve privacy and confidentiality. • Confidentiality and its limits are explained to service users and supporters in a way they understand, on arrival at the service and as necessary. • The confidentiality of correspondence with legal representatives and other relevant authorities and professionals is guaranteed. • Confidential visits are facilitated and not subject to cancellation or suspension unless in exceptional circumstances.

[8] See also expectation 9.1.

Explanatory note

International human rights instruments prohibit the unlawful or arbitrary deprivation of any person's liberty. Any deprivation of liberty must be in conformity with the law, and the presence of disability shall in no case justify deprivation of liberty (ICCPR article 9; CPRD article 14). All people, including people with disability and older people, have a related right to be recognised as a person before the law and to exercise their legal capacity (ICCPR article 14; CRPD article 12).

Service users who are deprived of their liberty in aged residential care, disability support and related environments are placed in a vulnerable position. This is especially so if they are also deprived of their legal capacity, either formally or informally. Procedural safeguards are therefore essential to ensuring service users can enjoy and assert their rights. These include processes and procedural safeguards to:

- ensure the lawfulness of deprivations of liberty
- inform service users about their rights
- enable service users to access advocacy and support, challenge deprivations of liberty and make complaints without fear of negative consequences or reprisals
- protect service users' privacy and confidentiality

Procedural safeguards must be disability inclusive. For example, each service user's information and communication needs must be ascertained and met. Access to support for decision-making – whether from family members, other supporters, legal or non-legal advocates, or others – is of particular importance to many users of aged residential care, disability support and related services. Such support can enable people to enjoy their legal capacity and challenge violations of their rights.

Specific standards and sources

International

- *International Covenant on Civil and Political Rights* (ICCPR) articles 9, 16.
- *Convention on the Rights of Persons with Disabilities* (CRPD) articles 3, 9, 12, 13, 14, 15, 16, 21.
- *Convention on the Rights of the Child* (CRC) articles 13, 16, 19, 25, 34, 37.
- *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295 (Adopted 13 September 2007) articles 1, 7, 13, 17, 18, 21, 22.

- *United Nations Principles for Older Persons*, GA Res 46/91 (Adopted 16 December 1991) [12], [14].
- *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, GA Res 43/173 (Adopted 9 December 1988), Principles 2, 4, 11, 13, 14, 15, 16, 17, 18, 28, 31, 33.
- United Nations Committee on the Rights of Persons with Disabilities, *Guidelines on Article 14 of the Convention on the Rights of Persons with Disabilities* (2015), [6]-[9].
- Human Rights Council, *Report of the Special Rapporteur on the Rights of Persons with Disabilities (on Disability-Specific Forms of Deprivation of Liberty)*, 40th session, A/HRC/40/54 (11 January 2019) [44]-[56].
- Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), *Approach of the SPT to the Concept of Prevention*, 12th session, UN Doc CAT/OP/12/6 (30 December 2010) [5(c)].
- Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), *Approach of the SPT Regarding the Rights of Persons Institutionalized and Treated Medically Without Informed Consent*, 27th session, UN Doc CAT/OP/27/2 (26 January 2016) [6].
- Human Rights Committee, *General Comment No. 35*: *Liberty and Security of Person*, 112th session, UN Doc CCPR/C/GC/35 (16 December 2014).
- Committee on the Rights of Persons with Disabilities, *General Comment No*. 1 *(2014) on Article 12: Equal Recognition Before the Law*, UN Doc CRPD/C/GC/1 (19 May 2014) [16]-[19], [38]-[39].
- United Nations, *International Principles and Guidelines on Access to Justice for Persons with Disabilities* (Geneva, August 2020).
- Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Means of Restraint in Psychiatric Establishments for Adults (Revised CPT Standards)*, CPT/Inf(2017) 6, 21 March 2017, [12].
- World Health Organization, *WHO QualityRights Tool Kit: Assessing and Improving Quality and Human Rights in Mental Health and Social Care Facilities* (2012), Annex 2; Annex 4, Standards 2, 3 and 4.
- *Yogyakarta Principles* (2006), Principles 3, 6, 7, 9, 10, 11, 28, 29.
- *Yogyakarta Principles Plus 10* (10 November 2017) Principle 36.

Topic 3: Healthcare

Overarching Expectation: Service users enjoy the highest attainable standard of physical and mental health, including access to healthcare services and treatment on an equal basis with others in the community that promotes their wellbeing, dignity, privacy and autonomy and meets their individual needs and preferences.

Expectations	Indicators
3.1 Service users make their own choices about healthcare and treatment wherever possible, and can access support to make decisions	• Healthcare services and treatments provided to service users are based on a person-directed and person-centred understanding of the service user's history, goals, interests and needs. • Service users can be accompanied by a supporter of their choice to health assessment and treatment appointments. • Service users and supporters are actively involved in all discussions and decisions about the health care, treatment and medication the service user receives, to the maximum extent possible. • Service users' own opinions, will and preferences regarding medication and other treatments are ascertained, considered and followed to the maximum extent possible. • Changes to treatment and/or medication are discussed with service users and supporters before they commence, including any treatment from community services. • Service users are genuinely able to exercise their right to decline or refuse assessment or treatment. • Clear, comprehensive information about assessment, diagnosis and treatment options is given to service users and supporters in a form they understand, and which allows them to make free and informed decisions. • Service users and supporters are helped to understand the clinical actions and effects, limitations, and potential side effects of the treatment or medication prescribed. • Health assessments and treatments are based on the free and informed consent of service users.

	• If service users' consent cannot be obtained, or a substitute decision-maker is authorised to consent on the service user's behalf, all legal requirements are followed and documented. • Service users who are subject to substitute decision-making have their will and preferences respected in all aspects of healthcare and treatment wherever possible, and to the fullest extent possible. • Treatment contrary to the consent, will and preferences of service users subject to substitute decision-making is minimised. When taken, reasons for doing so, and the details of the treatment that was provided are documented and explained to service users and supporters in a way they understand. • Service users are not subject to medical or scientific research or experimentation without their free consent.
3.2 Physical and mental health needs of service users are assessed appropriately by suitably qualified professionals	• Service users are offered a comprehensive health assessment, covering physical and psychological needs, on arrival at the service and on a regular basis thereafter. • Health assessments include review of prescribed medications and their side effects. • Service users and supporters are informed of the outcome of health assessments and offered the opportunity to seek a second opinion if they disagree with the outcome. • Health assessments and examinations are conducted in private and in a manner which is comfortable and appropriate to the service user's needs. • Any physical or mental health conditions identified at assessment receive timely attention.

3.3 Service users can access a range of services to support holistic, person-centred, culturally appropriate, and trauma-informed healthcare	• Service users receive physical and mental health care that is equivalent to that received by others in the community. • Service users have equal access to health and wellbeing services regardless of location, environment, disability, cultural or language needs. • Service users have access to, and are supported to access, physical and mental healthcare and professionals that meet their needs in relation to disability, age, culture, religious or spiritual practice, gender, experience of trauma and other characteristics. • Service users' access to physical and mental healthcare includes direct confidential access to a range of appropriately trained, and if necessary, specialist, healthcare professionals to discuss and meet their health and wellbeing needs. • Service users with intellectual disability, cognitive disability or dementia have access to health services and professionals who are trained to meet their specific requirements. • Service users who have language, speech or comprehension barriers, are non-speaking, or are non-verbal, have access to health services and professionals who are trained to meet their specific requirements. • LGBTIQA+ service users have access to health services and professionals who are trained to meet their specific requirements. • Health professionals and staff understand the differing physical, sexual, and mental healthcare needs and barriers of service users with inherent variations in sex characteristics (intersex) compared to transgender service users. • Service users have access to primary health care services that promote continuity of care, such as a consistent general practitioner. • Service users have access to trained nursing care that meets their needs.

	• Service users have timely and regular access to quality dental services based on clinical need, including oral health promotion. • Service users and supporters are fully informed of the reasons for any referrals to appropriate services and specialists in a timely manner (unless emergency or urgent treatment is required). • When a service user is referred to a health service, there is relevant planning, coordination and clear communication between services consistent with the service user's rights. • Every service user has a single clinical record developed in line with current record-keeping standards. • The type and dosage of medication administered to service users by the service provider is appropriate for their clinical diagnosis, documented, and reviewed regularly. • Administration of medication to service users is consistent with safe practice, including individualised prescription with the signature of the responsible clinician, clear dosage and frequency. • Service users have access to adequate pain treatment. • Service users are informed of and have access to sexual and reproductive health services. • A service user having a diagnosis of a disability or mental health condition is never treated as a reason for administering contraception, sterilisation, or abortion. • In discussions and decisions about contraception, sterilisation, abortion, or other procedures or treatments that may affect a service user's fertility, consideration is given to the need to balance any perceived or potential medical risks with the person's right to maintain their fertility or choose to have children in the future.

