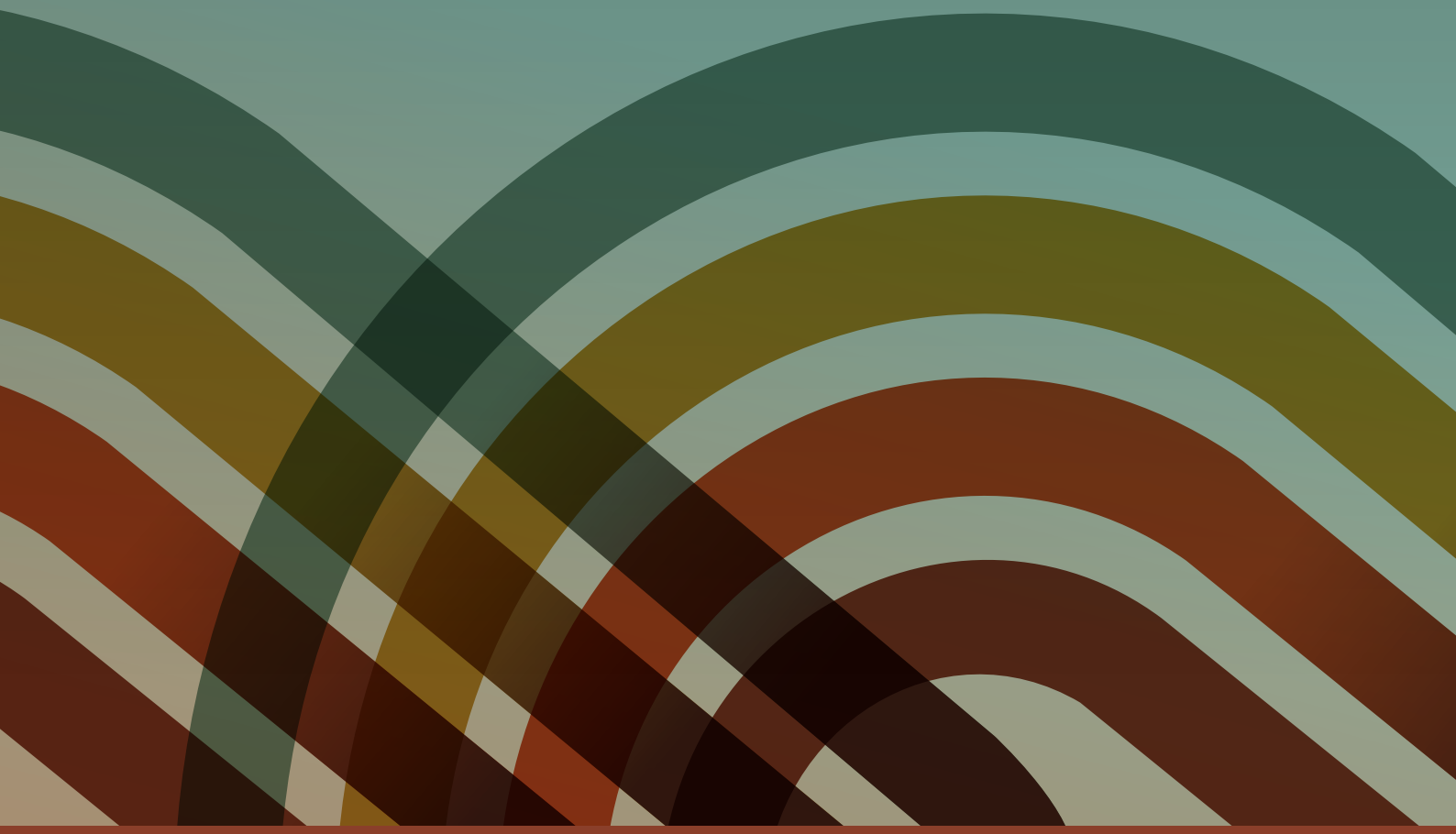
Tasmanian NPM
National Preventive Mechanism



Preventing torture and ill-treatment in Tasmania

Report to the Tasmanian Government on the Implementation of the Tasmanian National Preventive Mechanism under the OPCAT Implementation Act 2021

November 2023

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 Communities, 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 this report

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 and ill-treatment of people deprived of their liberty by embedding best practice human rights. It does this through proactive oversight of settings 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).*

This is the first report of the Tasmanian NPM. It provides foundational information, detailed analysis, and recommendations related to its implementation, working methodologies, and strategy. The report also describes the functions and operations of the Tasmanian NPM for the year ending 30 June 2023.

This report is available in print or electronic viewing format to optimise accessibility and ease of navigation. It can also be made available in alternative formats to meet the needs of people with a disability.

Enquiries about this report and/or requests for it in alternative formats should be directed to:

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Content warning

This report provides information that includes discussion about torture, cruel, inhuman or degrading treatment or punishment. No individual events are discussed in this report, however readers should be aware that some content may cause discomfort or distress.

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Foreword

Richard Connock,
Tasmanian National Preventive Mechanism

I am honoured to release this first report as Tasmanian NPM.

This report presents the results of comprehensive research, analysis, and consultation to develop an NPM implementation model that is most appropriate for Tasmania and satisfies the requirements of OPCAT. It makes eight recommendations to establish an independent Tasmanian NPM framework that complements existing oversight bodies, adopts a multidisciplinary approach to prevention, and engages actively with civil society.

In accordance with section 24 of the *OPCAT Implementation Act 2021* (Tas), this report also constitutes my Annual Report for 2023, which I will provide to the Commonwealth NPM.

On 28 February 2022, I was appointed Tasmanian NPM by the Governor of Tasmania, the Honourable Barbara Baker. The commencement of the Tasmanian NPM marked an important milestone for Tasmania in its journey to becoming compliant with the requirements of the *Optional Protocol to the Convention against Torture* (OPCAT), after the Tasmanian Parliament passed the *OPCAT Implementation Act* 2021 (Tas) in November 2021.

Following my appointment I was asked to provide a budget estimate to set up an office and commence operations. When considering this request I observed that little guidance had been developed to assist states and territories with the establishment of their NPM frameworks. As one of Australia's first NPMs in a nascent network, I also observed that limited opportunity existed to liaise with my counterparts on best practice. Accordingly, I instead sought from the Tasmanian Government funding necessary to thoroughly

scope what was required to implement this new statutory body and its attendant resourcing needs.

Although I am familiar with visiting places of detention, having served as Custodial Inspector for Tasmania since 2017, it is important to recognise that the requirements of an NPM are markedly different. The NPM mandate is considerably broader in scope: it is required to exercise functions and visit deprivation of liberty settings that the Custodial Inspector does not. There are also nuanced differences in its preventive approach, including in how an NPM is expected to conduct preventive monitoring, educate the community, and the expectations that it will maintain when examining whether relevant human rights standards are being met. An informed understanding of these matters and their application to Tasmania was necessary if the Tasmanian NPM was going be properly implemented.

The implementation project set up to conduct this scoping work has had a wide focus. It consulted internationally, nationally, and locally to develop an informed picture of OPCAT, learn from other NPMs, and understand the issues that will need to be addressed to position the Tasmanian NPM to succeed. A key component of this has included the development of new draft expectations materials in close consultation with experts. These materials provide a detailed guide to the matters that the Tasmanian NPM will have regard to when examining settings where people are deprived of their liberty.

Australia's OPCAT ratification journey is occurring during a time of considerable scrutiny of oversight frameworks in Tasmania and nationally. The Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings; the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability; and the Royal Commission into Aged Care Quality and Safety, have laid bare the serious abuses that can occur in settings where people are unable to leave, and oversight is missing or not operating effectively. It is also evident

that systemic cultural change is required within these settings, to instill an approach that welcomes independent oversight, works actively to address identified issues, and engages in good faith to continuously improve.

Implemented effectively, the Tasmanian NPM has the potential to contribute significant value to Tasmania's oversight landscape, exercising its functions across all places where people are deprived of their liberty. This extends beyond regular physical monitoring, to include providing education, advice, and cooperating with administrators and civil society to ensure that human rights are upheld and torture and ill-treatment is being prevented.

The recommended creation of an independent and specialised Tasmanian NPM is an opportunity to establish a coordinated, accessible, and consultative organisation dedicated to upholding human rights in Tasmania. In the absence of a dedicated human rights commission, the Tasmanian NPM can work to fill this gap, providing valuable awareness-raising and advice to increase understanding about the application of Australia's human rights obligations and related best practice.

A key outcome of this project is that the Tasmanian NPM must stand on its own, led by a person that does not concurrently serve as Ombudsman. Vital to the success of the Tasmanian NPM will be ensuring that it is appropriately funded so that it can establish a multidisciplinary office that operates independently to establish trust. I am encouraged by the Tasmanian Government's commitment to OPCAT and properly resourcing the Tasmanian NPM. I note that funding provided in both the 2022-23 and 2023-24 Budgets reflected what I requested.

Finally, I would like to acknowledge my Project Manager, Mark Huber, who has diligently led this project and the preparation of this report. And I would also like to thank my Principal Inspection Officer in the Office of the Custodial Inspector, Sam Christensen, and my Custodial Inspector team for assisting Mr Huber. I also want to recognise the

invaluable contributions of each expert that lent their experience to the project, notably with respect to the organisation design process, and the consultation and draft expectations materials.

I have been heartened by the strong civil society response to this project, and I am encouraged by the support and cooperation that I have received from government as it has progressed. It is clear that in Tasmania and across Australia there is widespread support for the creation of an NPM that can effectively prevent torture and ill-treatment from occurring, and uphold the human rights of all persons deprived of their liberty.

I strongly encourage the Tasmanian Government to accept the report's recommendations in full.

Glossary of terms and abbreviations

CAT
The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Civil society
This includes a wide range of organisations, including non-governmental organisations and associations, professional associations, trade unions, academia, and faith-based groups.

Commission of Inquiry
Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings.

Custodial centre
A prison within the meaning of the *Corrections Act 1997*; and a detention centre.

Deprivation of liberty
Any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority. (OPCAT, Article 4(2))

Ill-treatment
All forms of cruel, inhuman or degrading treatment or punishment.

NPM
National preventive mechanism.

OPCAT
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Paris Principles
Principles relating to the Status of National Institutions

Place of detention (or 'setting')
Any place under [a State Party's] jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence. (OPCAT, Article 4(1))

SPT
Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Torture
Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. (CAT, Article 1)

'the Act'
OPCAT Implementation Act 2021 (Tas).

UN
United Nations

Summary of recommendations

The project at a glance

From September 2022 to September 2023, the Tasmanian NPM Implementation Project team engaged with experts and NPM staff to understand how to design a new NPM, and how different NPM frameworks have operated in practice. To develop a Tasmanian approach, community feedback was obtained to learn about the issues that will need to be addressed if the Tasmanian NPM is to build trust and succeed in preventing torture and ill-treatment.

Eight key recommendations have arisen from this process of discovery, understanding and analysis. They are designed to establish an NPM that is best suited to Tasmania, fully independent, and which will work closely with civil society. To enable implementation, this report also provides a recommended governance framework, three-year implementation strategy, and budget analysis.

In summary, it is recommended:

1. **That the Tasmanian NPM be established as a new specialised institution, separate from the Ombudsman.**
2. **That the person appointed as Tasmanian NPM concurrently serve as Custodial Inspector, which is also to be separated from the Ombudsman, and the offices combined under the recommended governance model.**
3. **That the Tasmanian NPM delegate authority to the Commissioner for Children and Young People and establish a joint process agreement for the exercise of functions pertaining to children and young people.**
4. **That the Commissioner for Children and Young People and the Custodial Inspector be specifically resourced to contribute to the delivery of the Tasmanian NPM.**
5. **That the Tasmanian NPM and Commissioner for Children and Young People be co-located in a purpose designed office setting.**
6. **That the Tasmanian NPM establish a formal and permanent Civil Society Advisory Council, which is integrated into its governance structure.**

7. **That the Tasmanian NPM's corporate services are provided by an agency over which it will not exercise oversight.**
8. **That the Tasmanian NPM and Commissioner for Children and Young People engage cooperatively and provide advice to Government on an agreed approach to the implementation of Commission of Inquiry recommendations related to OPCAT and youth justice inspections.**

Consistent with OPCAT, the Tasmanian NPM will exercise four functions across the community: visiting, advisory, cooperation, and education. This will include examining the treatment of people deprived of their liberty in the following environments:

- adult custodial centres;
- youth detention;
- police and court custody;
- mental health settings; and
- health and social care (including hospitals, residential disability support, aged care, education settings, and out of home care).

The delivery of each function will be facilitated by an office comprised of relevantly-qualified, multidisciplinary, and diverse staff. Across Tasmania, activities involving children and young people will be led jointly with the Commissioner for Children and Young People. The Tasmanian NPM will prioritise collaboration opportunities with relevant independent bodies, people with lived experience, and independent experts.

All visits by the Tasmanian NPM and related activities will be underpinned by publicly available expectations and policies. This report includes four draft expectations documents, each of which was developed with the assistance of leading experts. These documents describe in plain terms how the Tasmanian NPM expects people to be treated to ensure that international human rights standards are met. The Tasmanian NPM will support setting administrators, government, and the community to create organisational cultures and practice that promote best practice human rights.

Introduction

Mark Huber, Project Manager

This report's objective is to provide a blueprint for the implementation of the *Optional Protocol to the Convention against Torture, Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT) in Tasmania. Specifically, the fulfilment of its National Preventive Mechanism (NPM) obligations, which all Australian governments have agreed to individually abide by.

Australia ratified OPCAT on 21 December 2017. While this event may be recent, it is important to highlight that the developmental journey to this point has been a long one. Indeed, many would be unaware that it has taken over half a century to reach this moment. So, before I introduce the project, I would like to provide some relevant historical context.

The prohibition against torture and other cruel, inhuman or degrading treatment or punishment (referred to generally as 'ill-treatment') is not a recent development. It is, in fact, an obligation established under longstanding customary international law—recognition of which can only occur through the widespread and consistent practice of states, which they accept as law. What's more, it exists as one of a handful of 'non-derogable' obligations, which means it applies to all states in all circumstances, and to all people. In other words, the prohibition against torture and ill-treatment is absolute.