	• Staff are trained to respond promptly and competently to medical emergencies with appropriate emergency equipment. • Incontinence pads, briefs and related products that maximise independent and comfort, including adaptive products, are available for residents who need them and are frequently changed. • Incontinence products are not used when residents can access the toilet with support. • Sanitary items and period products that maximise independence and comfort, including adaptive products, are available for residents who need them and are frequently changed. • Where necessary, prompt arrangements are made for transfer to a hospital or hospice of service users who are dying or who have life-limiting conditions.
3.4 Service users' medical confidentiality and privacy is upheld	• Information about a service user's health is kept confidential unless formal consent to share information is provided. • Confidential health information is stored securely. • Where health information is stored electronically, staff with access to relevant systems have received appropriate cybersecurity training. • Service users are entitled to know any information collected about their health. • Any service user's wish not to be informed of information about their health is respected. • Service users can access support to understand the information collected about their health.
3.5 Service users are supported and encouraged to optimise their health and wellbeing through preventive healthcare practices	• Healthcare treatment and planning for all service users includes relevant preventive healthcare practice. • Service users are offered, and actively encouraged to engage with, preventive and early detection services and interventions to promote their health and wellbeing. • Service users have access to, and are proactively provided with, information, education and support to

	promote their sexual and reproductive health. This information is tailored to individual service users' identities, characteristics and needs, including service users of all genders and LGBTIQA+ service users. • The service follows a specific and comprehensive strategy addressing prevention, testing and management of communicable diseases.
3.6 Service users dealing with substance misuse are identified and can access support through joined-up, comprehensive services and pathways	• Newly arrived service users receive prompt assessment of their substance use. • Service users have timely access to specialised, safe, effective, and individualised clinical and psychosocial support, with consent, in line with Tasmanian and Australian standards. • Service users receive relevant harm reduction information in an accessible format and in a way they understand.

Explanatory note

Users of aged residential care, disability support and related services have a right to the enjoyment of the highest attainable standard of physical and mental health. According to the Committee on Economic, Social and Cultural Rights, the enjoyment of this right requires that healthcare facilities, goods and services are (i) available in sufficient quantity, (ii) accessible to everyone without discrimination, (iii) acceptable to all in terms of cultural appropriateness and compliance with medical ethics and confidentiality, and (iv) of good quality and scientifically and medically appropriate.[9]

The Convention on the Rights of Persons with Disabilities reiterates that all persons with disabilities must have access to desired and necessary health facilities, goods and services of the same range, quality and standard as other people in the community (CRPD article 25(a)). Health care and treatment must be provided on the basis of individuals' free and informed consent, and people who require support to exercise their legal capacity and make decisions in relation to health care and treatment must have access to that support (CRPD article 12, 25(d)). The provision of person-centred health care on this basis will protect and promote the dignity, bodily integrity, privacy and autonomy of service users of aged residential, disability and related services.

Specific standards and sources

International

- International Covenant on Economic, Social and Cultural Rights (ICESCR) article 12.
- International Covenant on Civil and Political Rights (ICCPR) article 17.
- Convention on the Rights of Persons with Disabilities (CRPD) articles 3, 12, 15, 16, 17, 22 23, 25.
- Convention on the Rights of the Child (CRC) article 24.
- *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295 (Adopted 13 September 2007), articles 7, 21, 24.
- *United Nations Principles for Older Persons*, GA Res 46/91 (Adopted 16 December 1991) [11].

[9] Committee on Economic, Social and Cultural Rights, *General Comment No. 14*: *The Right to the Highest Attainable Standard of Health (Article 12)*, 22nd session, UN Doc E/C.12/2000/4 (11 August 2000) [12].

- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, GA Res 43/173 (Adopted 9 December 1988), Principles 22, 24, 25, 26.
- Committee on Economic, Social and Cultural Rights, *General Comment No. 14*: *The Right to the Highest Attainable Standard of Health (Article 12)*, 22nd session, UN Doc E/C.12/2000/4 (11 August 2000).
- Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), *Prevention of Torture and Ill-treatment of Women Deprived of their Liberty*, 27th session, UN Doc CAT/OP/27/1 (18 January 2016) [28]-[30].
- Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), *Approach of the SPT Regarding the Rights of Persons Institutionalized and Treated Medically Without Informed Consent*, 27th session, UN Doc CAT/OP/27/2 (26 January 2016) [12]-[19].
- Committee Against Torture, Ninth Annual Report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of Lesbian, Gay, Bisexual, Transgender and Intersex Persons), 57th session, UN Doc CAT/C/57/4 (22 March 2016) [68]-[70], [76]-[77].
- Human Rights Council, Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health (on the Right to Health in the Context of Confinement and Deprivation of Liberty), 38th session, A/HRC/38/36 (10 April 2018).
- World Health Organization, WHO QualityRights Tool Kit: Assessing and Improving Quality and Human Rights in Mental Health and Social Care Facilities (2012) Standards 2.2., 2.3, 2.4, 2.5, 3.2, 3.3, 3.4.
- ITHACA Project Group, *ITHACA Toolkit for Monitoring Human Rights and General Health Care in Mental Health and Social Care Institutions* (Health Service and Population Research Department, Institute of Psychiatry, King's College London, 2010) Parts 11, 16, 17, 18-26, 28-30.
- *Yogyakarta Principles* (2006), Principles 5, 6, 9, 17, 18, 25.
- *Yogyakarta Principles Plus 10* (10 November 2017) Principle 32.

Topic 4: Care and support

Overarching Expectation: Service users live in an enabling environment that supports their autonomy and self-determination; they have access to high quality, person-directed, culturally and life-course appropriate care and support that meets their needs, will and preferences and maintains their dignity.

Expectations	Indicators
4.1 Service users make their own choices about care and support to the fullest extent possible	• Care and support services provided to service users are based on a person-directed and person-centred understanding of their history, goals, interests and needs. • Service users and supporters are actively involved in all assessments, discussions and decisions about the care and support they receive, to the maximum extent possible. • Service users' opinions, will and preferences regarding care and support are ascertained, considered and followed to the maximum extent possible. • Changes to care and support arrangements are discussed with service users and supporters before they commence. • Clear, comprehensive information about care and support options is given to service users and supporters. Information is provided in a form the service user understands and which allows them to make free and informed decisions. • Service users can be accompanied by a support person of their choice to care and support assessment and planning appointments and meetings. • Service users who are subject to substitute decision-making have their choices, opinions and feelings respected in all aspects of care and support wherever possible, and to the fullest extent possible. • The provision of care and support contrary to the views or wishes of service users is minimised. When taken, reasons for doing so, and the details of the care and support that was provided are documented

	and explained to service users and supporters in a way they understand.
4.2 The care and support needs of service users are assessed and addressed appropriately by suitably qualified workers	• Service users' care and support needs are assessed comprehensively on admission or arrival by an appropriately qualified person and are recorded in a plan which is kept up to date and shared appropriately with all relevant staff. • Care and support assessment and planning take into account information and documentation provided by the service user, supporters, external agencies and other relevant parties. • Service users are able to view their own care and support plan and the results of assessments, to the extent possible, and are provided the opportunity to ask questions, disagree and give feedback. • Care and support assessment and planning recognises that service users may have multiple disability, multiple comorbidities, invisible, hidden and/or undiagnosed disability. • Care and support assessments and planning are conducted in private and in a manner which is comfortable and appropriate to the service user's needs. • Any immediate care and support needs identified in assessment and planning processes are met promptly.
4.3 Service users can access a range of services, workers and other supports to provide holistic, person-centred, culturally appropriate and trauma-informed care and support[10]	• Service users have access to, and receive, care and support that is equivalent to that received by others in the community. • Service users have equal access to care and support services regardless of location, environment, disability, cultural or language needs. • Service users have access to, and receive, care and support services and professionals that meet their individual needs and preferences in relation to disability (including multiple disability), age, culture, religious or spiritual practice, gender, sex, sexuality,

[10] See also expectation 6.1.

	experience of trauma, medical conditions (including comorbidities) and other characteristics. • Service users with intellectual or cognitive disability or dementia have access to care and support services and professionals who are trained to meet their specific requirements. • Service users who have language, speech or comprehension barriers, are non-speaking, or are non-verbal, have access to care and supports services and professionals who are trained to meet their specific requirements. • LGBTIQA+ service users have access to care and support services and professionals who are trained to meet their specific requirements. • Staff understand the differing care and support needs and barriers of service users with inherent variations in sex characteristics (intersex people) compared to transgender service users. • Service users have access to, and are supported to access, care and support services and professionals that meet their social, personal care, cultural and other needs and preferences in all domains of life. These domains include health and wellbeing, family, community, spirituality, work and education, among others. • Service users are enabled to meet their own care and support needs (self-care) to the maximum extent possible and desired by the service user. • Service users' access to care and support includes direct confidential access to a range of appropriately trained professionals to discuss and meet their care and support needs. • Service users can access and use aids, devices, assistive technologies and other forms of assistance and intermediaries they need to meet their sensory, communication and mobility-related requirements. • Service users and supporters are fully informed of the reasons for any referrals to appropriate services and specialists in a timely manner.

	• The service promotes consistency and continuity of care and support (including consistency of care and support personnel) to the maximum extent possible. • Appropriate handover processes are used when shifts or personnel change. These processes include consideration of service users' individual needs, characteristics and preferences. • New staff are introduced to service users before they become involved in providing care and support for that service user. • Staff refer to service user behaviour that presents an actual or perceived risk of harm to themselves or others using humane, compassionate and individually-appropriate language. • Staff address service users' behaviour, including behaviour which may be referred to as behaviours of concern (in disability services) or Behavioural and Psychological Symptoms of Dementia (BPSD) (in aged care services) through humane, individual, and compassionate interventions based on current, evidence-based best practice. • Staff have completed training on, and understand, the relationship between unwanted, undesirable or harmful service user behaviour and the service user's unmet needs. Responses to behaviour consider how to identify and address those needs, as well as how these are best met in the future
4.4 Service users are supported and encouraged to optimise their health and wellbeing through accessing early intervention and rehabilitation	• Care and support planning and provision for all service users should include effective coordination and implementation, including education, of relevant early intervention, prevention and rehabilitation services consistent with their needs and preferences.

4.5 Discharge or transition planning is proactive and comprehensive with a view to ensuring service users are not deprived of liberty, or stay in the service, for longer than is necessary	• Staff understand the necessity of reducing or removing restrictions and deprivations of liberty from service users to the maximum extent possible. • Care and support assessment and planning processes include discussion (with service users and supporters) of the service user's preferences, needs and concerns about transitions out of residential care to other services or to the community. • Where relevant, transition or discharge plans are developed, documented, provided to service users in accessible formats and explained in a way they understand. • Transition or discharge plans include facilitation of engagement with required services and supports the service user will require after leaving the service, such as housing, financial and aged care or disability services and supports.

Explanatory note

Users of aged residential care, disability and related services may require care and support to meet their personal needs, carry out daily activities, and fully participate in all aspects of life and community. Rights-based care and support will respect service users' individual needs, dignity, autonomy, safety and privacy, and their right to make decisions and have control over their lives. Without adequate care and support, people with disability and older people deprived of their liberty are at greater risk of torture, ill-treatment and other rights violations.

Article 19(b) of the Convention on the Rights of Persons with Disabilities says that persons with disabilities should have access to 'a range of in-home, residential and other community support services. This includes any personal assistance necessary to support living and inclusion in the community, and to prevent isolation and segregation from the community'. It characterises these services as essential for persons with disabilities to enjoy the right to live independently and be included in the community, with choices equal to others. The United Nations Principles for Older Persons similarly encourage governments to ensure that older persons have access to social services that enhance their autonomy, protection and care.[11]

Specific standards and sources

International

- Convention on the Rights of Persons with Disabilities (CRPD) articles 3, 19, 20, 26.
- *United Nations Principles for Older Persons*, GA Res 46/91 (Adopted 16 December 1991) [10], [12]-[14].
- Committee on the Rights of Persons with Disabilities, General Comment No. 5 (2017) on Living Independently and Being Included in the Community (Article 19), UN Doc CRPD/C/GC/5 (27 October 2017).
- Human Rights Council, Report of the Special Rapporteur on the Rights of Persons with Disabilities (on Support Services for Persons with Disabilities), 34th session, A/HRC/34/58 (20 December 2016).

[11] United Nations Principles for Older Persons, GA Res 46/91 (Adopted 16 December 1991) [12].

Topic 5: Connection to the community

Overarching Expectation: Service users are encouraged and supported to be part of the community and maintain contacts and connections that are important to them through a range of measures they freely choose.

Expectations	Indicators
5.1 Service users are connected with and part of the community, and are engaged as citizens	• The makeup of service users' family, kin, community, friend and support networks and expected frequency of visits and outings is determined and documented on arrival and regularly reviewed. • Service users choose whom they want and do not want to see and contact. • Strategies are in place and proactive efforts are made to enable and support service users to maintain contact with friends, family, kin, supporters and wider networks, and to establish new relationships and connections, in line with service users' preferences and needs. • Strategies are in place and proactive efforts are made to enable and support Aboriginal and Torres Strait Islander service users to maintain connection to their Country and community in line with service users' preferences. • All possible efforts are made to encourage and facilitate regular, meaningful contact between children and their parents, carers, siblings and other family members and others close to them. • All possible efforts are made to encourage and facilitate regular peer interaction for children with disability. • Service users are supported to fulfil any parental responsibilities and to engage with their children to the fullest extent possible. • Staff identify service users who self-isolate or do not have supporters or regular contact or visits with others. Staff provide support to promote positive relationships, wellbeing, connection and participation. • Where emergency circumstances necessitate limitations on service users receiving visitors or

	leaving the service (such as lockdowns), restrictions are minimised as far as possible. • During lockdowns or other periods of limitation on visits or movement, service users are able and supported to maintain regular, meaningful contact with family, friends and others in the community through alternative modes of social engagement and other means. • Service users have opportunities to follow the news and keep themselves informed of key events and information they need to participate fully in political and public life. • Service users are encouraged and supported to exercise their right to vote. • Service users are encouraged and supported to join and participate in the activities of political, religious, social, disability and older persons' organisations and other groups and activities of their choice, including groups relevant to other dimensions of service users' identity.
5.2 Service users regularly have time away from their residence	• Service users have the opportunity, and are supported, to regularly leave or have time away from their place of residence. • Staff understand, acknowledge and promote the importance of outside connections and activities. • Where service users can only leave the service with authorisation or when accompanied by others, such leave is actively and regularly considered, and is offered and facilitated to the fullest extent possible. • Service users' wishes, preferences and needs are fully taken into account when planning and supporting spending time away from the service or engaging in outside activities. • Service users are supported to access services, activities, groups and resources of their choice outside the service, including those associated with specific cultural, spiritual or other practices.[12]

[12] See also topic 8.

	• Service users can be accompanied outside the service for orientation and support by supporters or staff. • Service users' requests relating to leave or other time away from the service are assessed promptly and decisions are clearly explained in a way the service user understands. • Service users' requests to attend significant or time-sensitive events such as weddings, funerals, sorry business and other kinship or cultural obligations, or to visit sick relatives, are facilitated by staff wherever possible. • Service users are not deprived of contact, visits or time outside the service as a punishment. • All efforts are made to mitigate and prevent security or safety risks associated with service users leaving the service.
5.3 Service users live as close as reasonably possible to their community and support networks	• Service users are located as close as possible to their community, family and/or support networks and connections, where this is their preference. • Strategies are in place and proactive measures are taken to prevent and address disadvantages faced by service users located far from their communities, homes and/or support networks.
5.4 Service users can communicate freely, with their privacy respected, and with support where needed. Any restrictions on contact are individually justified, proportionate and fully explained[13]	• Service users have regular and reliable access to telephone calls, correspondence, electronic devices and the internet. • Service users can communicate in privacy and without censorship. • Communication devices can be transported and utilised by service users in private. • Service users have access to a telephone at any time, independent of staff, unless an authorised restriction is in place. • Staff take reasonable steps to assist or support service users to communicate.

[13] See also expectation 2.3.

	• Service users are assisted with making contact with supporters, advocates, substitute decision-makers, legal representatives and others where they so desire. • Foreign nationals, or people whose connections are outside Tasmania or Australia, receive assistance to maintain contact with those connections. • There are no blanket restrictions on access to communication or communication devices. • Service users are aware of the reasons for any restrictions on the use of devices in certain areas to ensure wider wellbeing (e.g. to ensure there are quiet areas or to protect other's privacy). • Restrictions on communication are never used as a punishment. • Access to telephones, correspondence, electronic devices or the internet is only restricted if all other less restrictive options have been explored and exhausted and the restriction is authorised in the service user's behaviour support plan. • Any communication restrictions do not interfere with service users' communication with legal representatives or advocates.

5.5 The fullest visiting arrangements possible are facilitated. Visits are as comfortable and easy as possible for service users and visitors.	• Visitors are given information about how to get to the service, any visiting hours, details about what to expect when they arrive, and information on making complaints. • Visitor parking and facilities are available and accessible. • Visitors are made to feel welcome. • Visits take place in an environment that is private, accessible, safe and comfortable. • Visitors can access a range of refreshments during visits. • Visits take place at any reasonable time and regularity, including evenings and weekends. • Requests for overnight visits from service users' partners are considered and accommodated to the fullest extent possible.

Explanatory note

Connection, contact and participation in community life are essential to the wellbeing and rights enjoyment of people who reside in aged residential care, disability support and related services. These include service users' rights to be free from arbitrary or unlawful interference with privacy, family, correspondence or other communication (ICCPR article 17; CRPD article 22), to be included in the community (CPRD article 19) and to participate effectively and fully in political and public life (ICCPR article 25; CRPD article 29).

To promote and protect these rights, service users must be able to communicate, and interact easily with, family, friends, supporters, independent advocates, legal representatives and others outside the service when they choose. Service users must also be able to participate freely in family, community and public life and pursue their interests and responsibilities outside their residence (addressed further in topic 8, below).