The prohibition is recited in many of the core legal instruments to emerge after the Second World War, including the 1948 UN *Universal Declaration on Human Rights* and the 1949 *Geneva Conventions* (establishing international humanitarian law). In 1975, the UN General Assembly went further, agreeing to a specific declaration acknowledging that any act of torture or ill-treatment was an offence to human dignity, and contrary to the 1945 UN Charter and human rights.

International law is a good faith based system with a voluntarist and cooperative character. In the event that a state is noncompliant with a treaty, there are very few established frameworks with power to enforce compliance or provide a remedy. Accordingly, central to the effective functioning of the system is the general principle that states honour the agreements they make. This means that a state cannot rely on its own legal system (such as its constitution or legislation) as a justification for noncompliance with its international obligations. The primacy of international law is paramount.

Even so, and despite the atrocities of the Second World War and repeated recognition that torture and ill-treatment cannot be tolerated, the post-war era continued to be marred by its continued use in noncompliant states. At the time, the burden fell upon compliant states to take action to reverse this trend.

As the momentum grew for states to do more at the international level to address the continued use of torture or ill-treatment and hold noncompliant states accountable, in the 1970's focus began to centre on creating a legally-binding convention that promoted accountability, including by regularly reviewing a state's practices. One policy option advanced at this time was for places within a state where people are deprived of their liberty to be independently examined on a regular basis. The underlying motivation being that if a place was opened to external assessment, violations could be prevented, or at a minimum the likelihood of them occuring significantly reduced.

As negotiations for a binding convention ensued over the next decade, an alternative, and less invasive, option also gained momentum, whereby torture and ill-treatment would be specifically defined, proscribed, and new obligations would be imposed upon State Parties to prevent its occurrence, including criminalisation and prosecution of wrongdoing. This followed a more familiar approach that had been applied in other recent treaties of the time. By 1984, this more familiar approach prevailed and the UN *Convention against Torture* (UNCAT) was finalised. Australia became a signatory to UNCAT in 1985, ratifying it in 1989.

Uniquely, and critical to the success of UNCAT, was the establishment of a new UN monitoring body, the Committee against Torture (CAT). The CAT's role was to periodically review each State Party's compliance with the Convention. In addition to this review function, the CAT was provided with a novel power to commence own-motion inquiries, including visiting a state party, if reliable information was received that contained well-founded indications that torture is being systematically practised in that State Party's territory.

UNCAT requires State Parties to take effective measures to prevent acts of torture in any territory under its jurisdiction. Noting the complementarity of independent monitoring to achieving this obligation, a Working Group was established in the early 1990s, which revisited the unadopted model considered during UNCAT negotiations. Discussions began on a supplementary Optional Protocol to the UNCAT focused on preventive monitoring to complement the UNCAT model of periodic reporting and ad hoc reactive inquiries. These Working Group deliberations would run for yet another decade.

By the early 2000s, two approaches were being debated for the Optional Protocol: the first proposed the creation of an international body that would regularly visit state parties and examine their places of detention (a Subcommittee of the CAT). And the second approach proposed that rather than the visits being carried out by an international body, each state party would establish a national body that would undertake regular preventive visits to all places of detention; a National Preventive Mechanism. This second approach also reflected an observed reality that an international body would be unable to visit countries often, and on each visit would be likely to only visit a fraction of the state's places of detention. This would limit its ability to protect detainees and realise its preventive mandate. By contrast, a nationally-based body would have an established presence and be able to conduct regular visits across a wider range of settings where people are, or may be, deprived of their liberty (referred to generally as 'settings' within this report).

Recognising each approach's complementary character, a compromise was reached under which *both* would be adopted, opening a state's places of detention to national and international visits. Alongside its general oversight function, the international Subcommittee on the Prevention of Torture (SPT) would provide an advisory and assisting role to NPMs, who in turn would exercise four functions within their state: *visiting, advisory, education, and cooperation.*

OPCAT was adopted by the UN General Assembly on 18 December 2002 and came into force on 22 June 2006. It is one of the most unique human rights agreements ever reached, notably because it does not create any new human rights obligations. Rather, it establishes a novel, two-part preventive monitoring framework to help states meet their existing obligations under the UNCAT. Upon ratifying OPCAT in 2017, the Commonwealth government committed the whole of Australia to fulfilling its obligations.

Risks of torture and ill-treatment exist wherever the state chooses to deprive liberty. Australia's implementation of OPCAT provides a valuable opportunity for introspective review; to consider what needs to be done to reduce this risk and raise the standard of care provided to many of our society's most vulnerable to prevent future abuse. It is axiomatic that the longitudinal individual and community impacts of torture and ill-treatment are profound, and capable of spanning generations. Manifold positive impacts can flow from implementing best practice human rights to prevent these events from occurring in the first place. Visits from the SPT and NPM and ongoing cooperation should be viewed as indispensable vehicles for driving continuous improvement to meet, improve upon, and lead the development of international best practice.

Looking outward, OPCAT implementation has a role to play in raising Australia's standing in the international community, as a model state committed to being at the forefront of human rights protection. Notably, of OPCAT's 92 state parties, only three are within our region: Cambodia, Nauru, and New Zealand, while Timor-Leste has been a

signatory since 2005. Australia has an important leadership role to play in encouraging the implementation of measures that promote full respect for human rights and prevent torture and ill-treatment.

OPCAT provides flexibility in the way that states can establish their NPM. In practice, most states have followed one of three implementation models:

- designating a single existing body as the state's NPM (e.g. an ombudsman or human rights organisation);
- designate multiple existing bodies; or
- establishing a new specialised institution to exercise all functions.

At the national level, Australia's decentralised approach loosely follows the second (multiple-NPM) model above. However, reflecting our federation, each state and territory, and the Commonwealth, will independently consider and implement an NPM model that is most appropriate for them. This means that Australia's overall NPM framework is likely to feature elements of every model. Ultimately what is essential is that the model implemented by each government can satisfy all NPM functions effectively and safely.

The objective of this project has been to develop a forward-looking NPM organisational framework that is appropriate for Tasmania, having regard to best practice insights obtained from other state NPMs, experts and stakeholders. It is the first implementation report released by an Australian NPM. Accordingly, this is the first time many NPM operational requirements have been considered in depth within Australia; including understanding the scope of the jurisdiction, evaluating governance and service design options, and the development of key draft operational materials for consultation.

This report ties together the outcomes of each stage in the project to provide a comprehensive picture of what the Tasmanian NPM should look like, how it should operate, and its resourcing requirements. It has followed SPT direction that the NPM framework be identified through an open, transparent and inclusive process involving a

wide range of stakeholders, including civil society. This civil society engagement component has been carried forward into the proposed Tasmanian NPM governance model.

It is important to emphasise at the outset of this report that the day to day operations of an NPM carry risk. If planned improperly, the actions of an NPM may do more harm than good. Notably, visits involve viewing secure settings unescorted, and interacting with people deprived of their liberty in private. If appropriate steps are not taken to safeguard the wellbeing of people who exercise NPM functions and the people with whom the NPM interacts, the likelihood that they may be exposed to physical or mental harm, or reprisal can increase. In addition, in the absence of a well-defined work plan and expectations, indicators of torture or ill-treatment may go unnoticed. These risks compound if staff lack appropriate qualifications and training. These considerations have also guided the design process.

Tasmania's approach to OPCAT implementation has been progressive. Prior to the commencement of this project, the Tasmanian Government engaged with stakeholders between 2020 and 2021 on the development of the *OPCAT Implementation Act 2021*. The project was assisted significantly by already having this legislation in place; providing the scaffolding that sets out in clear terms the Tasmanian NPM's jurisdiction, powers and functions. It has permitted this project to focus exclusively on scoping service delivery, organisational design, and strategic planning.

This implementation project took place over a one-year period, from September 2022 – 2023. It was conducted independently, through resourcing provided by the Tasmanian Government to the Tasmanian NPM, Mr Richard Connock, in the 2022-23 and 2023-24 Budgets. Funding provided in each budget year reflects the amount requested from government. This resourcing enabled my engagement and multiple experts by experience, facilitated orientation visits to a variety of deprivation of liberty settings around Tasmania, and supported relevant training. I also take this opportunity to acknowledge the assistance of the Office of the Ombudsman and Health Complaints

Commissioner, who provided administrative support; and the Department of Justice, who have provided corporate services and assisted with establishing the project website (npm.tas.gov.au).

The project benefited from valuable insights provided by Mr Sam Christensen, Principal Inspection Officer at the Office of the Custodial Inspector. Mr Connock has served as Tasmania's Custodial Inspector since 2017, under the *Custodial Inspector Act 2016*, which pertinently was developed in contemplation of Australia ratifying OPCAT and inspects Tasmania's custodial centres.

The project has consisted of five key milestone components:

1. planning and expert engagement;
2. understanding OPCAT Article 4 and the scope of the Tasmanian NPM's functions;
3. identifying the matters the NPM will take into consideration when exercising these functions;
4. development of draft visit expectations; and
5. organisational design and strategic planning.

To meet the one-year project timeframe an agile project approach was developed, which is outlined at Part 1. Each stage of the project leveraged the expertise of experts with significant relevant experience. These individuals are acknowledged throughout the report; however, I take this opportunity to recognise stakeholders who voluntarily provided their assistance, and who took the time to meet with me and project participants—without their insights it is likely that this project would have produced less robust outcomes:

- Dr Alice Edwards, UN Special Rapporteur on Torture;
- Isabelle Crompton, Office of the Commissioner for Children and Young People Tasmania;
- Melanie van Egdom, Equal Opportunity Tasmania;
- Ben Buckland, Association for the Prevention of Torture;
- Emma Leach and the OPCAT team, Office of the Ombudsman

New Zealand;

- Lauren Rutter, Office of the Chidren's Commissioner New Zealand;
- Sam Gluckstein, United Kingdom NPM;
- Mary Mallett, Interim Disability Commissioner Tasmania;
- Associate Professor Anthony Cidoni, Acting Chief Psychiatrist Tasmania;
- Phil Donnelly and Mark Valtas, Official Visitors Program Tasmania;
- Hannah Philips and Lee-Anne Carter, Tasmanian Aboriginal Legal Service;
- Bree Klerk, Mental Health Council of Tasmania.

I also acknowledge and thank Steven Caruana for distributing each consultation paper to the Australia OPCAT Network, which consists of over 100 members based around the country.

The body of this report is structured into five parts, each of which discusses a key step in the project and provides a summary of results. Many of these parts refer to key documents produced for consultation, which are included as appendices.

This project was advanced through a Tasmanian lens intended to develop a best practice operational model for the state. This has included considering local elements such as the scope of the Tasmanian NPM jurisdiction, identified places of deprivation of liberty and examination requirements, existing oversight bodies and their potential complementarity to the Tasmanian NPM, Tasmania's stakeholder environment, and resource optimisation. Overlaying these considerations is universal feedback from all stakeholders that for the NPM to uphold its integrity it must be independent and conflict-free, comprise a diverse and multidisciplinary staff complement, include ongoing civil society engagement, and be properly resourced to effectively exercise its preventive mandate.

Noting the influence of these factors and other key insights on the

project's outcomes, I caution that the recommendations presented in this report may not be transferrable to other jurisdictions—particularly those with larger populations (and correspondingly more deprivation of liberty settings over which NPM functions are to be exercised). However, effort has been made to explain the process followed to assist other jurisdictions undertaking similar work.

It is also relevant to point up at this introductory stage that the timing of this project coincided with the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings (Commission of Inquiry). I acknowledge the important work it has completed and its significant outcomes. The Commission of Inquiry's Report includes commentary on OPCAT and a recommendation in relation to the composition of Tasmania's NPM framework. I note that some recommendations made in this report are not in direct alignment with the Commission's. However, I consider that the recommendations in this report retain the spirit of the Commission's recommendations, respond to its observations, and are complementary. Care has been taken to provide detailed reasons on why a different approach is recommended.

While effort has been made to prepare this report in plain terms, I am conscious that some language used and concepts discussed are complex. If stakeholders would like assistance with the document or have related questions, they are welcome to contact the Office of the Tasmanian NPM at enquiries@npm.tas.gov.au.

Finally, I thank Mr Connock for his assistance and the substantial trust he placed in me to design this project and deliver this report. Working on this project has been a privilege, and it is inspiring to see Tasmania committed to strengthening human rights and playing a leading role in Australia's OPCAT implementation journey.

Part 1: About the Tasmanian National Preventive Mechanism and the Implementation Project

1.1 Introduction

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

The legislation was developed by the Tasmanian Government (Department of Justice) and was passed by the Tasmanian Parliament in 2021. It is designed to give effect to Tasmania's obligations arising from Australia's ratification of the Optional Protocol to the Convention against Torture (OPCAT). In the main, these obligations (which apply to all Australian governments equally) are to:

1. receive visits by delegations of the United Nations (UN) Subcommittee on Prevention of Torture (SPT); and
2. establish an NPM framework.

This report relates to the second obligation.

The current Tasmanian NPM, Mr Richard Connock, was appointed in February 2022, and serves in this capacity alongside his appointments as Custodial Inspector and Ombudsman.

While the *OPCAT Implementation Act 2021* is not the focus of this report it is relevant to identify at the outset that this legislation is the source of the Tasmanian NPM's jurisdiction, powers and functions. This is because under Australia's dualist legal system international agreements do not have the force of law unless they have been translated into the domestic legal system. Where discussion in this report refers directly to the OPCAT text, it is because that text is incorporated in the OPCAT Implementation Act 2021.

This part of the report provides a background overview of OPCAT, the Tasmanian NPM, and introduces the implementation project. The overview component is intended to assist persons who may not be familiar with OPCAT, and provides additional context behind implementation project planning decisions. The implementation project introduction provides an overview of the project plan, structure and timing.

1.2 OPCAT and the National Preventive Mechanism

OPCAT is an international human rights agreement designed to strengthen state compliance with existing international human rights law. Any state that is a party to the *UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (UNCAT) may become a party to OPCAT.

OPCAT does not create any new human rights obligations. Rather, it is a complementary agreement designed to improve compliance with existing human rights obligations under UNCAT and the wider international human rights framework. Its focus is on protecting the rights of people deprived of their liberty in places of detention by preventing torture and ill-treatment. Recognising that torture and ill-treatment is more likely to occur in places closed to external scrutiny, OPCAT aims to achieve its preventive objective by establishing new mechanisms for proactive, independent oversight.