Specific standards and sources:

International

- International Covenant on Civil and Political Rights (ICCPR) article 17, 25.
- Convention on the Rights of Persons with Disabilities (CRPD) articles 19, 21, 22, 23, 29.
- Convention on the Rights of the Child (CRC) articles 13, 16, 23.
- *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295 (Adopted 13 September 2007), articles 8, 9, 10, 11, 12, 13, 14, 18, 25, 33.
- *United Nations Principles for Older Persons*, GA Res 46/91 (Adopted 16 December 1991), [7]-[9], [12].
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, GA Res 43/173 (Adopted 9 December 1988), Principles 15, 19, 20, 28, 29, 33.
- Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), *Prevention of Torture and Ill-treatment of Women Deprived of their Liberty*, 27th session, UN Doc CAT/OP/27/1 (18 January 2016) [31]-[37].
- Claudia Mahler, Report of the Independent Expert on the Enjoyment of all Human Rights by Older Persons on Older Persons Deprived of Liberty, UN Doc A/HRC/51/27 (51st session, 9 August 2022) [61].

- World Health Organization, WHO QualityRights Tool Kit: Assessing and Improving Quality and Human Rights in Mental Health and Social Care Facilities (2012) Standards 1.5, 1.7, 5.3.
- ITHACA Project Group, *ITHACA Toolkit for Monitoring Human Rights and General Health Care in Mental Health and Social Care Institutions* (Health Service and Population Research Department, Institute of Psychiatry, King's College London, 2010) Part 11.
- Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Factsheet: Persons Deprived of their Liberty in Social Care Establishments,* CPT/Inf(2020)41, 21 December 2022, 3.
- European Network of National Human Rights Institutions (ENNHRI), *Respect My Rights: An ENNHRI Toolkit on Applying a Human Rights-Based Approach to Long-term Care for Older Persons* (October 2017) Annex 1, 'Right to privacy and family life' and 'Right to participation and social inclusion'.
- *Yogyakarta Principles* (2006), Principles 19, 20, 21, 24, 25, 26, 27.
- Yogyakarta Principles Plus 10 (10 November 2017)

Topic 6: Diversity, equality and non-discrimination

Overarching Expectation: The diversity of the service user group is recognised and welcomed. The distinct and individual needs of service users are identified and fully met in relation to disability, age, Aboriginal and Torres Strait Islander background, culture, gender, sex, sexuality, gender identity, nationality, religion or spirituality, and other grounds. Organisational policies, culture, processes and practices ensure service users are not subject to discrimination, bullying or harassment.

Expectations	Indicators
6.1 Service users are respected and valued as individuals; their individual needs and preferences are identified and met	• To the extent they are comfortable to do so, the service user's individual needs, strengths and goals, history and experiences are assessed and discussed on arrival and updated regularly. All prescribed attributes[14] and any other factors that are important to the service user's wellbeing, identity and sense of self are addressed. • Information gathered on arrival is recorded and communicated to staff and kept up-to-date. This knowledge is evident in the care and support provided. • Care plans specify clear actions required to address service users' particular needs and preferences.[15] • Service users have genuine choice about who meets their needs and preferences, and support to make and exercise informed decisions. Planning and commissioning of services is based on an understanding of the diverse backgrounds, identities, needs and goals of service users.
6.2 Aboriginal and Torres Strait Islander service users can exercise their cultural rights and live in a culturally safe service	• Service users' Aboriginal and Torres Strait Islander cultural identity and connections are discussed and understood in a supportive and respectful manner upon arrival at the service, to the extent that the service user wishes to do so. • Respect for Aboriginal and Torres Strait Islander service users' cultural identity and connections are at the centre of all decisions made about their treatment, care and support.

[14] *Anti-Discrimination Act 1998* (Tas) s 16.

[15] This is addressed further under Topic 4.

	• To the extent they wish to do so, Aboriginal and Torres Strait Islander service users are aware of their Country, language groups and nation, and have regular access to cultural mentors and Elders. • Assessment, treatment, care and support provided to Aboriginal and Torres Strait Islander service users is culturally sensitive and safe. • Assessment, planning and provision of care and support to Aboriginal and Torres Strait Islander service users takes into account individual and collective experience of trauma. • Staff have completed Aboriginal and Torres Strait Islander cultural awareness training and have regular access to related professional development opportunities. • Staff are able to demonstrate an understanding of Tasmanian Aboriginal history and continuing culture, and culturally aware and culturally sensitive and safe practices and service provision. • Aboriginal and Torres Strait Islander service users are protected from racism, unfair treatment, harassment, bullying and abuse.
6.3 Service users from culturally and linguistically diverse backgrounds, including Deaf community and culture, can exercise their cultural rights and live in a culturally safe service	• Service users' cultural identity and connections, including Deaf cultural identity, are ascertained in a supportive and respectful manner upon arrival at the service, to the extent that the service user wishes to do so. • Respect for culturally and linguistically diverse service users' cultural identity and connections, including Deaf cultural identity, are at the centre of all decisions made about their treatment, care and support. • To the extent they wish to do so, service users from culturally and linguistically diverse backgrounds, including Deaf service users, are aware of their cultural background and history, and have regular access to cultural mentors and community. • Assessment, treatment, care and support provided to service users belonging to culturally and/or racially marginalised groups, including Deaf service users,

	takes into account individual and collective experiences of trauma. • All staff have completed relevant cultural awareness training (including Deaf cultural awareness) for working with service users from culturally and linguistically diverse backgrounds and have regular access to related professional development opportunities. • Staff demonstrate an awareness of a diverse range of cultural differences and culturally aware and culturally safe practices and service provision. • Service users from culturally and linguistically diverse backgrounds, including Deaf service users, are protected from racism, unfair treatment, harassment, bullying and abuse.
6.4 LGBTIQA+ service users are supported to understand, explore and express their identity in a safe and supportive environment	• Service users' LGBTIQA+ identity and/or status is ascertained in a supportive and respectful manner upon arrival at the service, to the extent that the service user wishes to do so. • Service users are supported to explore or understand LGBTIQA+ identity in a safe, supportive and appropriate manner. • Service users can express their LGBTIQA+ identity or status, and changes or developments to that identity or status, at any time, and staff respond in a supportive and respectful manner. • Respect for LGBTIQA+ service users' identity or status are at the centre of all decisions made about their treatment, care and support. • To the extent they wish to do so, LGBTIQA+ service users are aware of LGBTIQA+ cultures and communities and have regular access to mentors and community. • Assessment, treatment, care and support provided to LGBTIQA+ service users takes into account individual and collective experiences of trauma. • Staff have completed relevant awareness training for working with LGBTIQA+ service users and have regular access to related professional development

	opportunities. Training is tailored to the context and needs of the service setting and service users. • Staff have completed training on, and understand, how to have conversations with service users about LGBTIQA+ identity or status safely, supportively and appropriately. • Staff have completed training on, and understand, the harms of conversion practices or pressures, or other forms of suppressing the expression of service users' LGBTIQA+ identity. • Staff have completed training on, and understand, that service users are entitled to experience and express their LGBTIQA+ identity or status regardless of their legal or decision-making capacity. • LGBTIQA+ service users are protected from unfair treatment, harassment, bullying and abuse.
6.5 Service users live in an environment where tolerance, understanding and respect are actively promoted	• Staff promote and model inclusion in all aspects of their work and show an awareness of equality and non-discrimination principles in their conduct and practices. • Special measures are in place to recruit Aboriginal and Torres Strait Islander staff and staff from other cultural groups, so that staff reflect the diversity of the population of service users. • Regular proactive efforts are made to recognise, raise awareness of, and celebrate the diversity of service users and staff. Service users have opportunities to initiate, lead and/or be involved in these events and activities. • Staff and service users have constructive and positive relationships. • Service users and staff know what behaviours and language are acceptable.
6.6 Service users live in an environment where discriminatory conduct, bullying and harassment are not tolerated and any	• Staff are trained and supported to identify and eliminate discrimination, bullying and harassment in the service. • There are clear systems in place, known and used by all staff, to identify and take appropriate action to

instances are challenged[16]	prevent and act upon all forms of discrimination, bullying and harassment or disadvantage. • There are effective interventions to support service users being discriminated against or subject to bullying or harassment. • There are effective interventions to challenge, educate and support service users who engage in discriminatory, bullying or harassing behaviour. • Service users and supporters feel able, and know how, to raise concerns about discrimination, bullying or harassment through complaint mechanisms. • Complaints about discrimination, bullying or harassment are thoroughly investigated. Responses are timely and take account of the context and individual experience of the service user. • Service users and supporters are aware of, and know how to use, accessible avenues to make complaints about discrimination, bullying or harassment to an external body independent of staff and without fear of negative consequences or reprisals.
6.7 Service users are treated fairly and swift action is taken to address any evidence of discriminatory processes and conduct	• Rules and processes are understood by service users and applied fairly by staff. • There is routine internal monitoring to identify any inequity or discrimination. Monitoring covers all identities and needs, for example in the application of restrictive measures, in access to services, activities, visits or other areas, or in decisions about service users' ongoing tenure in the service. • Results of monitoring are communicated to staff and service users in accessible formats and ways they understand. • Where inequity or discriminatory practice is identified or suspected, timely action is taken to address this. • Data on discriminatory incidents and allegations is routinely analysed for patterns and trends to identify

[16] See also expectation 2.4.

	issues requiring action and for continuous improvement purposes. • Aspects of a service user's identity or characteristics that may lead to bullying or discrimination are kept confidential except to the extent desired by the service user.
6.8 Reasonable adjustments and other accommodations are made to ensure equality of access and treatment of people with disability	• Individualised supports, resources and aids are provided to meet service users' mobility, sensory and other disability- or impairment-related needs, aligned with individual preferences. • Reasonable adjustments are made to ensure that service users with disability, including service users with multiple disability, multiple comorbidities, invisible, hidden and/or undiagnosed disability, have access to the full suite of mainstream programs, activities and facilities. • Where reasonable adjustments are not possible, the reason is explained in a way the service user understands and alternatives of equivalent quality are offered.