The two mechanisms established under OPCAT are the SPT and the NPM. Both mechanisms hold visiting mandates, to independently examine places of detention within a state. However, beyond that high level commonality, each entity exercises different but complementary functions.

The SPT is a standing entity established at the international level and mandated to visit places of detention within the jurisdiction and control of any OPCAT state party. Following a visit, the SPT makes recommendations to the state to improve the treatment of persons

deprived of their liberty, including conditions of detention. States party to OPCAT are obligated to receive the SPT and grant it unfettered access to places of detention, provide it with certain information, and agree to engage cooperatively with the SPT during its visits. The SPT also holds an advisory function, to assist with NPM implementation and operations.

The NPM, in contrast to the SPT, is a nationally-based entity; every state party to OPCAT is required to establish an NPM. Because SPT visits may be many years apart, and limited in duration and number of places visited, the NPM plays a critical, complementary role in the prevention of torture and ill-treatment by being a permanent, regular presence within each state.

1.2.1 What is a national preventive mechanism (NPM)?

The NPM is a proactive, independent visiting framework established under OPCAT to exercise four key functions: visiting, advisory, education, and cooperation. The way it exercises these functions is intended to be supportive, engaging in ongoing and constructive dialogue, rather than public denunciation, to improve the treatment of people deprived of their liberty over the long term.

The NPM's primary function is its visiting function; undertaking preventive monitoring of places where people are or may be deprived of their liberty (places of detention). Under this function, the NPM is required to regularly examine the treatment of the persons deprived of their liberty, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment. Importantly, an NPM is not a reactive or complaint investigation body, nor does it engage in individual advocacy.

Article 4 of OPCAT defines places of detention and deprivation of liberty in broad terms. It recognises that torture and ill-treatment can occur in a wide range of settings. The places visited by the SPT and by NPMs go beyond prisons and other traditional custodial environments.

Around the world, state NPMs visit places such as police stations, detention centres (including pre-trial detention centres, military detention, and immigration detention), custody transport vehicles, mental health facilities, education facilities, and health and social care facilities (such as hospitals, aged care, and educational facilities).

During these visits, places are evaluated for compliance with the State's international human rights obligations, other relevant United Nations norms, applicable domestic laws, and relevant best practice. To effectively exercise their mandate, an NPM is required to have unfettered access to places of detention, private access to persons held in those places, access to related things and information, and contact with authorities. Consistent with their preventive focus, an NPM does not investigate complaints.

Following a visit, an NPM exercises its advisory function by making recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and ill-treatment. The relevant authorities are required by OPCAT to enter into dialogue with the NPM to discuss possible measures to implement its recommendations. The NPM does not have the power to enforce implementation, although it may emphasise observed failures in its reporting.

Alongside these recommendations, an NPM also:

- provides feedback on draft legislation and proposed policy;
- reviews relevant rules, methods and practices;
- delivers education programs to relevant authorities, stakeholders and the wider public; and
- cooperates with government and non-government entities to share experiences and improve their effectiveness.

The NPM issues an annual report on its activities, and may publish other reports or information relevant to its functions.

OPCAT requires that the NPM uphold the principle of confidentiality.

This means that a person's personal information obtained by the NPM in the exercise of its functions cannot be published without that person's consent.

Reprisal against a person for providing information to an NPM or the SPT (or because they may provide information in the future) is prohibited. In Tasmania, protection from reprisal has been made a specific offence under section 36 of the *OPCAT Implementation Act 2021*.

1.2.2 What is preventive monitoring?

Under OPCAT, the NPM exercises its functions through a proactive, preventive lens. Article 19 of OPCAT outlines the objective of visits as being to strengthen, if necessary, the protection of persons against torture and other cruel, inhuman or degrading treatment or punishment, and with the aim of improving the treatment and the conditions of the persons deprived of their liberty. In other words, visits are aimed at preventing future occurrences of torture and ill-treatment.

This means that the NPM's aim is not obligated to respond to specific events or allegations, and it does not receive or investigate complaints. The approach of an NPM is forward looking and overarching rather than reactive to individual events, to ensure that issues which could lead to torture or ill-treatment are unlikely to arise in the first place. Operating independently, an NPM's regular proactive monitoring will complement any existing complaint body's reactive oversight. Visits to places of detention are required to be regular, focusing on systemic improvement rather than on particular individuals, and involve ongoing dialogue and cooperation with relevant authorities.

The prevalence of torture and ill-treatment can be influenced by many factors. Addressing all factors on each visit can be difficult to achieve, and resource intensive. Preventive visits accordingly can take a number of forms, and can be announced or unannounced. Follow-up visits are common.

To ensure that visits are appropriately thorough, a common approach is for the criteria against which a person's treatment is assessed to be divided into 'themes'. Each of these themes includes a series of minimum expectations and related indicators that guide how each expectation may be satisfied.

A visit to a place may be comprehensive, in the sense that it will aim to address many or all of these expectation themes at once. These 'omnibus' visits typically take a week or longer. Alternatively, a visit may be more discrete, focusing on one particular theme only. These 'thematic' visits are typically more frequent, typically taking several days or less. On each visit, the NPM may include the involvement of external experts by experience, such as a specialist medical practitioner. Further information about these different visit types is provided below, at Part 5.

The choice of visit type and prioritisation of regularity of visits to certain places, and relevant themes, is determined by an NPM following the principle of proportionality. This principle takes into consideration factors such as strategy, available resources, and analysis of a situation, which can include safety considerations and the identified risk of likelihood of torture and ill-treatment occurring in a setting. NPMs are expected to develop an internal program to ensure that it deploys its resources as effectively and safely as possible.

1.2.3 What does Australia's NPM model look like?

OPCAT does not specify a particular NPM organisational model, enabling a State Party to set up, designate or maintain one or several NPMs. Around the world, States that have established NPMs have generally done so differently. In a similar way, Australia's NPM implementation approach is also distinctive.

The 'Australian NPM' consists of a network of separate NPMs set up individually by each state and territory government, and the Commonwealth government. At the national level, this is what is known as a multiple-NPM model.

This approach was selected by Australian governments due to jurisdictional complexities arising from Australia's federation, because each state and territory, and the Commonwealth, maintains jurisdiction and control over different places where people are deprived of their liberty.

The nature of this approach adds an additional layer of complexity. Because each Australian government will implement Australia's NPM obligations separately, they will each independently decide on an approach for their jurisdiction (i.e. set up, designate or maintain one or several NPMs). Accordingly, the Australian NPM is likely to comprise a multiple-NPM framework that includes one or multiple component NPM's from each Australian government.

This large and diffused Australian NPM will require an overarching governance framework if it is to work together effectively. As such, the Commonwealth Ombudsman has been designated with an additional role of coordinating some Australian NPM activities, such as facilitating information sharing, and preparing an annual report for submission to the Australian Government and SPT.

To date, only some Australian governments have begun to set up their NPM frameworks, including passing relevant legislation and designating or setting up one or more NPMs. It is observed that adequate resourcing to establish Australia's NPM framework has not been forthcoming. Except for Tasmania, all other existing NPMs have raised the fact that they have received insufficient or no resourcing to exercise their NPM functions.

In addition to this issue of resourcing, Part 2 of the report identifies that further work should be completed by Australian governments to clarify how the Australian NPM should exercise its functions in relation to deprivation of liberty environments over which both the Commonwealth and state/territory share jurisdiction and control.

1.3 The Tasmanian NPM Implementation Project

This implementation project's objective is to design an NPM framework that is appropriate for Tasmania, embraces contemporary best practice, and provides a roadmap for its operationalisation.

The project was commenced without a preferred NPM model in mind (i.e. a new specialised institution, a single designated NPM, or multiple NPMs). Its objective being to identify the option best suited to Tasmania, and make related recommendations in relation to governance, strategy and budget. This required understanding the options available, their compatibility, and complementarity to Tasmania.

To meet this objective the project team first sought to develop a comprehensive understanding of OPCAT, the NPM, and its application to Tasmania. To develop contemporaneous insights, the project team consulted with civil society, experts, the SPT, and current and former staff of other state NPMs.

Project planning commenced in mid-September 2022, following recruitment of the Project Manager. Fortuitously, the commencement of project planning coincided with two informative events: a National OPCAT Symposium, organised by the Australian Human Rights Commission; followed by the SPT visiting Australia for the first time and meeting NPMs. The Symposium provided valuable opportunities for conversation about Australia's OPCAT progress and planning. When meeting with the SPT, high level information was provided relevant to understanding the SPT and NPM mandates, and how NPMs should function. Alongside these two events, during the project planning stage, the project team was fortunate to obtain valuable insights from Ben Buckland, from the Association for the Prevention of Torture, and Emma Leach, from the Office of the New Zealand Ombudsman.

Through these events and discussions, as well as further literature review, it became clear that two important and unsettled operational

questions existed that required analysis:

1. what is the scope of the Tasmanian NPM's jurisdiction; and,
2. what should the Tasmanian NPM be taking into consideration when exercising its preventive mandate?

It was assessed that without answers to these questions the project team would lack the insights needed to identify and recommend a suitable NPM operational framework for Tasmania. Developing a shared understanding of these two questions became the foundation of the project's stakeholder consultation strategy. Consultation insights would then inform the identification of deprivation of liberty settings applicable to the Tasmanian NPM, the development of core operational materials; and the organisation (governance, strategy and budget) design process.

The core operational materials developed under the project are the Tasmanian NPM's draft 'expectations'. Expectations documents are commonly published by NPMs to help people understand matters that will be considered when exercising functions in different deprivation of liberty settings, to prevent torture and ill-treatment. The development of draft expectations also provided insights that assisted the organisational design process, such as estimated visit workload, optimal staff capability, and the number of staff required for different visits.

Australia is a relative latecomer to NPM implementation, and there was much that could be learned elsewhere, from other state NPMs and civil society about the different approaches that existed, their perceived positives and negatives, and compatibility with Tasmania. It was also essential that the project team understood the existing oversight environment, in order to identify gaps and potential NPM participation opportunities.

Figure 1 provides a high level overview of the project timeline. To meet the project's 12 month timeframe, an agile project plan was created enabling different components to run in parallel.

The project was divided into three streams: community consultations; expectations development; and organisational design. Each stream contained multiple components and the assistance of experts by experience, which are discussed in the respective parts on the next page.

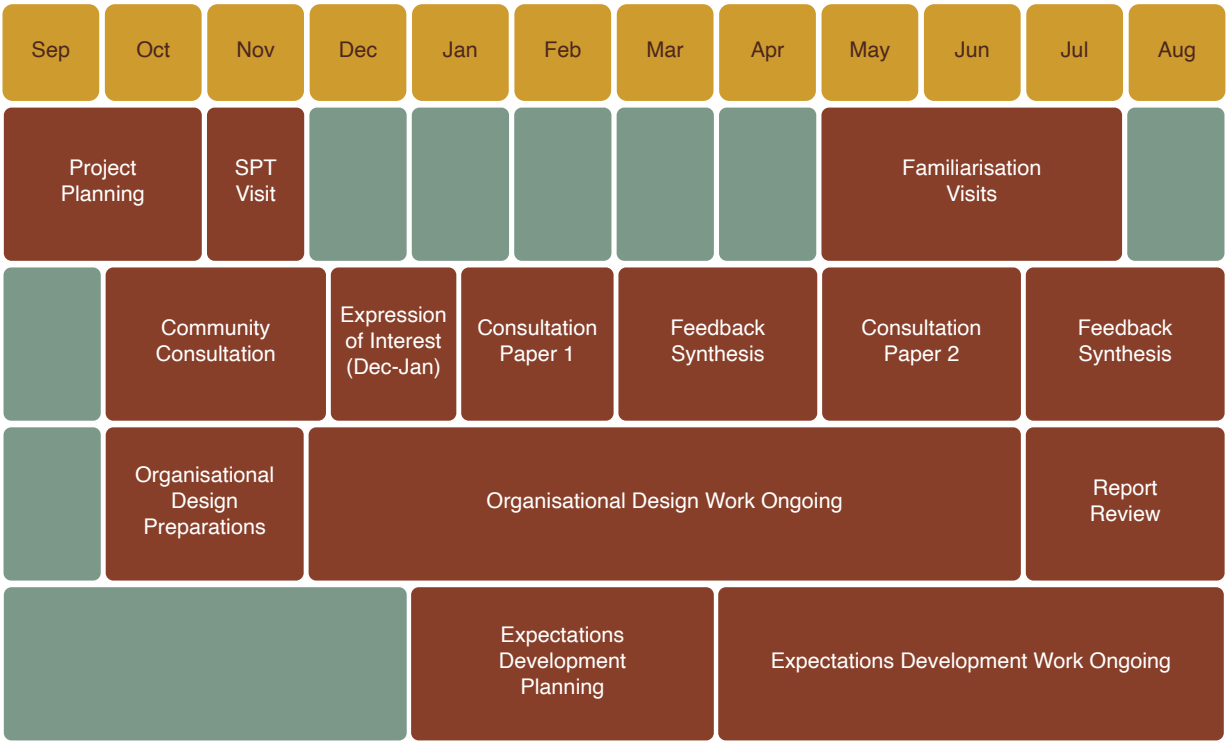

Figure 1: Project timeline overview

1.3.1 Background to the community consultation process

The community consultation process proceeded in three stages: an expression of interest, followed by two rounds of public consultations focusing on the two questions identified above. The expression of interest period was open from 19 December 2022 to 9 January 2023. The purpose of this expression of interest process was to raise awareness of the implementation project and forthcoming consultation opportunities, assist with stakeholder identification, and provide an opportunity for stakeholders to introduce themselves and register interest to receive consultation materials. A copy of the expression of interest paper is provided at **Appendix 1.**

The expression of interest paper was published on the Tasmanian NPM website and distributed widely with stakeholder assistance.

The Tasmanian NPM website (npm.tas.gov.au) was created with the assistance of Web Services, Department of Justice - Tasmanian Government. It is a basic website intended to provide accessible information about the Tasmanian NPM, OPCAT, and the implementation project. The website was designed to be mobile-friendly and meet accessibility standards. **Figure 2** provides a screenshot of the Tasmanian NPM website home page, taken during community consultations for Consultation Paper 2, in June 2023. Further work is currently being undertaken to design a post-implementation website for the Tasmanian NPM, which will retain the exisiting domain address.

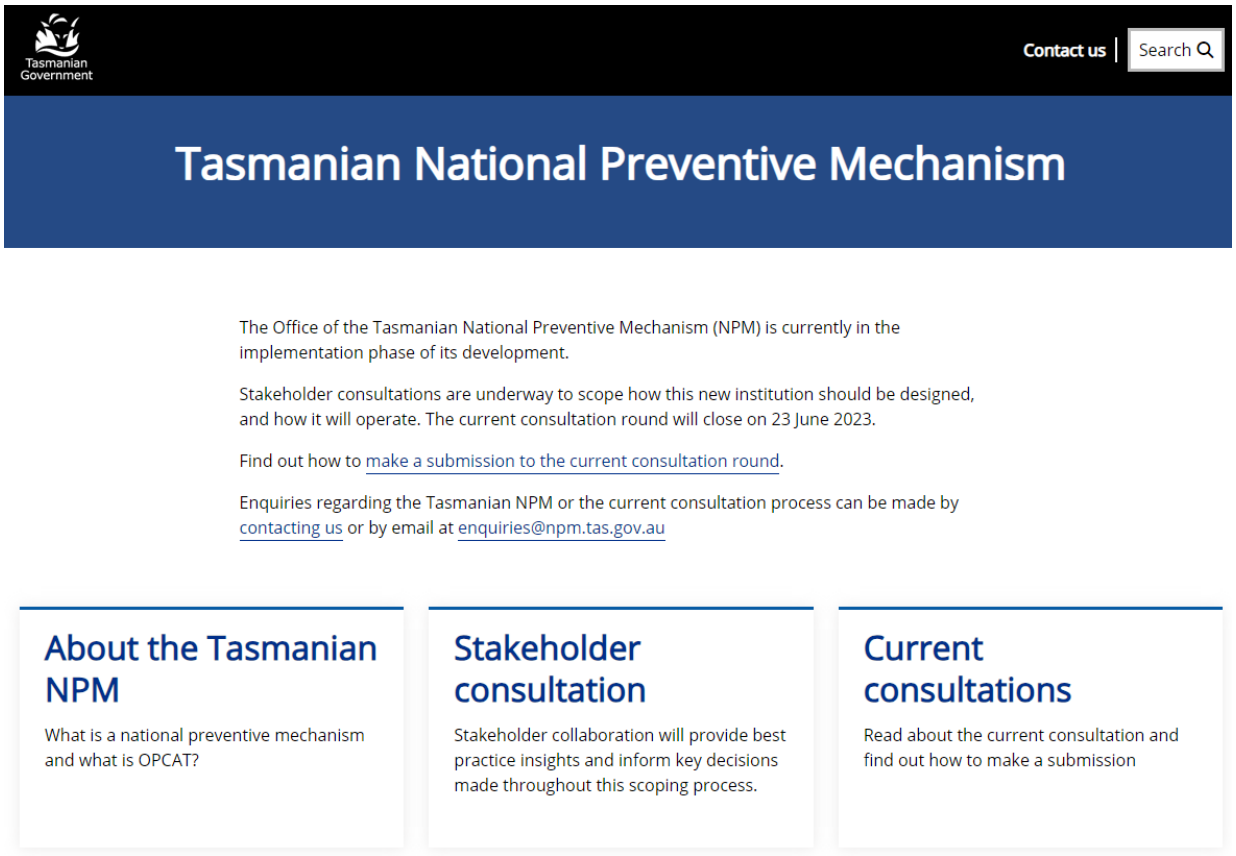

Figure 2: Tasmanian NPM website home page (June 2023)

Stakeholders contacted in relation to the expression of interest included Tasmanian civil society organisations regularly engaged in government policy consultations, members of the Australian NPM, members of the Australia OPCAT Network (facilitated by its coordinator, Mr Steven Caruana), and the Australian Human Rights Commission.

Individuals who responded to the expression of interest were added to the stakeholder contact list and received consultation papers. Each consultation round ran for a four week period, with extensions provided to stakeholders on request and all late submissions accepted. Information about each consultation round is provided below at Part 2 and Part 3, respectively.

Alongside this public expression of interest, Heads of Agency from the Department of Justice, Department of Health, Tasmania Police, and the Department for Education Children and Young People were contacted, and requested to nominate senior contacts for ongoing engagement in relation to the project. These contacts each received copies of the consultation papers. Two written progress updates were also distributed to Members of the Tasmanian Parliament.

The expectations development process commenced following conclusion of the first consultation round. Feedback received during this consultation round provided the insights necessary to identify the settings that the Tasmanian NPM would visit, and how they should be grouped as expectations. Information about the expectations development process is provided at Part 4. It is noted that one expectations document, pertaining to health and social care, remains under development.

Accompanying the consultation process, in June 2023 the Project Manager, and a member of the Office of the Custodial Inspector, completed a familiarisation and fact finding visit to New Zealand. On this visit they accompanied members of the Office of the New Zealand Ombudsman OPCAT team on visits to aged care and custodial settings, met with Office Staff, and received advice and information related to how their OPCAT office operates. The Project Manager also

met with staff from the office of the New Zealand Commissioner for Children, who provided an overview of its NPM jurisdiction, activities and related insights.

The project team expresses gratitude to all stakeholders who provided feedback to the consultation process. Feedback provided was comprehensive, addressing each of the consultation questions in detail. The contributions provided considerable insights for the implementation project team on how the Tasmanian NPM should be designed, and its priorities on commencement. Consistent with information provided in each consultation paper, stakeholders who provided written submissions are acknowledged below, while the feedback summaries are intended to be general in nature.

Part 2: Understanding the Tasmanian NPM's jurisdiction

The first consultation paper released as part of the implementation project focused on developing a shared understanding, with government and stakeholders, of the Tasmanian NPM's visiting jurisdiction. A copy of the consultation paper is provided at **Appendix 2.** Review of this consultation paper is encouraged for further context. This part provides an overview of why this consultation paper was released, and a summary of its results.

2.1 Background to consultation paper 1

OPCAT provides at Article 19 that the chief function of an NPM is to regularly examine treatment of the persons "deprived of their liberty in places of detention" with a view to strengthening, if necessary, their protection against torture and ill-treatment. For the Tasmanian NPM, this function is included in the *OPCAT Implementation Act 2021* (Tas) (the Act), at s 9(1). Consistent with Article 19, sections 4 and 5 of the Act further define these key terms 'deprivation of liberty' and 'place of detention', by reference to the definition found in OPCAT, at Article 4.

Article 4 of OPCAT defines 'places of detention' and 'deprivation of liberty' in broad terms. This reflects that torture and ill-treatment can occur in a wide range of settings, and that the first hours of detention are often a time period where persons are at the greatest risk of this occurring. Notably, these definitions extend beyond what may be regarded as traditional deprivation of liberty settings, such as custodial centres. This is reflected in the Act, which provides for clarity at s 5(3) a non-exhaustive list of places to be visited, as well as a power for additional places to be prescribed for avoidance of doubt.

At the time this project commenced, limited guidance existed, from the SPT or another body on how to approach Article 4 when designing an NPM. In Australia, a 'primary places of detention' approach had

been advanced, which limited the NPM jurisdiction to places a person could be detained for 24 hours or longer. This concept, however, is neither mentioned in OPCAT nor supported by the SPT, and does not feature in either the Tasmanian or Commonwealth legislation. When Australian NPMs met with the SPT, in November 2022, it recommended that a broad view of Article 4 be adopted, which has also been echoed by stakeholders. Identical guidance was provided by the United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Against this background, it was clear that without greater certainty on how OPCAT Article 4 should be interpreted, and applied to the Tasmanian NPM, the implementation project would be unlikely to accurately realise its objectives. It was also considered essential that any understanding be advanced in consultation with government, stakeholders, and the public, who were best placed to identify settings falling within the scope of the NPM jurisdiction and related issues. This feedback would also inform how the NPM is designed and its resourcing needs.

Simultaneously, this consultation process provided an opportunity for stakeholders to assess how the Tasmanian NPM may be relevant to their activities and the populations they represent, and consider potential opportunities to work together to prevent torture and ill-treatment. Accordingly, the consultation paper asked stakeholders to provide feedback in response to the following questions:

1. Are you aware of any places in Tasmania where populations that your organisation represents are or may be deprived of their liberty (other than places listed at section 5(3) of the Act)?
2. What places in Tasmania does your organisation consider the NPM should visit as a matter of priority?
3. What is important for the NPM to consider in order for its functions to be responsive to the populations that your organisation represents? (needs, risks, barriers)
4. What cultural attributes does the office of the NPM require to ensure that the intent of OPCAT is realised?

The substantive component of the consultation paper aimed to provide a concise, plain English analysis of the scope of Article 4, which would be open to feedback. The materials were drafted following expert opinion received from Tasmanian barrister, Regina Weiss, whose professional background relevantly includes substantial experience practicing international human rights and humanitarian law with the International Criminal Court. Relevant insights were also provided by Dr Alice Edwards, UN Special Rapporteur on Torture; Ben Buckland, from the Association for the Prevention of Torture; and Emma Leach, from the Office of the New Zealand Ombudsman.

The substantive discussion provided in particular that OPCAT is designed to include not only the traditional criminal detention facilities such as prisons, detention centres, and police settings, but also civil facilities (e.g. medical treatment), social care places, temporary places, ad hoc settings (such as a home), transportable places, and education settings including childcare and early learning, irrespective of whether they are public or private.

In addition, no time limits or restrictions should be placed on the related definition of 'deprivation of liberty', which covers all circumstances in which a person is or may be held against their will, even if that will was initially surrendered voluntarily or is temporary in nature. Finally, the link between the place deprivation of liberty occurs on the one hand, and the involvement of a public authority on the other hand, does not need to be direct. For instance, if a private place operates subject to government regulations or standards; or, operates with implied approval (such as by receiving a grant, subsidy or similar), that may satisfy the threshold for an NPM to visit.

After this consultation paper was released, the SPT released a 'Draft General Comment No. 1 on places of deprivation of liberty (article 4)'. This document is still under development, but initial impressions are that the SPT's views align with the approach taken in the consultation paper, albeit in considerably more detail. Once this General Comment is finalised, the Tasmanian NPM will have regard to its contents when

considering if a place can be characterised as a place of detention under Article 4.

2.2 Consultation outcomes

Consultation papers were circulated to all individuals and groups that received the Expression of Interest paper, as well as those who responded to that paper, Tasmanian Members of Parliament, and relevant government departments.

Written feedback was received from the Office of the Public Guardian Tasmania, the Tasmanian OPCAT Network, the Tasmanian Council of Social Service, the Mental Health Council of Tasmania, Equal Opportunity Tasmania, the Integrity Commission Tamania, the Commissioner for Children and Young People Tasmania, the Tasmanian Aboriginal Legal Service, the Tasmanian Law Reform Institute, and the Australian Lawyers Alliance.

Government Departments also provided information in relation to settings falling within their respective jurisdiction, and information about services provided by the Commonwealth government.

Overall, stakeholders were clear that the Tasmanian NPM must be independent, adequately resourced, and culturally competent. It must exercise its functions in respect of all deprivation of liberty settings, and potential settings, in Tasmania. Notably, stakeholders universally recommended that once established, the Tasmanian NPM should prioritise delivery of its functions in respect of detention settings identified through recent inquiries or reports. A specific focus should be on children and young people and health and social care. Visits to these places should occur in the manner and with the frequency decided by the NPM itself.

Stakeholders explained that the definitions of torture and ill-treatment were conceptually broad and dependent on specific circumstances. Particularly, conduct that is appropriate for one person, or a class of persons, may amount to ill-treatment for another. This reflected that

different systems practices across settings (e.g. justice, health, and education) can have differing impacts on different groups. This could arise because of a group's different cultural standards and practices, and/or vulnerability to system failures or individual malpractice.

Relevantly, this was emphasised as priority matter affecting Aboriginal Tasmanians deprived of their liberty. It was noted that due to the physical and emotional legacies of the Aboriginal experience of dispossession, dispersal, discrimination and disproportionate incarceration, Aboriginal Tasmanians have the potential for greater vulnerability to a range of situations within detention settings. Feedback explained that for many indigenous people, deprivation of liberty can be a form of double punishment, which is capable of amounting to torture or ill-treatment. Relevantly, it was identified that deprivation of liberty seldom appears within the indigenous justice repertoire. The act of depriving members of indigenous groups or communities of their liberty can have an acute negative effect as it can cause links to be ruptured between individuals, communities and ancestral lands, which can damage a person's cultural and spiritual identity. Additionally, this negative impact may be exacerbated by a person's treatment while deprived of their liberty, such as a person being mistreated or their wellbeing inadequately safeguarded, or where the provision of, or access to, services does not uphold the person's human rights, including being provided healthcare that is not culturally appropriate.

Stakeholders emphasised that for the Tasmanian NPM to fulfil its functions, it must engage regularly with experts by experience and advisors. This included not only individuals with specialised interdisciplinary knowledge, but also persons with lived experience. And, to ensure ongoing genuine dialogue, multiple stakeholders recommended the incorporation of a civil society advisory group in the Tasmanian NPM's governance framework; and the establishment of an ongoing partnership with all Tasmanian Aboriginal Community Controlled Organisations.

Further feedback in relation to each of the consultation questions is summarised below.

2.2.1 Are you aware of any places in Tasmania where populations that your organisation represents are or may be deprived of their liberty (other than places listed at section 5(3) of the Act)?

Echoing the assessment provided in the consultation paper, stakeholders reiterated that OPCAT Article 4 should apply to the Tasmanian NPM without any temporal limitation. It was emphasised that the risk of torture and other ill-treatment is significantly greater during the first hours of deprivation of liberty.

In view of the NPM's broad jurisdiction under OPCAT Article 4, this question was intended to assist the Tasmanian NPM to identify settings it may visit; particularly where the Tasmanian NPM may not have previously been aware of a setting, or the circumstances that may lead to a person being deprived of their liberty within a setting.