Explanatory note

Equality and non-discrimination are fundamental human rights principles. International instruments including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of Persons with Disabilities (CRPD) seek to establish equality and prohibit discrimination based on various factors.

The Committee on the Rights of Persons with Disabilities has explained that 'inclusive' equality under the CRPD requires both acceptance of disability as part of human difference and diversity and positive measures such as the provision of accessibility and accommodations. It also necessitates recognition that the needs and experiences of persons with disability, including experiences of discrimination, may vary depending on multiple and intersecting dimensions of difference.

For users of aged residential care, disability support and related services who are deprived of their liberty, equality and non-discrimination measures require that services recognise and respond to individuals' attributes, needs, experiences and preferences. These include attributes, needs, experiences and preferences related to faith or religion, spirituality, gender, sex, sexuality, gender identity, nationality, Aboriginal and Torres Strait Islander background, age, or other grounds, including the 'prescribed attributes' in the Tasmanian anti-discrimination legislation.

Service users must also enjoy robust protections to prevent and, where necessary, respond to discrimination, bullying or harassment from any source. Service users who are members of a particular group or demographic, such as children, service users from culturally and linguistically diverse backgrounds, including Deaf community and culture and LGBTIQA+ service users, may have particular care and support needs and experiences which do not apply to other groups, requiring tailored and appropriate services to protect and promote their rights.

In light of the comparatively high incidence of disability among Aboriginal and Torres Strait Islander people in Tasmania, and the ongoing effects of individual and collective trauma associated with colonisation and dispossession, it is also imperative that the history, experiences and needs of Aboriginal and Torres Strait Islander service users are understood and met in a culturally safe manner.

Specific standards and sources:

International

- International Covenant on Economic, Social and Cultural Rights (ICESCR) articles 2, 3.
- International Covenant on Civil and Political Rights (ICCPR) articles 3, 26, 27.

- Convention on the Rights of Persons with Disabilities (CRPD) articles 3, 5, 6, 7, 15, 16.
- Convention on the Rights of the Child (CRC) articles 2, 30.
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) articles 2, 5, 6
- Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) articles 12, 15.
- *United Nations Declaration on the Rights of Indigenous Peoples,* GA Res 61/295 (Adopted 13 September 2007) (2 October 2007) 1, 2, 5, 9, 15, 18, 22.
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, GA Res 43/173 (Adopted 9 December 1988), Principles 5, 33.
- *United Nations Principles for Older Persons*, GA Res 46/91 (Adopted 16 December 1991), [10], [18].
- Committee on the Rights of Persons with Disabilities, Guidelines on Article 14 of the Convention on the Rights of Persons with Disabilities (2015), [17]-[18].
- Committee on the Rights of Persons with Disabilities, *General Comment No. 6 on Equality and Non-Discrimination (Article 5)*,19th session, UN Doc CRPD/C/GC/6 (26 April 2018).
- Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), *Prevention of Torture and Ill-treatment of Women Deprived of their Liberty*, 27th session, UN Doc CAT/OP/27/1 (18 January 2016) [24]-27].
- *Yogyakarta Principles* (2006) Principles 1, 2, 3, 9, 10, 19, 20, 21, 26.
- *Yogyakarta Principles Plus 10* (10 November 2017) Principles 30, 31, 32, 37, 38.

Topic 7: Safety, order and restrictive practices

Overarching Expectation: Service users feel safe and are free from all forms of harm or maltreatment. Service users' safety is secured, and their needs met, via alternatives to restriction to the maximum possible extent. All aspects of safety and security are informed by an understanding of individual needs, characteristics and experiences, including experiences of trauma.

Expectations	Indicators
7.1 The service takes a holistic, trauma-informed, person-centred and proactive approach to maintaining a safe environment for all service users[17]	• Staff and service users interact in a manner that fosters positive, warm and professional relationships. • Staff have completed training, and understand how, to support positive and safe relationships with service users. • No service user is subject to physical, sexual, financial, economic or other exploitation. • No service user is subject to verbal, physical, sexual or mental violence or abuse. • No service user is subject to unlawful coercion. • No service user is subject to physical or emotional neglect. • The service has adequate resourcing (such as adequate time and staff numbers) to ensure service user safety. • Staff take appropriate action to protect service users from exploitation, violence, abuse, coercion, neglect or other harm. • Staff have completed training on, and understand, the range of practices that may constitute exploitation, violence, abuse, coercion, neglect and other forms of harm or maltreatment, including practices within the service. • Staff training on forms of harm and maltreatment is specific to the characteristics and needs of the service user group (such as gender-specific, age-sensitive and culturally-specific training). • Staff have completed training on, and understand how, to recognise indicators of exploitation, violence,

[17] See also expectation 8.3.

	abuse, coercion, neglect or other harm or maltreatment. • Staff training on indicators of harm or maltreatment addresses indicators that may be particular to the service user or situation, and indicators of present (not only historical) harm. • Staff have completed training on responding effectively to issues of service user safety and wellbeing and support colleagues who disclose exploitation, violence, abuse, coercion, neglect or other harm. • Staff, including any security staff, have completed training on, and understand, the impact of, life experiences such as trauma and abuse on service users' needs and behaviour. • Staff, including any security staff, have completed training on, and understand, how to provide trauma-informed services as relevant to their role. • Staff, including any security staff, have completed training on, and understand, how their own experiences of trauma may affect their responses to service users and others. • Service users who have been subjected to trauma, including in the service, are assisted to access support and services of their choice to respond to that trauma. • The service has a protocol in place that enables service users, supporters and others to provide information to the service about service users who may be at risk of harm and may require additional supports.
7.2 The service responds promptly and appropriately to concerns or allegations (including potential concerns or indications) about exploitation, violence, abuse, coercion, neglect or other forms	• Service users, supporters and others can approach staff to discuss safety or maltreatment concerns, issues or incidents, and they are taken seriously. • Service users, supporters and others can raise concerns in confidence with a range of people and services outside the service. • Where allegations or concerns about exploitation, violence, abuse, coercion, neglect or other harm have been raised, service users are supported and

of harm to service users[18]	protected and proactively enabled to access an independent advocate for assistance. • Where allegations or concerns about exploitation, violence, abuse, coercion, neglect or other harm have been raised by someone other than the service user, immediate support is given to that person. • All concerns (including potential concerns or indications) about exploitation, violence, abuse, coercion, neglect or other harm are promptly documented, investigated and reported to the appropriate authority for investigation. • Staff meet mandatory reporting obligations and have completed the necessary training and support to do so. • Alleged criminal acts are reported to the Police. • In determining how to respond to incidents between service users, independent supports are engaged to determine whether it is appropriate and safe to make a referral to Police. • Investigations into allegations or suspicions of exploitation, violence, abuse, coercion, neglect or other harm are shared with the appropriate agencies and handled fairly, quickly and in accordance with statutory guidance. • Service users and any person who alleges harm against a service user are given a written response that sets out the action that has been, or will be, taken. Responses respect the privacy and confidentiality of the service user and others. • Disciplinary and/or legal action is taken against any staff member or other person found to be engaged in exploitation, violence, abuse, coercion, neglect or other maltreatment of service users.

[18] See also expectations 2.4, 9.3

7.3 Alternatives to restriction are prioritised and implemented effectively	• The service is actively working to reduce and eliminate restrictive practices, including seclusion and restraint. These efforts are evidenced in policies, procedures and practices. • External service providers such as general practitioners, geriatricians, occupational therapists, paediatricians, psychologists and psychiatrists are informed of, involved in and support the service's efforts to reduce and eliminate restrictive practices. • Individualised de-escalation and restraint and seclusion avoidance planning is conducted for every service user on arrival and aligns with positive behaviour support planning as appropriate. • De-escalation and restraint and seclusion avoidance planning involves service users and supporters and takes into account any advance directives. • De-escalation and restraint and seclusion avoidance planning identifies relevant aspects of service users' individual needs, history (including history of trauma), potential triggers, effective and/or preferred de-escalation strategies, and effective and/or preferred alternatives to restraint and seclusion. • Agreed de-escalation and restraint and seclusion avoidance strategies are subject to necessary approvals (such as inclusion in a behaviour support plan), recorded, communicated to staff, readily available in a crisis, and updated regularly. • Blanket restrictions on all service users, or blanket consent for all types of restrictive practices, are not used. • Access to shelter, warmth, a comfortable environment, water, food, fresh air, exercise, leave, confidentiality or reasonable privacy are never restricted as a punishment or used as a 'reward' or 'privilege' dependent on a service user's behaviour.