Stakeholders identified a broad range of settings in which the liberty of children and young people may be deprived, and emphasised their vulnerability to abuse in these circumstances, particularly if the use of restrictive practices is also involved.

This included:

- out-of-home care;
- designated bail rooms or waiting areas in court houses;
- bail support accommodation (as proposed under the Tasmania's Youth Justice Blueprint 2022);
- education settings;
- community-based accommodation settings; and
- in private residences, such as where a child or young person with disability is receiving support.

With respect to the settings listed under section 5(3) of the Act, stakeholders and familiarisation visits also drew attention to the fact

that children and young people can be deprived of their liberty in settings where adults may also be deprived of their liberty, increasing the potential risk of abuse:

- police or court custody;
- the Hobart and Launceston reception prisons;
- health and social care settings (particularly within hospitals);
- secure mental health settings;
- government and private transport vehicles; and
- adult correctional settings. In particular, children residing at the mother-baby unit in Mary Hutchinson Women's Prison.

These insights directly informed the Tasmanian NPM's initial approach to developing broad draft expectations for children and young people (discussed at Part 4). It is observed that many of the settings identified by stakeholders above are addressed in the report of the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings as places where abuse has occurred, and in which the presence of an NPM is needed.

With respect to adults, stakeholders underscored the importance of the Tasmanian NPM visiting disability residential and aged care settings. This includes both supported living group accommodation settings, and individual support in a person's home. It is not uncommon in these settings that a person's free exit from the premises is prevented if they do not have decision making capacity, and that restrictive practices may be applied.

Many stakeholders provided feedback on the importance that places identified in response to this question be prioritised accordingly during the Tasmanian NPM's first years of implementation. This feedback is addressed on the following page.

2.2.2 What places in Tasmania does your organisation consider the NPM should visit as a matter of priority?

OPCAT provides that NPMs are to undertake 'regular' visits to places where people are, or may be, deprived of their liberty. How this concept of regularity is applied in practice is up to each individual NPM to determine. The SPT has stated that the NPM should be mindful of the principle of proportionality when deciding its work priorities. The regularity of visits among NPMs around the world varies greatly. This reflects that states have different deprivation of liberty landscapes, different NPM frameworks, different visit approaches, and different resourcing. This consultation question was intended to elicit insights that can assist with the planning and prioritisation of visits by the Tasmanian NPM during its initial period of operationalisation.

Stakeholder responses identified a need for the Tasmanian NPM to implement a visit scheduling framework that prioritises visits on the basis of a setting's risk of harm to a person(s) deprived of their liberty. In other words, the NPM should identify and prioritise the most urgent risks of harm, which should remain a priority until appropriate remedial action has been taken.

When evaluating risk, stakeholders recommended that the Tasmanian NPM pay particular attention to the attributes of age, disability, and race. It was noted that individuals within these attribute groups are at higher risk of abusive treatment while detained. An approach recognising this was required. Stakeholders also commented that the Tasmanian NPM should bear in mind the complex interactions between individual vulnerability, institutional risk, and socio-cultural factors that may affect an individual's risk in a particular deprivation of liberty setting.

Stakeholders collectively reiterated that priority be given to examining the treatment of Aboriginal and Torres Strait Islander people deprived of their liberty, and in the delivery of the Tasmanian NPM's wider educative, advisory and cooperative functions. Pertinently, stakeholders submitted that for the Tasmanian NPM to effectively

prevent the torture and ill-treatment of Aboriginal and Torres Strait Islander people deprived of their liberty in Tasmania, it would need to engage in genuine partnership with Aboriginal Community Controlled Organisations to develop an understanding of what they consider to be cruel, inhuman or degrading treatment in different deprivation of liberty settings. This included in:

- custodial settings;
- social care settings, such as out-of-home care, aged care, and disability support including special schools for children with disability;
- non-hospital health care facilities, such as mental health facilities; and
- facilities on the fringe of the justice system, including health facilities (particularly mental health facilities) in prisons and youth justice bail units.

Turning to immediate priorities, stakeholders recommended that the Tasmanian NPM commence the exercise of its functions by visiting settings identified in the reports of the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings, the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, and the Royal Commission into Aged Care Quality and Safety. It is noted, however, that before this recommendation can be actioned further direction will be required from the Tasmanian and Commonwealth governments. Further detail on this point is provided below.

2.2.3 What is important for the NPM to consider in order for its functions to be responsive to the populations that your organisation represents?

The Tasmanian NPM will exercise its functions across the community. In addition to engaging with people deprived of their liberty, NPM activities will involve interacting with the public, civil society, government, and

the private sector. In view of this breadth, targeted strategies will be required to ensure that services are being delivered in a way that supports the NPM's purpose, and which can be measured for impact. This consultation question was designed to help the Tasmanian NPM understand what it needed to consider when developing these strategies, its governance, and in exercising its functions.

Beginning with essential competencies, stakeholders identified that the Tasmanian NPM office must be trained in trauma-informed practice and apply appropriate techniques in the delivery of its functions. It must also adopt and implement a child-centred and child rights-based approach to its various activities related to children and young people. This included having regard to:

- the Australian Human Rights Commission National Principles for Child Safe Organisations, and Tasmanian Child and Youth Safe Standards;
  relevant best practice for a disability informed and inclusive NPM; and
- relevant outcomes from the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings, and the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

Stakeholders explained that developing a trauma-informed care approach to identifying and visiting places of detention and interviewing people deprived of their liberty would involve educating all NPM staff in trauma and trauma-informed practice, as well as supporting staff to apply trauma-informed techniques in their work. Acting on this stakeholder advice, it is noted that as part of the project Tasmanian NPM and Custodial Inspector staff completed general training in trauma-informed practice and organisations, safeguarding children, and customised training on trauma informed engagement with young people in detention through the Australian Childhood Foundation.

In addition, stakeholders reiterated that at its core the NPM's operations must be grounded in respect for human rights. This included ensuring

that all staff understand the human rights instruments that they would be applying when exercising the Tasmanian NPM's functions, and that the office was accessible to all; particularly people with disability and from diverse communities. It was noted that this would likely require the development of personalised and tailored communication approaches, to allow people to fully engage. To encourage widespread engagement with the NPM, stakeholders recommended that priority be given to the delivery of the education function during the initial years of operations. This included providing human rights training, and contributing to intersectional research and policy advocacy.

Finally, stakeholders reiterated the importance of the NPM office being appropriately resourced to fulfil its functions, and be sufficiently independent from all arms of government and entities that may give rise to conflict. This included a recommendation that an independent statutory body be considered, which should be staffed to ensure the expertise and experience necessary for its effective functioning. Stakeholders also emphasised the importance of incorporating ongoing, formal partnerships with civil society organisations.

2.2.4 What cultural attributes does the office of the NPM require to ensure that the intent of OPCAT is realised?

Culture is a key driving force behind the success of any organisation. Identifying and understanding the cultural attributes important for the Tasmanian NPM to function effectively formed an essential element of the implementation scoping and organisational design process. Feedback provided by stakeholders in response to this consultation question contributed to these components of the project, and are reflected in the governance and strategy planning results outlined at Part 5 below.

Stakeholders responded that the NPM needed to maintain a culture that promoted diversity and was representative of the wider public. It was submitted that (as far as possible) this should include employees

that are representative of the demographics being monitored, including individuals with lived experience.

Stakeholders emphasised that ensuring a culturally-appropriate culture is implemented necessitated the active participation of the Tasmanian Aboriginal community, including consideration of targeted recruitment to obtain the required cultural expertise, and to deliver culturally appropriate and trauma-informed support. Stakeholders highlighted that Australia's NPM implementation will be a crucial tool in addressing the mass incarceration of Aboriginal and Torres Strait Islander peoples, and their deaths in custody. Developing a culturally appropriate NPM for Aboriginal and Torres Strait Islander peoples will require creating genuine partnerships that look beyond basic cultural requirements, to develop an organisation that understands their needs, strengths, knowledge, and worldview in all aspects of detention.

With respect to children and young people, stakeholders highlighted that the NPM must have in place child-friendly and culturally sensitive supports for children from culturally and linguistically diverse backgrounds. This should include the development of mechanisms to ensure that a child's views and their cultural identity, and their community connections are respected.

Overall, stakeholders reiterated that for the NPM to be effective, it must have the trust of the community, and people with lived experience of detention. This included real and perceived independence from Government. Stakeholders mentioned questioned the appropriateness of staff of oversight entities being employees of a government department that they were responsible for monitoring. For instance, Custodial Inspector staff are Department of Justice employees, and Commissioner for Children and Young People Staff are employees of the Department for Children, Education and Young People. These agencies also provide related corporate services. It is noted that that financial control affecting the independence is unlikely to satisfy the requirements of the *Principles relating to the Status of National Institutions*, as required under article 18(4) of OPCAT.

2.2.5 Jurisdiction of the Tasmanian NPM over disability support and aged care settings

In addition to the consultation questions, this stage of the project also involved developing an understanding of how Australia's NPM model is intended to function. The *OPCAT Implementation Act 2021*, s 5(2) provides that the Tasmanian NPM's powers and functions extend to places of detention subject to the jurisdiction and control of Tasmania. This reflects that each state and territory, and the Commonwealth, will implement their own NPM framework. However, it leaves unsettled the question of deprivation of liberty environments that involve the cooperation of both the Commonwealth and the Tasmanian Governments. This saliently includes aged care and disability support settings.

Stakeholder feedback was unequivocal that these settings must receive NPM visits as a matter of priority. Resourcing the Australian NPM to exercise its functions in respect of aged care and disability support settings has the potential to prevent further abuse and raise the bar of respect for the human rights of people deprived of their liberty. It is also noted that resourcing the NPM to exercise its functions with respect to disability support settings is a specific recommendation of the recently released Final Report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

Having regard to the regulatory landscape of the aged care and disability support sectors, the relevant stakeholder landscape, and the scope of NPM activities, the NPM operational model recommended is one of shared authority between the Commonwealth NPM, and state and territory counterparts. This will enable the Australian NPM to jointly coordinate and exercise its functions to provide oversight of these settings. It was evaluated that this is likely to be the most efficient model given the large number of aged care and disability support settings over which the Australian NPM will have oversight, their geographic spread, and the stakeholder landscape. An

appropriate funding model to facilitate these activities will also need to be developed.

To provide background context, Australia's aged care and disability support landscape is complex. Within it, settings are subject to a unique regulatory environment that is overseen by the Commonwealth, but all settings are physically located within the jurisdiction of States and territories and operate with their consent or acquiescence, and must comply with respective state and territory law. For instance, disability support and aged care services in Tasmania operate subject to the *Disability Services Act 2011* (Tas) and *Health Service Establishments Act 2006* (Tas); and the use of restrictive practices may also involve provisions of the *Guardianship and Administration Act 1995* (Tas) and *Mental Health Act 2013* (Tas). It is understood that further legislation related to disability inclusion and safeguarding is also imminent. Services provided include a large and diverse range of support options, which are delivered by the public and private sectors, and are subject to different funding arrangements.

This regulatory environment makes it unclear which NPM should have jurisdiction. Accordingly, advice was sought on whether the Tasmanian NPM's jurisdiction extended to aged care and disability support settings. The advice received indicated that these settings are likely to be under the jurisdiction of both the Commonwealth and Tasmania, but the question of whether they are under the 'control' of Tasmania in order to satisfy the requirement section 5(2) noted above was unclear. Unless the aged care or disability support setting was run by the Tasmanian-Government, in which case it was more likely to fall within the Tasmanian NPM's jurisdiction. However, it is considered that given that the Tasmanian Government has power to authorise a person to oversee and enter any place where disability support is provided in Tasmania, it is more likely than not that this element of control is sufficiently made out.

The Tasmanian aged care and disability support landscape is overwhelmingly privately operated. Additionally, the Australian

Government subsidises or directly funds the majority of support services provided across the state. It is understood that the Tasmanian government has limited insight into the operations of these private settings. Although it is also understood that this may change with the appointment of a Disability Commissioner.

Meanwhile, the Tasmanian Government, through the Department of Health, operates a small number of residential aged care settings, based in rural and remote areas across Tasmania. Project team members visited the King Island District Hospital and Health Centre as part of the familiarisation and expectations development process.

In light of this ambiguity, it is unclear if monitoring of private aged care and disability support settings should be under the Tasmanian NPM's jurisdiction, the Commonwealth NPMs jurisdiction, or if in these circumstances jurisdiction should be shared by Tasmanian and Commonwealth NPMs. A situation where the Tasmanian NPM only visited Tasmanian Government-run settings, leaving private settings to a Commonwealth NPM, would also be likely to lead to divergences in oversight, and may cause public confusion. Greater clarity is required on how Australian governments intend the Australian NPM to function, if for no other reason than the NPM resourcing requirements are likely to be significant, irrespective of whichever NPM approach is selected.

Turning to the implementation options available, it was evaluated that the Tasmanian NPM sharing jurisdiction with the Commonwealth NPM was a model likely to have the greatest impact. It is also assessed as being potentially less costly than the alternative options of the Tasmanian NPM or a Commonwealth NPM exercising exclusive jurisdiction. Factors considered included the aged care and disability support environment in Tasmania, the nature of Australia's NPM framework, the exercise of NPM functions, and the community and stakeholder landscape.

As a starting point, it is noted that there are likely to be hundreds of private aged care and disability support settings around

Tasmania that may fall within the jurisdiction of an NPM, and that it is a constantly changing environment. The exact number of Tasmanian settings within which people are deprived of their liberty is unknown. Identification of settings will be a complex process, involving receiving information from regulatory authorities, service providers, the community, and then physical visits to determine if a setting is one in which a person is, or may be, deprived of their liberty. For instance, a residential aged care setting in which all residents have capacity, restrictive practices are not applied, and all residents can freely leave may not require NPM visits, or less frequent visits. Tasmania has one of the highest proportions of high care need ratings for activities of daily living in the country, however, so it is unclear if many residential aged care settings will fit this profile.

In addition to shared accommodation environments, people receiving support (such as under a Home Care Package or though the National Disability Insurance Agency) within their own home can also be deprived of their liberty. The reports of the Royal Commission into Aged Care Quality and Safety, and the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, were unequivocal that abuse occurs in these environments.