7.4 Staff are trained in trauma-informed practice and least restrictive practice, and have adequate resources, to respond to potentially harmful or risky incidents and behaviour	• Staff, including any security staff, have completed training in, and understand the purpose of, restraint and seclusion avoidance. Training includes de-escalation techniques for intervening in crises and preventing harm to service users, staff and others. • Staff, including any security staff, have completed training on, and understand, the potential for restrictive practices and other practices to cause or exacerbate service user trauma. • Behaviour support, de-escalation and restraint and seclusion avoidance planning is conducted by suitably trained, qualified and specialised personnel. • Where potentially harmful events or behaviour occur, staff respond compassionately and implement ant agreed de-escalation, restraint and seclusion avoidance strategies.
7.5 Any use of restraint or seclusion is conducted with proper legal authority, used only as a last resort and for the shortest time possible, and causes the minimum interference with the person's autonomy, dignity and privacy[19]	• Staff, including security staff, have completed training on, and understand, the range of practices that may constitute restraint and seclusion, and the harms of restraint and seclusion. • Staff have completed training on, understand, and follow legal authorisation processes required for the lawful use of restraint and seclusion. • Staff have completed training on, understand, and follow monitoring, safeguarding, reporting and review requirements that apply during and following every use of restraint and seclusion. • Staff and leadership foster and demonstrate a culture of continuously questioning and reassessing the appropriateness of authorisation and use of restrictive practices for individual service users. • Any staff, including security staff, who may be involved in applying restraint or seclusion have completed training on how to do so as safely as possible. • Restraint and seclusion are never used to punish, or with the intention of inflicting pain, suffering or humiliation.

[19] See also expectation 2.1.

	• Restraint and seclusion are never used to manage service users as a substitute for adequate staffing or facility design. • A service user's actual or perceived diagnosis of a disability or mental health condition is never treated as sufficient reason for administering restraint or seclusion. • Informal seclusion is never used. • Solitary confinement (confinement alone in a space the person cannot leave for 22 hours or more a day without the opportunity for meaningful human contact) is never used. • Any restraint or seclusion is only used where there is a real possibility of harm to the person, staff or others if the restriction is not imposed. • Any restraint or seclusion is only used as a last resort after all available alternatives have been explored and applied. • Any restraint or seclusion is the least restrictive option and causes the minimum interference to a person's autonomy, privacy and dignity. • Decisions about authorising or applying restraint or seclusion take into account, and respect, service users' dignity of risk. • Any restraint or seclusion is imposed for no longer than absolutely necessary. • Where the use of restraint or seclusion is authorised, the service user's needs, views and preferences (such as preferences about modes of restriction and gender of staff involved) are identified, documented and followed to the maximum extent possible. • All efforts are made to mitigate the potential harm of restraint or seclusion. • The nature of the techniques used to restrain are proportionate to the risk of harm and its seriousness. • Every incidence of restraint or seclusion has an exit strategy and target end point that is known and understood by the service user to the fullest extent possible.

	• Service users in seclusion have access to appropriate sensory stimuli. • Every incidence of restraint or seclusion is formally and transparently documented and audited in accordance with legal requirements. • Documentation of restraint or seclusion incidents includes a report of what happened, the reasons for the use of restraint or seclusion, efforts made to avoid it, its authorisation and any reviews, how it was implemented, how the service user's needs were met, and the service user's response. • Use of restraint or seclusion is reported to the appropriate authority. • There is a debrief with staff, the service user and supporters following any incidence of seclusion or restraint. The events that led to the use of seclusion or restraint, what actually happened to the service user during the seclusion or restraint, and the rationale for the use are explained in a way the service user understands. • During debriefing, service users are offered the opportunity to communicate their perspective on the restraint or seclusion incident and the service's explanation of it. • Debriefing includes discussion of ways the service and service user can avoid future incidences of restraint or seclusion and provision of support. • Policies concerning use, and efforts to minimise and eliminate use, of restraint and seclusion are kept under ongoing review to ensure consistency with best practice and human rights standards.

7.7 The service provides a safe and secure environment which reduces the risk of self-harm and suicide. Service users at risk of self-harm or suicide are identified at an early stage and given the necessary support	• The environment minimises to the fullest extent possible the risk of self-harm and suicide. • Service users are assessed regarding their risk of self-harm and suicide at appropriately regular intervals. This information is recorded and communicated to staff. • Services provide and use preventative measures such as sensory regulation tools, behaviour support, de-escalation and restraint and seclusion avoidance strategies, in responding to risks of self-harm and suicide. • Staff receive training on, and understand, that the use of restraint or other restrictions to prevent self-harm or suicide may be traumatic even when it is considered necessary . • Staff regularly check on service users according to their assessed risk of self-harm and suicide, particularly in more private areas of a service, while being mindful to minimise intrusion into a service user's privacy as much as possible. • Personal possessions are only removed in well documented, exceptional circumstances to reduce risks to the service user.
7.8 Any searches are undertaken with proper legal authority, are proportionate to an identified risk and carried out with due regard to, and respect for, dignity and privacy	• Where personal or property searches of service users or visitors are considered necessary and proportionate to identified risk, this is referred to a body with lawful authority to conduct the search.[20] • Where relevant, service users, staff and visitors are informed there is a policy on searching and are provided with its details in readily available and accessible formats. • Searches of people or their property respect the person's privacy and dignity and are carried out in the least intrusive way possible.

[20] In relation to searches of children and young people, see also expectation 11.5 of Tasmanian NPM, *Expectations on the Treatment of Children and Young People* (Version 1, October 2023) <https://npm.tas.gov.au>

	• Searches are respectful of a person's gender, culture and faith. • Searches are respectful of a person's actual or potential experiences of trauma. • Service users can access a supporter, including an independent advocate, in relation to searches. • Searches of people who experience pain or have sensory, bodily or other needs that vary from others in the community take into account and accommodate their needs. • The consent of the person to be searched is sought before the search is conducted. • The person is kept informed, in a way they understand, as to what is happening and why throughout the search. • Records of all searches are documented and audited. Any items taken are appropriately logged and stored securely. Service users' items are transferred with that service user if they move to another service. • Support is available for people who are distressed or otherwise affected by the process of searching.

Explanatory note

Users of aged residential care, disability support and related services must enjoy safety in all aspects of life. Services must develop and effectively implement processes to prevent safety risks and respond to allegations (including potential concerns or indications) about exploitation, violence, abuse, coercion, neglect and other forms of maltreatment or harm to service users.[21] This is necessary for the protection and promotion of many human rights, including the rights to liberty and security of the person (ICCPR article 9, CRPD article 14), health (ICESCR article 12, CRPD article 25), life (ICCPR article 6, CRPD article 10), freedom from exploitation, violence and abuse (CRPD article 16) and freedom from torture, or cruel, inhuman or degrading treatment or punishment (ICCPR article 7, CRPD article 15).

Users of these services may at times behave in ways that create, or are perceived to create, a risk of harm to themselves or others. Services might respond to these and other circumstances by imposing restrictive practices such as physical, mechanical, environmental or chemical restraint, or seclusion, on service users. These restrictive measures, while legally permitted in certain specified circumstances, cause harm and raise serious human rights concerns themselves. Multiple human rights bodies, including the Committee on the Rights of Persons with Disabilities, have expressed the view that their use can and must always be avoided through the provision of appropriate environments and support.[22] Some other human rights bodies have characterised restraint and seclusion as permissible in international law where they are necessary as a last resort for safety reasons, if accompanied by appropriate safeguards including authorisation, supervision, monitoring, review and appeal processes.[23]

Both perspectives set a clear direction towards the reduction and elimination of restraint and seclusion and require demonstrable steps to be taken towards this

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[21] *Convention on the Rights of Persons with Disabilities*, Preamble, articles 16,23; Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Nature and Extent of Violence, Abuse, Neglect and Exploitation* (Final Report, vol. 3).

[22] E.g., Committee on the Rights of Persons with Disabilities, *Guidelines on Article 14 of the Convention on the Rights of Persons with Disabilities* (2015), [12]-[15]; General Assembly, Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, 30th session, UN Doc A/HRC/30/37 (6 July 2015) [38], [103]; • Human Rights Council, Report of the Special Rapporteur on the Rights of Persons with Disabilities (on Disability-Specific Forms of Deprivation of Liberty), 40th session, A/HRC/40/54 (11 January 2019) [44]-[56].

[23] E.g., Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), Approach of the SPT Regarding the Rights of Persons Institutionalized and Treated Medically Without Informed Consent, 22nd session, UN Doc CAT/OP/27/2 (26 January 2016) [6]-[9]; Human Rights Committee, General Comment No. 35: Liberty and Security of Person, 112th session, UN Doc CCPR/C/GC/35 (16 December 2014) [19].

aim. There is a growing body of evidence to support the implementation of alternatives to restrictive practices. Effective steps include individualised de-escalation and restraint and seclusion avoidance planning, as well as training, resourcing and support for staff to implement alternative practices in a manner that maintains safety and security for all.

Specific standards and sources

International

- *International Covenant on Civil and Political Rights* (ICCPR) articles 6, 7, 9, 10, 16, 17, 26.
- *International Covenant on Economic, Social and Cultural Rights* (ICESCR) articles 12.
- *Convention on the Rights of Persons with Disabilities* (CRPD) articles 3, 5, 10, 12, 14, 15, 16, 17, 22, 25.
- *Convention on the Rights of the Child* (CRC) articles 16, 19, 24, 37.
- *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295 (Adopted 13 September 2007), articles 1, 2, 7, 22.
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- *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, GA Res 43/173 (Adopted 9 December 1988), Principles 6, 7.
- *United Nations Principles for Older Persons*, GA Res 46/91 (Adopted 16 December 1991) [17].
- General Assembly, *Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1982) GA Re37/194, Principle 5.
- Committee Against Torture, *Ninth Annual Report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of Lesbian, Gay, Bisexual, Transgender and Intersex Persons)*, 57th session, UN Doc CAT/C/57/4 (22 March 2016) [60]-[70], [74], [76]-[82].

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- Human Rights Council, *Report of the Special Rapporteur on the Rights of Persons with Disabilities (on Disability-Specific Forms of Deprivation of Liberty)*, 40th session, A/HRC/40/54 (11 January 2019) [58]-[63].
- United Nations General Assembly, *Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (on solitary confinement)*, 66th session, UN Doc A/66/268 (5 August 2011) [25]-[26], [67]-[68].
- Human Rights Council, *Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (on Abuses in Health-care Settings)*, 22nd session, UN Doc A/HRC/22/53 (1 February 2013) [63].
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- World Health Organization, *WHO QualityRights Tool Kit: Assessing and Improving Quality and Human Rights in Mental Health and Social Care Facilities* (2012) Standards 1.5, 4.1, 4.2.
- World Health Organization, *Freedom from Coercion, Violence and Abuse: WHO QualityRights Core Training Course Guide* (2019).
- World Health Organization, *Strategies to End Seclusion and Restraint: WHO QualityRights Specialised Training Course Guide* (2019).
- *Yogyakarta Principles* (2006) Principles 2, 3, 5, 7, 9, 10, 11, 18,
- *Yogyakarta Principles Plus 10* (10 November 2017) Principle 30.

Topic 8: Daily life

Overarching Expectation: The living situation in the service promotes dignity, respect, autonomy, wellbeing and rights of all service users; service users have choice and control over their everyday lives to the fullest extent possible, and care and support facilitates this.

Expectations	Indicators

8.1 Service users are welcomed and well-oriented when they arrive at the service	• Before and on arrival at the service, service users are welcome and treated with dignity and respect.
	• The environment and processes when service users arrive at, first use, or are admitted to the service make service users feel safe, supported and comfortable.
	• Service users can choose to involve supporters in arrival, admission and/or orientation processes.
	• Upon arrival at the service and periodically during the service user's time with the service:
	  ○ any immediate needs of the service user are identified and met.
	  ○ any safety risks are identified, considered, assessed and addressed.
	  ○ service users and supporters are informed of service users' rights and how to access support.[24]

8.2 Service users are the primary decision-makers in relation to day-to-day life decisions, and their dignity, autonomy and wellbeing is fostered	• Service users and supporters are consulted about service users' interests and preferences as to how they spend their time. • Service users have the maximum possible control over daily decisions, such as what to wear, personal grooming, where to spend time and with whom, entertainment and daily routine (such as when to shower and when to get up and go to bed). • If a service user's choices cannot be honoured, the reasons why are explained to the service user and supporters (in a way they understand), documented and regularly reviewed.

[24] See also expectations 2.3-2.6.

	• Service users are afforded the dignity of being able to change their minds about daily decisions and choices without explanation or justification. • Staff understand the significance of service users having control over daily decisions when other elements of their life are constrained. • Staff recognise, and are supported by management to respect, dignity of risk. They enable and support service users to choose to take risks in their daily lives. • Support for service users to make positive choices which contribute to their health and wellbeing is provided through engagement, education and encouragement, not coercion. • Service users receive support to live and mobilise with the greatest possible independence through measures such as access to personal mobility and communication aids, devices, assistive technologies and other forms of assistance and intermediaries.[25] • Service users can access regular physical rehabilitation or exercise.
8.3 Service users are treated with dignity and respect[26]	• Staff support the creation of a daily lifestyle that is as similar as possible to the lives of others in the community in the same stage of life. • Staff take time to build relationships with service users, show genuine interest and listen to them. • Communication with and about service users is empathetic, constructive, humanising and respectful. • Staff encourage and support empathetic engagement between service users and staff, other professionals, volunteers and community members. • All service users have the opportunity for meaningful human contact – contact that is of sufficient quality and duration – every day.

[25] See also topic 4 and expectation 6.6.

[26] See also expectations 7.1 and 7.2.

	• Staff know how and feel confident to raise concerns about colleagues' behaviour or interactions with service users, without recrimination. • Staff listen to and act on service users' wishes, views and preferences about daily life to the fullest extent possible. • There is a comprehensive and sensitive handover of information between staff to ensure continuity of care and support in the service.
8.4 Service users have access to meaningful activities and are encouraged and supported to engage in activities of their choice[27]	• Service users have the opportunity, and are encouraged and supported as necessary, to participate in recreational, sporting, leisure, religious and cultural activities within and outside the service aligned with their preferences and wishes. • Service users have the opportunity, and are supported and encouraged as necessary, to participate in activities to foster and develop their autonomy, dignity and other rights, aligned with their preferences and wishes. These may include education, employment and public participation. • Suitable and meaningful activities are offered and available for service users throughout the day and throughout the week. • The needs of specific service user groups in relation to activities, including spiritual and cultural needs, are identified and supported. • Service users are able, and supported, to spend active and meaningful time with other people and form meaningful relationships with those around them. • Service users' sexuality and sexual and romantic lives and relationships are acknowledged, respected and facilitated as appropriate to the individual. • Where service users request or seek to be isolated, efforts are made to identify the reasons for this and address the root causes.

[27] See also expectations 5.1 and 5.2.

8.5 Service users can freely practice their culture, religion and spirituality[28]	• Service users have access to people who can provide cultural and/or spiritual support. • Service users are provided with appropriate materials, opportunities and private space to engage in cultural and/or religious practices to the fullest extent possible.
8.6 Service users have access to adequate amounts of water and nutritious food which promote their health and wellbeing	• Safe drinking water is freely available to all service users at all times. • Nutritious food of sufficient quality and quantity is available to all service users. • Service users can access dietary advice that takes into account their individual health needs and is meaningful to them in their individual context. • Service users have a varied, healthy and balanced diet which meets their individual needs (including dietary, cultural and religious needs) and personal preferences. • Service users have choice and input about what, when and where they can eat, include outside of mealtimes. • Service users have opportunities to provide feedback on the food and drink available to them. • Meals and food are served at appropriate temperatures and times, unless there is a justifiable and proportionate reason that this is not possible.
8.7 Service users have access to appropriate clothing and laundry facilities	• Service users are able to wear their own clothes and make choices about the clothing that they wear. • If service users are unable to wear their own clothing, they are provided with options of good quality clothing that meets their needs and preferences and is suitable for the climate. • There are adequate laundry facilities and practices. • Items that need to be washed, such as clothing and bedding, are kept clean and in good condition. Items are labelled and returned correctly to their owner.

[28] See also topic 6.

8.8 Service users have access to personal possessions and property	• Service users can have possessions that are familiar or important to them, especially in their bedroom. • Respect and appropriate care are shown for service users' personal possessions. • Clear, timely and effective processes are in place for the dignified storage and transfer of service users' possessions. • Service users can access their stored possessions on request.

Explanatory note

The experience of daily life for residents of aged residential, disability support and related services engages a range of human rights standards and principles. In order to prevent torture and ill-treatment, service users must be treated with dignity and respect at all times. This encompasses admission processes, all interactions with staff, and access to adequate and good quality food, water and clothing, and service users' own possessions.

Service users' autonomy in daily life, including the freedom to make their own choices and to enjoy full and effective participation and inclusion in society on an equal basis with others, must also be supported. The choices and forms of participation valued by service users will differ from person to person but may include having control over daily routines and experiences, forming and fostering relationships with others, and being involved in a range of activities and pursuits within and outside the service (including religious, cultural, recreation, leisure and sporting activities, as well as education, employment and public participation).