The application of the NPM mandate to people's private dwellings raises complex questions, including whether an NPM can and should visit these settings, and if so, what these visits should look like and how the NPM should shape its expectations. Moreover, even if an NPM can undertake visits to private dwellings, it may be inappropriate for an NPM to exercise its power to enter a dwelling without obtaining consent to do so, particularly in circumstances where the relevant person identified as, or potentially, deprived of their liberty has capacity to give consent and has denied the NPM entry. Extensive consultation will be required before an appropriate approach is settled.

Unless significant resourcing is provided to a national NPM, this complex landscape favours an NPM with a permanent physical presence in Tasmania exercising the visiting function. Tasmania has the largest percentage of people living outside its capital city of any Australian jurisdiction, and this is reflected in the dispersed locations of many aged care and disability support settings. When compared to a national body without a physical presence in the state, the Tasmanian NPM is likely to be better positioned to undertake a variety of regular visits, including drop in, thematic, and follow up visits, and to promote ongoing cooperative engagement with administrators of these settings. It may also reduce travel expenditure, notably air travel.

By maintaining a continuous presence, the Tasmanian NPM is favourably positioned to seek insights from local stakeholders and the community, whose family, loved ones and friends may be receiving care. For many stakeholders, having a single NPM contact point, rather than multiple, can also reduce the likelihood of fatigue and confusion. Being near settings can also improve NPM staff productivity, as it improves their proximity to physical primary information sources (e.g. written records, physical structures, and in-person interviews), enables the in-person delivery of educative services (rather than relying on virtual presentations), and enables in-person meetings with local administrators and the state government. Combing this visit jurisdiction with other Tasmanian NPM visit jurisdictions, such as to custodial settings, and health care settings, may also lead to the identification of cross-cutting insights and issues. The office could also leverage its multidisciplinary staff to coordinate its strategic advice and cooperative response.

In addition to the exercise of NPM functions in Tasmania, with respect to aged care and disability support there is also a need for NPM functions to be exercised at the Commonwealth level. Notably, the advisory, education and cooperation functions, as well as general information gathering. This arises in view of the sectors' Commonwealth regulated nature, with relevant government

authorities based in Canberra. It is also observed that a number of key national stakeholders are located outside Tasmania, such as the Australian Human Rights Commission, and the head offices of the National Disability Insurance Agency and the Aged Care Quality and Safety Commission.

The recommended approach is for the Commonwealth NPM to be resourced to exercise these functions outside Tasmania. It is observed that the Commonwealth NPM is well placed to exercise NPM functions with Commonwealth authorities and stakeholders. In particular, the Commonwealth NPM will maintain a physical presence in Canberra, is more familiar with the machinations of national government, and maintains an existing rapport with national stakeholders. This approach would also be likely to reduce the Tasmanian NPM's travel resourcing requirements.

For avoidance of doubt, this recommended model would not preclude the Commonwealth NPM from joining the Tasmanian NPM. Joint activities should be encouraged from time to time, particularly to enable familiarisation with different settings, promote knowledge transfer between NPMs, and facilitate the continuous improvement of practices.

If this recommended model is accepted, it is further recommended that consideration be given by other Australian governments to its adoption in nationwide. This would enable the Commonwealth NPM to exercise jurisdiction at the national level on behalf of all state and territory NPMs. Relevantly, it would create a convenient single contact point at the national level for administrators and stakeholders, thereby avoiding the likelihood of work duplication and fatigue that would arise from having to interact with numerous state and territory counterparts.

The Commonwealth NPM would also have responsibility for coordinating state and territory NPM activities, facilitating information sharing, and promoting best practice across the Australian NPM network. It is considered that these roles align with the Commonwealth Ombudsman's current work as NPM Coordinator.

As mentioned above, an alternative option to this proposed shared jurisdictional model is that the Commonwealth designate a new NPM with exclusive jurisdiction to visit aged care and disability support settings, such as the Aged Care Quality and Safety Commission. In view of the large number of aged care and disability support settings across Australia, it was also assessed that for a national NPM to effectively exercise NPM functions across all states and territories, multiple new offices would need to be established, duplicating the presence of some existing state and territory NPMs (or existing bodies capable of exercising these functions). Where an office was not established within a particular jurisdiction, travel-related expenditure to that jurisdiction was assessed as likely to be substantial. It is additionally presumed that a federal body would be unlikely to establish a permanent Tasmanian presence, leading to less frequent visits, particularly to settings in rural and remote locations.

By way of example, the Office of the New Zealand Ombudsman, which exercises a similar jurisdiction over correctional facilities and residential aged care settings with high level dementia care throughout New Zealand, advised the project team that it maintains a dedicated OPCAT visiting staff complement of over 30 multidisciplinary inspectors based out of Wellington, with a smaller new office in Auckland. These staff are further supported by a large office-based staff complement of legal, policy, report writing, and administration experts. For these visiting staff to effectively fulfil the NPM functions, its annual travel budget alone, not including staff wages, and other related and administrative expenses, exceeded two million New Zealand Dollars. Having regard to the larger geographic size of Australia, its larger aged care landscape, and the addition of disability support settings and their significant landscape, it is reasonable to conclude that resourcing requirements for a national aged care and disability support NPM would far exceed those of New Zealand.

Until further clarity is provided by the Tasmanian and Commonwealth government, it is suggested that the Tasmanian NPM commence exercising its visiting function at aged care and disability support

settings that are Tasmanian Government operated, or receive funding from the Tasmanian Government. The governance model and staffing complement proposed at Part 5 of the report reflects this recommendation. Additional resourcing will be required if all private aged care and disability support settings in Tasmania are to also be visited by the Tasmanian NPM.

For the Tasmanian NPM to facilitate the effective functioning of this operational model consideration should be given to Child Safety Service, education, aged care, and disability support being specifically prescribed as places of detention under section 5(3)(f) of the *OPCAT Implementation Act 2021.* This will provide certainty to administrators of places where people may be deprived of their liberty that the Tasmanian NPM has the power to conduct visits. And it will help to clarify to stakeholders and the public that the settings listed are subject to the Tasmanian NPM's human rights oversight.

Part 3: Matters that the Tasmanian NPM will take into consideration

The second consultation paper focused on developing a shared understanding with stakeholders, government, and the wider public of what matters the Tasmanian NPM takes into consideration when exercising its functions, and the identification of related issues. Similar to the first consultation paper, this paper centred on understanding the scope of key provisions in OPCAT. A copy of the consultation paper is provided at **Appendix 4.** Review of this consultation paper is encouraged for further context. This part provides an overview of why this consultation paper was released, and a summary of its results.

3.1 Background to consultation paper 2

This paper builds on the first consultation paper by turning to identify the matters that the NPM should take into consideration when exercising its functions—especially when conducting visits. It is important to note Australia's human rights obligations at the international level apply uniformly; states and territories cannot select which human rights apply, or opt-out. This also means that a human rights breach by one state or territory is a breach by Australia as a whole.

OPCAT affords an NPM wide discretion in the matters it may consider when exercising its functions. Article 19, which establishes the NPM, provides in general terms that an NPM is to consider "any relevant norms" of the UN in the exercise of its functions. In addition, the Preamble to OPCAT refers to the common responsibility shared by all states to uphold 'full respect for human rights'. Read together, OPCAT provides that when an NPM is exercising its functions it assesses the state's compliance with any relevant human rights obligations, and whether any relevant UN norms have been applied in meeting these obligations.

OPCAT does not specify the human rights obligations and norms that apply. As a continuously evolving field, they are subject to change

over time. This consultation paper accordingly focused on taking a present day snapshot; to identify Australia's human rights obligations associated with the prohibition of torture and ill-treatment and related norms. The identification of norms focused on providing an overview of the non-binding sources of human rights law that it was considered Australia should be following, as a matter of good practice and as a model state in the international community.

The paper is structured in two parts: it begins with an overview of the sources of Australia's international obligations, binding and non-binding. It then proceeds to identify the key obligations arising for Australia from the Convention against Torture. Consistent with the first consultation paper, this paper was informed by expert opinion provided by Tasmanian barrister, Regina Weiss. On this occasion, Tasmanian lawyer, Julia Flint also provided research assistance.

In summary, the consultation paper identified that Australia's overarching international obligations relating to the prohibition of torture and ill-treatment include:

a. prevention;

b. education on prevention and prohibition; and

c. ongoing review of the steps it has taken in relation to these obligations.

In relation to Australia's obligations under the CAT and OPCAT, it is a party to 12 significant international human rights agreements, each of which identifies specific conduct that can amount to torture and ill-treatment. The paper also found that these agreements are complimented by 18 further sources of 'soft-law' developed by the international community that, although not binding, are a normative reflection of the minimum standards of conduct expected and which the Australian NPM should consider when exercising its functions.

The consultation paper also presented an opportunity for civil society organisations to consider the analysis and provide feedback on the human rights obligations applicable to their populations, identify key issues, and provide insights on best practice to prevent torture and ill-treatment in different settings where a person may be deprived of their liberty. The following consultation questions were included:

4. What does your organisation see as the core issues affecting populations that you represent in places of detention, that the Tasmanian NPM should consider as a matter of priority?
5. What does your organisation see as the main barrier(s) to preventing torture and ill-treatment in places of detention, and to people in these places engaging with the Tasmanian NPM?
6. Are there any international obligations or other materials missing from this consultation paper that your organisation considers the Tasmanian NPM should have regard to when exercising its functions?
7. Are there any examples of best practice in preventing torture and ill-treatment that you consider the Tasmanian NPM should have regard to during the development of its operating policies and procedures?

The consultation outcomes, summarised below, informed the development of the draft expectations included in this report (discussed at Part 4).

3.2 Consultation outcomes

The consultation paper was circulated to everybody that received the first consultation paper or provided a response, as well as Tasmanian Members of Parliament and relevant government departments. Noting that the analysis in this paper included identification of Australia's human rights obligations, feedback was also requested from the Commonwealth Attorney-General.

Feedback was received from stakeholders including the Commissioner for Children and Young People Tasmania, the Office of the Public Guardian Tasmania, Dr Anita Mackay, Simon Katterl, Flick Grey, Kate Swaffer, Penelope Weller, Tash Smyth, Linda Steele, the Tasmanian Aboriginal Legal Service, the Tasmanian OPCAT Network, the Tasmanian Council of Social Service, Meg Webb MLC, and the Commonwealth Attorney-General's Department.

Feedback provided by stakeholders on the consultation paper's analysis confirmed that it was generally accurate, encompassing Australia's relevant human rights obligations and related soft law. Feedback correctly identified that examples of conduct provided in the paper as capable of amounting to ill-treatment could also, depending on the circumstances, be capable of amounting to torture. With respect to Australian law, feedback identified that extensions of criminal responsibility exist in Australian law, at Part 2.4 of the *Criminal Code Act 1995* (Cth), for an offence of torture to include attempts to commit torture, complicity or participation in acts of torture. Despite its existence, it is understood that there has never been a prosecution under Division 274 (Torture) of the *Criminal Code Act 1995* (Cth).

Technical feedback was also provided that international declarations are a non-binding source of law (as opposed to treaties, for example, which are binding), specifically noting that the consultation paper had inaccurately referred to the Universal Declaration of Human Rights as binding. This feedback is acknowledged, but seen as academic in the context of this particular instrument given its importance.

The significance of the Universal Declaration of Human Rights should not be understated. It is the foundation of modern international human rights law, and as such holds a unique place as a primary source of rights and law. Nearly all subsequent human rights agreements include a preambular reference to the Universal Declaration of Human Rights, and it has been used as a model for many state constitutions, laws and policies. As the field of human rights has evolved, many of the Universal Declaration of Human Rights' component parts have been codified in binding agreements.

The Universal Declaration of Human Rights was not created with the intention of being a binding agreement. However, the momentum of contemporary discourse is clearly moving in the direction of recognising that the Universal Declaration has now acquired customary international law status, which would make it binding. Accordingly, it would be improper, and contrary to the spirit of OPCAT, for an Australian NPM to consider the Universal Declaration of Human Rights as less than reflective of the minimum standard that Australia should aim to uphold as a model state in the international community.

Turning to general feedback provided in relation to the consultation questions, many stakeholders took the opportunity to reiterate the importance of feedback provided in response to the first consultation paper. Notably, that the Tasmanian NPM will be unable to effectively exercise its mandate unless it is properly resourced, independent, and develops an appropriate mechanism to engage proactively with civil society. Stakeholders also noted that because Tasmania does not possess a Human Rights Act or a Human Rights Commission, the Tasmanian NPM is likely to play a key role in filling this gap, principally through the exercise of its educative and cooperative functions to promote human rights.

Stakeholders emphasised that the Tasmanian NPM should initially plan and prioritise activities under these functions, to promote awareness raising of human rights and begin to instil cultural change. This included within the community, government, and across the

deprivation of liberty settings to be visited. However, caution was voiced that these activities would only be successful if the Tasmanian NPM could build trust, underscoring the importance that activities were culturally safe, diversity inclusive, and developed in collaboration with people with lived experience.

Stakeholders also recommended that the Tasmanian NPM explore opportunities to engage collaboratively with existing expert bodies in the delivery of its functions, in addition to the use of consultant experts by experience. Specifically, stakeholders recommended that the Tasmanian NPM explore opportunities to work with the Commissioner for Children and Young People in the exercise of its functions.

Further feedback provided in relation to each of the consultation questions is summarised below.

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

Across all settings, stakeholders commented on the urgent need for improvements in cultural awareness, and understandings around attendant vulnerabilities, particularly in relation to Aboriginal and Torres Strait Islander cultures. Stakeholders observed that in many settings cultural awareness, particularly as reflected in operational policies and procedures, was inadequate. Restating feedback provided in relation to the first consultation paper, stakeholders also noted that treatment suitable for one culture could amount to ill-treatment for another.

Stakeholders outlined Aboriginal Tasmanians have the potential for greater vulnerability to a range of situations within settings of detention, and risk factors can exist in intersection with other vulnerabilities. For instance, it was noted that Aboriginal and Torres Strait Islander LGBTQIA+ peoples face especially high risk of verbal and physical abuse in detention. Aboriginal and Torres Strait Islander

children and young people can also experience higher anxiety about custody than non-Aboriginal children and young people, leaving them more vulnerable to behaviour that induces fear. Information was also provided that about a third of Tasmanian Aboriginal people had reported high to very high psychological distress, which can be a key risk factor for deprivation of liberty.

To effectively reduce the risk of ill-treatment stakeholders emphasised that the Tasmanian NPM must prioritise initiatives that promote cultural change. Stakeholders requested that the Tasmanian NPM prioritise the development of a culturally inclusive understanding of torture and ill-treatment, and requested that this occur in consultation with all relevant communities.

Turning to specific settings, stakeholders requested that the Tasmanian NPM prioritise assessing the use of restrictive practices under mental health orders in mental health, aged care, and disability support settings. In particular, the use of seclusion and restraint, including physical, mechanical, and chemical restraint. It was noted that there have been high observed incidences of prolonged use of restrictive practices in mental health settings, submitting that this is likely to be inconsistent with articles 12, 17 and 25 of the Convention on the Rights of Persons with Disabilities. The Royal Commission into Aged Care Quality and Safety highlighted that in many settings aged care residents' basic human rights are being denied.

Stakeholders requested that the NPM pay particular attention to the use of substitute decision-making, particularly in circumstances where supported decision making was an available option. It was noted that the use of coercive admission into residential aged care, as well as compulsory mental health treatment, and restrictive practices, were incompatible with a supported decision-making approach. Stakeholders also submitted that prolonged use of detention within closed environments (such as where a person is denied a leave of absence) did not meet the minimum restriction on rights promised under the *Mental Health Act,* and that there needed

to be a prioritisation of community-based or in-home support options. However, it was also noted that where supported residential services were provided, segregation, institutional control, exploitation and abuse had been reported to occur.

Stakeholders considered that there was a lack of accountability across settings because information about conduct capable of amounting to torture or ill-treatment went unreported. This was attributed in particular to substandard complaints mechanisms, which could give rise to reprisals. Noting that the Tasmanian NPM is not a complaint-assessment body, stakeholders requested that the Tasmanian NPM prioritise the review of settings' complaints mechanisms. Where issues were identified, it was important that the Tasmanian NPM engaged cooperatively with administrators to remove barriers that may be preventing complaints from being made, or from appropriate action being taken in response to a complaint. In addition, stakeholders noted the importance that individuals also have the option to provide information to the NPM confidentially and to make complaints to appropriate external bodies. Both processes rely on protection from reprisal being upheld.

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

Stakeholder feedback in response to this question raised a broad range of considerations. At a high level, the feedback underscored the importance of comprehensive implementation planning. Feedback also noted that ongoing stakeholder collaboration was essential to overcoming engagement barriers.

With respect to administrative barriers, stakeholders reiterated the importance of the Tasmanian NPM being independent, properly resourced, and comprised of a diverse multidisciplinary staff complement. Stakeholders also raised concern that the Tasmanian

NPM had been added to an already over-crowded mandate held by the Ombudsman, which imposed a barrier by limiting the time able to be dedicated to NPM activities.

Turning to substantive barriers, stakeholders observed that limited public understanding of human rights and trust in the NPM were matters that the Tasmanian NPM will need to address if it is to achieve its mandate. Stakeholders also noted that the continued overrepresentation of Aboriginal and Torres Strait Islander peoples remained a persistent barrier to preventing torture and ill-treatment in places of detention.

With respect to public understanding, stakeholders anecdotally observed that the Tasmanian community generally lacked a foundational understanding of their human rights, particularly those provided under core agreements such as the Universal Declaration of Human Rights. This created a barrier because it may be more difficult for people to identify conditions of treatment that potentially fall below the Tasmanian NPM's expectations. Stakeholders also submitted that until this foundational understanding improved, it would be difficult for the Tasmanian NPM to fulfil its mandate and instil cultural change.

Stakeholders noted that unlike some other jurisdictions, Tasmania does not possess broad human rights legislation (e.g. a *Human Rights Act* or charter) or a generalist human rights body, which traditionally contribute to improving public awareness and policy advice. In the absence of these frameworks, the Tasmanian NPM is likely to be regarded (alongside Equal Opportunity Tasmania) as the state's de facto human rights body, placing increased importance (and civil society expectation) on how it exercises its education and advisory functions.

With respect to trust, stakeholders suggested that for the NPM to be effective in identifying and responding to ill-treatment, it must have the trust of people with deprivation of liberty lived experience, as well as their surrounding communities. In particular, is necessary that Tasmanian Aboriginal people and their communities have confidence that they can approach, inform and interact with the Tasmanian NPM.

Stakeholders noted that as a new and largely unknown body in Tasmania (and Australia), the NPM would be commencing operations with a need to build trust. Against the backdrop of recent enquiry findings and policy failures within government, stakeholders suggested that building this trust might be a challenge. To do so, stakeholders recommended the Tasmanian NPM develop clear and transparent information processes, and engage in partnership with civil society. It was noted that before people will volunteer information, they need to trust that this information will be used to improve conditions of treatment, that their confidentiality will be upheld, and that they will be protected from reprisal. In addition, when engaging with the community, the Tasmanian NPM's staff and activities will need to be culturally competent, trauma-informed, and actively engage people with lived experience. Stakeholders reiterated that consulting with and actively involving persons with disabilities was required under articles 4 and 33 of the Convention on the Rights of Persons with Disabilities.

Stakeholders emphasised that any awareness raising on human rights also needed to include information about Aboriginal and Torres Strait Islander peoples, particularly with respect to Tasmanian Aboriginal history and culture, with a view to achieving lasting cultural change that eliminated racism in all its forms. It was noted that the Royal Commission into Aboriginal Deaths in Custody had found racism underpinned a large proportion of the physical and mental ill-treatment experienced by Aboriginal and Torres Strait Islander peoples. And that following this Royal Commission, serious concern continued to be raised by independent bodies, including the Australian Human Rights Commission, the United Nations Committee on the Elimination of Racial Discrimination, United Nations High Commissioner for Human Rights.

More recent inquiries have also raised concerns. For instance, the Report of the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings referred to evidence indicating that racism towards them was a driver of Aboriginal

and Torres Strait Islander young people overrepresentation in out of home care (Chapter 9.5, Volume 4).

Stakeholders also identified that the disproportionate representation of Aboriginal and Torres Strait Islander peoples in custodial settings remained a significant barrier to preventing torture and ill-treatment. Australian Bureau of Statistics data indicates that in Tasmania, from 2018 to June 2023, the imprisonment rate of adult Aboriginal and Torres Strait Islander peoples increased by 26.9%, from 645.2 to 818.9 per 100,000; with the average daily number increasing from 116 adults to 163 adults (source: Australian Bureau of Statistics 'Aboriginal and Torres Strait Islander persons in full-time custody, by sex' [data set]).

In addition, data from the Australian Institute of Health and Welfare for the same period indicates that Aboriginal and Torres Strait Islander young people regularly made up one third to almost half of Tasmania's youth detention population, noting that numbers changed frequently due to many young people being held on remand for short periods of time (source: Australian Institute of Health and Welfare (December 2022) 'Indigenous young people (all ages) in detention on an average night by sex, states and territories, June quarter 2018 to June quarter 2022').

Stakeholders recognised that action to address barriers extended beyond the mandate of the Tasmanian NPM, but said that an opportunity existed for the Tasmanian NPM to play a key role. It was noted that addressing the disproportionate Tasmanian Aboriginal experience of detention in particular would require extensive planning and consultation, including consideration of wider societal factors such as racial and historical discrimination, and community awareness of Aboriginal culture, history, and past issues of settlement and government. Accordingly, it was recommended that the Tasmanian NPM engage collaboratively with the community, stakeholders, and other independent bodies engaged in complementary activities. This includes the Commissioner for Children and Young People, the Anti-Discrimination Commissioner, and the Australian Human Rights

Commission – noting in particular its ongoing work under the National Anti-Racism Framework.

In health and social care settings, stakeholders observed that some barriers were supported by law. This included, for instance, the regulation of restrictive practices, as well as structural factors such as institutionalised care for people with disability. They also observed that embedded cultures in many institutionalised settings preference arms-length decision-making about what is in the best interests of a person. They said this created an environment where people's agency and humanity can be more easily denied. Stakeholders noted that article 19 of the Convention on the Rights of Persons with Disabilities provided for the equal right of all persons with disabilities to full inclusion and participation in the community, and placed obligations on governments to engage in deinstitutionalisation.

It was noted that the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability expressed the view that segregating people with disability for work, study, living and recreation should be systematically phased out entirely within Australia. It found that the elements of institutionalisation of people with disability were present in many settings across Australia, which it considered were failing to uphold their fundamental human rights.

Finally, stakeholders also cautioned that regulatory capture could arise as a barrier for the NPM, if it prioritised developing constructive working relationships with the administrators of places of detention, such as under its cooperative function. It was emphasised that the Tasmanian NPM would need to effectively counterbalance this through ongoing engagement with civil society and lived experience communities.

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

Stakeholder responses to this question were generally brief and observed that the consultation paper was accurate in its reference to international instruments. In addition to the instruments listed in the consultation paper, stakeholders raised two further instruments that the Tasmanian NPM should have regard to:

- the 2005 *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (the Van Boven Principles)*;* and
- the 1985 *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.*

An overview of each instrument is provided below.

The Van Boven Principles were adopted by the United Nations General Assembly on 16 December 2005. They are named after the then-Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Theo Van Boven (Netherlands), who served from 2001 to 2004. The document provides additional detail on the human rights of remedy and reparation, which are found across numerous core international human rights and international humanitarian law instruments. It sets out a series of basic principles and guidelines that states need to meet, to satisfy their international obligations.

While the Van Boven Principles may appear to set a high bar, applying to 'gross' violations of human rights, it is important to note that the meaning of this term is not defined in international law. For the purposes of OPCAT, any form of torture or ill-treatment can rise to meet this 'gross' threshold. In addition, harm suffered may be individual or collectively by a group. Accordingly, proactive

NPM monitoring should include ensuring mechanisms exist within their jurisdiction, which align with Van Boven Principles, to safeguard the wellbeing and rights of individuals harmed. This includes ensuring that:

- appropriate legislative and administrative and other appropriate measures exist to prevent violations;
- alleged violations of human rights are capable of being investigated effectively, promptly, thoroughly, and impartially, and that independent prosecutorial action can occur in accordance with law;
- persons who may be affected by a violation can receive equal and effective access to justice; and
- effective remedies are available to victims, including reparations.

It is noted that the Van Boven Principles are cited in the consultation paper (footnote 68) in relation to their relevance to Article 14 of the Convention against Torture, however they are not mentioned in the substantive discussion. It is agreed that consideration of the Van Boven Principles fits within the purview of matters to be considered by the Tasmanian NPM when exercising its functions.

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power was adopted by the United Nations General Assembly on 29 November 1985. This document sets out a series basic standards against which states can assess their own practices and evaluate what changes need to be introduced to ensure equitable treatment for victims, so that victims are adequately recognised and treated with respect for their dignity. This includes matters such as access to justice, fair treatment, restitution, compensation, and assistance. It is noted that this Declaration is not mentioned in the consultation paper.

The torture or ill-treatment of individuals deprived of their liberty can give rise to circumstances where these individuals, as victims of abuse, are entitled to justice. Similarly, an individual not deprived

of their liberty may suffer reprisal because a person believes that they communicated with the NPM, potentially breaching Article 21(1) of OPCAT. Ensuring that equitable treatment for victims exists, is accessible, and is provided in practice, is relevant to preventing future abuse. It is agreed that consideration of this Declaration fits within the purview of matters that should be considered by the Tasmanian NPM when exercising its functions.

Finally, in relation to other materials, stakeholders underscored the importance that the Tasmanian NPM have regard to reports of the Special Rapporteur on Torture, and the many relevant independent inquiry reports to have arisen. Stakeholders also requested that the Tasmanian NPM have regard to Closing the Gap priority reforms and targets, observing that Tasmania still has a long way to go, especially in relation to Tasmanian Aboriginal children and young people in out-of-home care and adult incarceration rates.

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

Stakeholder feedback in relation to this question focused on the need for multidisciplinary approaches to the exercise of all functions, noting that a suite of tailored methodologies would be needed to successfully achieve its mandate.

Stakeholders identified that a one-size-fits-all approach to torture prevention is likely to miss the vulnerabilities of marginalised groups and vulnerable populations. Accordingly, feedback repeated the importance that the Tasmanian NPM develop visit methodologies and materials in consultation with experts, civil society, and people with lived experience, which are appropriate for different deprivation of liberty environments and the populations deprived of their liberty therein.

When exercising its education and advisory functions, stakeholders recommended that the Tasmanian NPM should engage in intersectional research on vulnerable populations, which may inform policy advice related to human rights across a range of areas. When conducting research and undertaking visits, stakeholders also repeated that the Tasmanian NPM must engage proactively with related independent bodies. They submitted that this needed to include ongoing collaboration with the Commissioner for Children and Young People Tasmania, as well as the exploration of collaboration opportunities with the Anti-Discrimination Commissioner, and research opportunities with related bodies such as the Tasmanian Law Reform Commission.

In addition to adopting multidisciplinary approaches and proactive engagement with related entities, stakeholders also noted that best practice required understanding the importance of timing the delivery of functions, particularly when undertaking visits, to coincide with periods when the potential risk of torture and ill-treatment was high. In custody settings, stakeholders submitted that preventative activities and mechanisms should be applied in the first hours and days after a person is taken into custody. It was discussed that the Tasmanian NPM should be granted real-time access to information that will enable it to determine when to schedule visits accordingly.

By contrast, in non-custodial settings, stakeholders observed that it was important that visit planning prioritised examining the longitudinal treatment of people deprived of their liberty. Stakeholders observed that many people in these settings, such as disability support and aged care, may reside for long-term periods and during this time their mental and physical health may change, as well as the level and quality of their care. Stakeholders considered that this was more likely to occur where a person's capacity declined, and where visits became more infrequent, reducing the indirect external security that occurs through people such as family or friends observing their care or providing feedback.

Stakeholders also observed that the most effective practices were those which ensured adequate human resourcing and collaboration, notably, by retaining experts by experience, to meet the full range of NPM functions.

Finally, stakeholders also reiterated that the NPM should independently assesses what resources are required to carry out its functions. From review of annual reporting, it is noted that under-resourcing is a recurrent issue among many NPMs. The New Zealand Ombudsman is noted as an example of an NPM that independently assesses its funding, which is approved by Parliament and detailed in its annual report.