Specific standards and sources

International

- International Covenant on Civil and Political Rights (ICCPR) articles 7, 10, 17.
- International Covenant on Economic, Social and Cultural Rights (ICESCR) articles 11, 12.
- *Convention on the Rights of Persons with Disabilities* (CRPD) articles 3, 4(3), 5, 12, 14, 15, 16, 17, 19, 22, 24, 25, 26, 27, 28, 29, 30, 33(3).
- United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295 (Adopted 13 September 2007), articles 20, 21
- *United Nations Principles for Older Persons*, GA Res 46/91 (Adopted 16 December 1991) [1]-[5], [10], [12]-[18].
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, GA Res 43/173 (Adopted 9 December 1988), Principles 1, 6.
- Human Rights Council, Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health (on the Right to Health in the Context of Confinement and Deprivation of Liberty), 38th session, A/HRC/38/36 (10 April 2018).
- *Yogyakarta Principles* (2006), Principles 2, 12, 16, 20, 24, 26.

Topic 9: Leadership, culture and staffing

Overarching Expectation: The leadership, culture and staffing of residential services promotes and protects the rights of service users.

Expectations	Indicators
9.1 Service users and representative organisations are involved in governance and decision-making processes[29]	• Governance and decision-making processes at all levels involve meaningful consultation and effective communication with service users, supporters and other stakeholders. • Services and leaders make proactive efforts to secure diverse representation, provide necessary accommodations and accessibility measures, and involve representative organisations and advocates for service users, in order to facilitate service user representation and participation to the fullest possible extent. • Stakeholder consultation and involvement includes representative and advocacy organisations of persons with disability, older persons, and persons with dementia (including, as relevant, groups representing persons with multiple dimensions of identity), those who have experience of the aged care sector or disability support sector, and civil society.[30] • Leaders proactively seek engagement with Aboriginal and Torres Strait Islander service users, their families and communities with the aim of building trust and improving service delivery and co-design practices.
9.2 Leaders and staff promote, operationalise and demonstrate a human rights-based approach to providing the service to service users	• There is a demonstrable commitment from leaders to treating all service users with dignity and respect. • Leaders and staff understand and share the aim of delivering a human rights-based approach to providing care and support and other aspects of the service. • Leaders and staff have completed training on relevant human rights standards, including the prohibition against torture and other forms of cruel and inhuman and degrading treatment, the right to equal recognition before the law (including supported decision-making),

[29] See also expectation 2.6.

[30] See also topic 6.

	and other rights of persons with disabilities and older persons. • Leaders and staff demonstrate knowledge and understanding of the needs and rights of children, persons with disability, older persons and/or persons with dementia (as appropriate to the service user group). • Leaders and staff understand and are confident to respond in a rights-based manner to situations where two or more service users' rights, preferences or needs are (or appear to be) in conflict. • Staff training emphasises how human rights fundamentally underpin the provision of a safe, high quality, person centred, trauma-informed service.
9.3 Leaders are committed to and take responsibility for promoting and providing high quality care and support, and continuous quality improvement[31]	• Leaders communicate a shared and ambitious vision for the service. • Leaders and staff foster a culture where feedback and complaints are welcomed and taken seriously. • Leaders are in touch with what happens on a day-to-day basis in the service, including issues raised through complaints and the challenges faced by staff. • The service gathers and analyses sufficient information to ensure leaders can monitor conditions and treatment of service users, are aware of any concerns, and address them. • Leaders monitor and understand the legal and factual basis on which service users are subject to restrictive practices or other deprivation of liberty. • Leaders monitor and follow-up changes to policies and practice to ensure they are implemented. • Senior management has the experience and skills necessary to improve outcomes for service users. • Leaders develop successful working relationships with partners and stakeholders to deliver the service's aims.

[31] See also expectations 2.1, 2.2, 2.4 and 7.2.

	• Best practice models and up-to-date research are used to improve the service and service users' experience. • Quality improvement strategies are used to assess and improve the service and service users' experience. • Strategic and operational plans, including those relating to staffing, resourcing and quality improvement, show how the service realises, maintains and progresses best practice. • There are processes to ensure that staff, service users and supporters and can influence and contribute to quality improvement initiatives. • The organisation has a range of tools, including policies, systems and processes to assess, monitor, manage, mitigate and report incidents and risks. • External scrutiny is welcomed and encouraged by those in leadership positions. • Recommendations made by external bodies, professionals and groups inform changes to practice and service improvement. • Staff have completed training on, and understand, their obligations regarding information collection, sharing and recordkeeping. • Leaders ensure effective, accurate reporting in relation to all safety (including sexual safety and restrictive practices) incidents and provide rigorous management scrutiny and oversight of the same. • Whistleblowing procedures are known, understood and trusted by staff.
9.4 Leaders are committed to, and promote, policies, practices, strategies and behaviours which respect diversity and create an inclusive	• A workforce diversity and inclusion strategic plan has been developed with clear targets, and its implementation is tracked. • Leaders and staff model non-discriminatory attitudes and behaviours. • Fair and non-discriminatory policies and processes are developed and deployed at all levels within the service.

service and organisational culture[32]	
9.5 The service emphasises its commitment to service users' rights, safety and wellbeing when advertising for, recruiting and screening staff and volunteers	• Recruitment, including advertising, referee checks and staff and volunteer pre-screening, emphasise the rights, safety and wellbeing of service users. • Staff and volunteers are conscientiously selected, recognising that the service users' safety and wellbeing depends upon the staff members' integrity, humanity, knowledge, skills, and personal suitability. • Relevant staff and volunteers have current working with vulnerable people checks relevant to the sector they work in and the service users they work with. • Appropriate screening is conducted of staff and volunteers from external providers delivering services or activities to service users. • All staff and volunteers, including agency staff, receive an appropriate induction and are aware of their responsibilities to service users, including record keeping, information sharing and reporting obligations. • New part-time or full-time staff undergo formal supervised probation scaffolded by a variety of supports and supervision by suitably selected experienced and trained managers, supervisors, and peers. Issues identified during probation are addressed with opportunities given for improvement. • Probation is only signed off when new staff meet all requirements for permanency and are deemed suitable for ongoing work with service users.
9.6 Staff are equipped with the resources, knowledge, skills and awareness to protect and promote service users' rights	• There are appropriate levels of staffing and other resources to provide a rights-based, safe, culturally safe, high quality, person-centred and trauma-informed service. • Leaders readily identify resource constraints and take measures to resolve them.

[32] See also topic 6.

	• The service employs and trains staff with sufficiently diverse skills to promote and protect service users' human rights. • Staff understand and share the aims and priorities of the service. • Staff complete regular training to ensure they have the knowledge, skills and attitudes necessary to provide a rights-based, safe, culturally safe, high quality, person-centred and trauma-informed service. • Staff complete regular training to maintain and upgrade their skills (and qualifications where relevant) and can access professional development activities. • Staff complete regular training on safety and wellbeing policies and procedures and evidence-based best practice. • Staff have completed workplace training on 'soft skills' (such as communication and facilitation skills) and workplace-specific skills and knowledge (such as behaviour support, de-escalation, seclusion and restraint, incident reporting and other work health and safety practices and procedures). • Staff have completed training to increase disability awareness, Aboriginal and Torres Strait Islander cultural awareness and safety, child and adolescent development, child and youth safe standards and practices, emergency management, anti-discrimination and other areas relevant to the service user group. • Staff are trained and aware of their responsibilities toward service users who are deprived on their liberty. • The regular performance appraisal process includes updating staff professional development needs and interests. • There is a formal training plan to coordinate the training of staff. Accurate and up-to-date records are kept of all staff training.

9.7 Ongoing supervision and people management is focused on promoting the safety, dignity, rights and wellbeing of service users	• Staff are provided with appropriate supervision and management. • Ongoing staff support, supervision and performance management policy and processes involve safety and quality elements. • Line managers and supervisors support their staff, including challenging or managing where necessary and providing suitable professional development opportunities. • The organisation maintains suitable record keeping systems and protocols for staff and volunteers. • Robust retention strategies are in place. • Leaders prioritise maintaining consistency of staffing and rosters. • Regular performance appraisal is undertaken for all staff. • There are robust codes of conduct, performance management, investigation and standing down policies and procedures to identify, respond to, manage and report on staff underperformance and incidents, including allegations of abuse. These policies and procedures are strictly adhered to, actions are taken (including reporting) and outcomes are recorded. • Timely action is taken when unsuitable staff are identified. • Use of leave and overtime is monitored as part of the regular review of staff morale.

Explanatory note

The quality of leadership, staffing and organisational culture are essential to the prevention of torture and ill treatment in all places of detention, including aged residential care, disability support and related environments. This requires the commitment of leaders (meaning anyone with leadership or management responsibility in the service or wider system) and staff to providing a human rights-based service through adequate resourcing, appropriate recruitment, training and oversight processes, and ongoing monitoring and quality improvement.

Governance and decision-making at all levels should be informed by meaningful consultation and involvement of service users, supporters and their representative organisations (CRPD articles 4(3), 33(3)). The evidence base for effective governance and decision-making processes in this context is an evolving field and it is crucial that services understand best practice and undertake ongoing improvement.

Specific standards and sources

International

- Convention on the Rights of Persons with Disabilities (CRPD) articles 4(3), 33(3).
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- *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987).
- *Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 1 March 1980, 1249 UNTS 13 (entered into force 3 September 1981).
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