Part 4: Expectations development

The development of expectations for the treatment of people deprived of their liberty is essential to the Tasmanian NPM's effective operations. Expectations documents are commonly developed by an NPM to help people understand some of the matters that will be considered when exercising its functions. They are also working documents; used to support the Tasmanian NPM and its staff by setting out the visit process and criteria against which the treatment of people deprived of their liberty will be examined during a visit.

When undertaking visits, reporting, and making recommendations, the NPM must ensure that its work is grounded in relevant international norms and practices, and is properly planned. The Association for the Prevention of Torture emphasises that poorly prepared or planned visits may do more harm than good. It is important that NPM visits observe the do no harm principle. The development of expectations forms a key component of the preparatory process.

Publishing the expectations assists in the delivery of the NPM's education and advisory functions, elucidating the breadth of matters that require proactive monitoring to minimise the risk of torture and ill-treatment. It also helpsto promote cooperation with government, setting administrators, detainees, and civil society. Importantly, the publication of expectations is a demonstration of the NPM's independence. Section 9(i) of the *OPCAT Implementation Act 2021* (the Act) provides for the Tasmanian NPM to publish its expectations, among other working materials.

This project has sought to develop draft expectations covering the deprivation of liberty settings listed at s 5(3) of the Act and identified through the consultation process (*see* Part 2). Having regard to the breadth of settings identified, it is proposed that five thematically focused expectations documents be initially created:

1. children and young people;
2. adult custodial centres;
3. police and court custody;
4. mental health; and
5. health and social care.

These groupings take into consideration a number of factors including the characteristics of and commonalities between settings identified, stakeholder consultation feedback, information provided by government, general guidance provided by organisations such as the Association for the Prevention of Torture, and observations of how other NPMs operate. All groupings include related transportation.

The draft documents 1 – 4 are included in this report **appendices 4 to 7.** Review of these papers is strongly encouraged. These documents are currently open for consultation and stakeholder feedback is welcomed. It is noted that work on the fifth expectations document, focusing on people deprived of their liberty in health and social care settings, remains ongoing.

The first expectations document, on the treatment of children and young people deprived of their liberty, differs from the other documents by focusing on the person deprived of their liberty, rather than setting they are in. This document is intended to have broad application, applicable to the many identified settings in which a child or young person may be deprived of their liberty. Depending on the nature of the setting, some expectations may not apply.

Specific expectations have been developed for children and young people due to their inherent vulnerabilities and distinct developmental needs. It aims to ensure independent and objective assessments of outcomes for children, reflecting that treatment should take into account their rights, their developmental stage and vulnerability, and the care due to any child. Note that where a child or young person is deprived of their liberty in a setting to which another expectations document also applies, such as in an adult custodial centre, the

expectation will be that the setting comply with both documents, with the children and young people expectations applicable in the event of inconsistency.

The creation of each expectations document has been led by experts with significant subject matter expertise and career experience. Experts were principally identified through recommendations provided by stakeholders and selected on the basis of their availability and experience. The experts engaged were:

- **Emeritus Professor Neil Morgan.** From 2009 to 2019, Neil served as Western Australia's Inspector of Custodial Services, tabling over 100 reports to Parliament on the treatment of people in custody. Before this, he served as a Professor of Law, and is currently an Emeritus Professor at the University of Western Australia.
- **Megan Mitchell AM.** From 2013 to 2020, Megan served as Australia's first National Children's Commissioner. She previously served as NSW Commissioner for Children and Young People, and as CEO of the Australian Council for Social Service. Megan has led an extensive career in senior leadership positions in child protection and out of home care, disability, juvenile justice and early childhood services. She currently sits on many related government and non-government boards.
- **Scott Tilyard APM GAICD.** Scott is a former Deputy Commissioner of the Tasmania Police Service, having served for over 40 years, retiring in 2021. Scott currently chairs the Tasmanian Road Safety Advisory Council and is Principal of Scott Tilyard Consulting, specialising in policing, security, and general management consulting.
- **Louise Finer.** Louise is a policy expert on detention, torture prevention and human rights. She was previously Head of the United Kingdom's National Preventive Mechanism Secretariat, and now works as a consultant to international and national NGOs and detention monitoring bodies. She is a visiting fellow at the University of Bristol and the University of Essex Human Rights Centres

- **Sarah Cooke OBE.** Sarah sits as a judge on the United Kingdom's Mental Health Tribunal and practices as a human rights consultant. She previously served as Chief Executive of the British Institute of Human Rights, and as a monitor with the UK NPM body that oversees mental health detention. As a human rights lawyer, for the past 17 years, her consulting expertise has focused on mental health and human rights.

Supporting advice was also obtained from Associate Professor Dinesh Wadiwel (University of Sydney), Associate Professor Linda Steele (University of Technology Sydney), and Caroline Frohmader (Women With Disabilities Australia), in relation to international obligations for the treatment of people with disability deprived of their liberty.

Following best practice, each document has been designed to focus on the experience of persons deprived of their liberty in a setting. That is, they concentrate on an outcome rather than a process. They are arranged thematically to ensure ease of access, and to support a thematic approach to visits. Within each thematic topic are relevant expectations, which are supported 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.

Development of the draft expectations documents involved ongoing consultation with relevant government departments to obtain relevant information about settings, any related policies and process, and to understand how settings operate. Meetings were also held with Tasmanian stakeholders, including the Anti-Discrimination Commissioner, the Commissioner for Children and Young People, the Tasmanian Aboriginal Legal Service, the Interim Disability

Commissioner, the Mental Health Council of Tasmania, and the Acting Chief Psychiatrist.

To facilitate the development of these documents, orientation visits with our consultant experts were conducted at a variety of places of detention around Tasmania, accompanied. This enabled the project team and experts to become familiar with the place and gather relevant information to support the expectations development process. Attendees viewed the physical environment, spoke to staff and people deprived of their liberty, and requested information such as policies and practices. Visits included to:

- Risdon Prison Complex, which includes the Southern Remand Centre;
- Mary Hutchinson Women's Prison;
- Ron Barwick Prison;
- Wilfred Lopes Centre;
- Hobart Police Station;
- Hobart Reception Prison;
- Hobart Supreme Court cells;
- Royal Hobart Hospital;
- Launceston Reception Prison;
- Launceston Police Station;
- Ashley Youth Detention Centre (accompanied by the Commissioner for Children and Young People);
- Launceston General Hospital;
- North West Regional Hospital;
- Burnie Supreme Court cells;
- Queenstown Police Station;
- King Island Police Station; and
- King Island District Hospital and Health Centre.

Receiving NPM visits and being examined against human rights obligations will be a new experience for many departments and setting

administrators, and these orientation visits also provided an important opportunity for administrators to learn more about the Tasmanian NPM and its functions.

The expectations documents included in this report are now open for consultation.

As the first drafts produced by the Tasmanian NPM, they are considered living documents. They will be updated in response to feedback received, as well as in response to observations arising from their use by the Tasmanian NPM when examining settings where people are deprived of their liberty. Reflecting that the creation of each document was led by a different expert, some variances exist in their style and language. Stakeholders are also encouraged to provide feedback on these elements of the documents, which will inform the creation of an overarching office style guide to promote consistency across future Tasmanian NPM publications.

The expectations documents will be published on the Tasmanian NPM website and accompanying accessible and educative resources will be developed. Periodic reviews will occur to ensure that expectations continue to reflect best practice.

Part 5: NPM organisation design and planning

This part ties together the outcomes of the service design and operational planning components of the project, which took place from November 2022 to July 2023 and included the results of each consultation round. The project team also subsequently considered recommendations made by the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Insitutional Settings, released in September 2023.

The results of each component have been synthesised into recommendations related to the Tasmanian NPM's governance model, implementation strategy, stakeholder engagement, budget, and risk.

5.1 Background to NPM design

In commencing this part, it is important to repeat that OPCAT provides considerable flexibility in the form an NPM can take, with Article 3 enabling a State Party to set up, designate or maintain one or several NPMs to fulfil the requirements of OPCAT. Reflecting this flexibility, State Parties to OPCAT around the world have established different NPM frameworks. The Association for the Prevention of Torture provides a helpful overview of these different approaches in its 'OPCAT Database' (see www.apt.ch).

Due to Australia's decentralised approach to NPM implementation, each Australian government (states, territories, and the Commonwealth) will need to evaluate what model is best placed to fulfil the requirements of OPCAT within its respective jurisdiction.

Consistent with its function of assisting State Parties with NPM implementation, the SPT has published guidelines on NPMs, detailing the matters to be considered when completing this evaluation. In particular, the SPT emphasises that an NPM should:

- complement rather than replace existing systems of oversight, and

its establishment should not preclude the creation or operation of other such complementary systems;

- collectively have the expertise and experience necessary for its effective functioning;
- not include members who hold positions which could raise questions of conflicts of interest; and
- ensure that its staff have between them the diversity of background, capabilities and professional knowledge necessary to enable it to properly fulfil its NPM mandate. This should include, *inter alia*, relevant legal and health-care expertise.

Each of these requirements were considered throughout the NPM model evaluation and governance design process.

The NPM design process commenced with a broad literature review. This included relevant academic, SPT and UN publications, Australian stakeholder publications, and consultation feedback provided by stakeholders in relation to the *OPCAT Implementation Act 2021*. For the project team, a key early realisation to arise from this review was that although manifold OPCAT related publications exist, they generally provide only high-level guidance on how to identify the most appropriate NPM model, and attendant governance and implementation considerations. Turning to a review of NPM annual reports, it was observed that many established NPMs flagged under-resourcing as an ongoing issue affecting their capacity to fulfil their mandate (often also repeated in SPT visit reports). This underscored the importance of detailed NPM implementation scoping.

In view of this identified literature gap, the project team decided to seek expert advice in relation to organisational design, governance, and implementation strategy. Through a targeted request for quote process, the project team selected Tasmania-based company Elm Consulting Australia (Elm) to supply these services assisted by Melbourne-based company, the Twiga Group. Elm is a management consultancy focused on purpose-driven organisations, specialising in corporate governance, leadership development and strategic

planning. The Twiga Group is a business consultancy with expertise in human-centred design across the private sector. The project team liaised with the Department of Justice and Treasury in relation to applicable government procurement policies and instructions.

Reflecting Article 18(2) of OPCAT and s 12(4) of the *OPCAT Implementation Act 2021*, the request for quote process included a request that service providers provide information about their team's gender balance and representation of ethnic and minority groups. It is noted that the Elm project team was comprised of all women and included a member of the LGBTQIA+ community.

The process developed by Elm to design an optimal NPM implementation model for Tasmania comprised three overarching elements:

1. design and governance;
2. strategy, including vision, purpose, values, strategic pillars, operating model design, implementation, risk, and stakeholder engagement; and
3. budget.

Each element was progressed in close consultation with the project team. Detailed information and recommendations for each component is provided below.

From the initial review and engagement round, five overarching insights were synthesised to guide the design process above:

1. **Trust:** The Tasmanian NPM plays a role in addressing public concern about the conditions of treatment in different settings. The Tasmanian NPM must build trust with the public that people's human rights will be respected.
2. **Independence:** The NPM Office must be sufficiently independent from all arms of government, and devoid of any actual or perceived conflicts. If located within a broader existing body, the NPM Office must maintain separate staff and budgets.
3. **Diversity:** The NPM Office must be multidisciplinary, child-centred, and comprised of people with diverse professional backgrounds and demographic identity. All staff should receive

training in trauma-informed care, cultural competency, the needs of priority populations, and in working with children and young people.

4. **Engagement:** Stakeholders are highly interested in the good functioning and success of the Tasmanian NPM and expect to be regularly engaged and updated. The Tasmanian NPM should also introduce formal and ongoing mechanisms to ensure specialised knowledge and people with lived experience of detention inform delivery of the Tasmanian NPM's functions.
5. **Person-centred:** The Tasmanian NPM must foster a culture based on full respect for the human rights of people deprived of their liberty. This includes recognising the high levels of incarceration and harm experienced in detention by Aboriginal and Torres Strait Islander peoples.

The Elm team commenced its work through an initial round of discovery, research and analysis, in consultation with the Project Manager. This included a broad literature review, as well as in person meetings with NPM experts including Ben Buckland (Association for the Prevention of Torture), Emma Leach (Office of the New Zealand Ombudsman), and Louise Finer.

Following these initial meetings, Elm and the project team developed a public and stakeholder consultation approach and strategy, which informed each consultation round outlined above at Part 2 and Part 3. Alongside the consultation process, Elm and the project team met with senior representatives from the Office of the Commissioner for Children and Young People, and the Office of the Anti-Discrimination Commissioner. It also liaised with the experts engaged to develop the draft expectations.

An overview, results and recommendations for each element in the NPM design process is provided on the next page.

5.2 Research and assessment

5.2.1 Introduction and research outcomes

This stage of the project involved identification of an optimal NPM model for Tasmania.

The purpose of developing a robust governance framework for the Tasmanian NPM is to support it to achieve its mandate, by creating clear lines of authority, accountability and responsibility. It is designed to give decision-makers the opportunity to guide the direction of the office while remaining flexible enough to execute operations in an efficient and cost-effective manner.

In addition to being able to effectively exercise all NPM functions, additional considerations informed by stakeholder feedback included:

- safeguarding the Tasmanian NPM's independence and identifying potential conflicts;
- creating opportunity to recruit a multidisciplinary and diverse staff;
- the identification of complementary collaboration opportunities with existing oversight bodies;
- avoiding duplication of services; and
- enabling ongoing engagement with civil society.

As detailed above, during the consultation process stakeholders emphasised their interest in the good functioning and success of the Tasmanian NPM, noting the significance of its work to their operations and priority populations. Notably, it was important that the Tasmanian NPM is sufficiently resourced, independent from all arms of government, and free from any actual or perceived conflicts and internal co-dependency.

5.2.2 Environmental scan

The governance design process commenced with a high-level review of existing NPM models and available materials (such as annual reports, SPT commentary and academic literature). Comparative analysis discovered considerable differences between many state NPM frameworks, particularly in terms of their organisational designs. Overall, however, it was observed that the effectiveness of different NPM models was dependent on a number of key factors, including:

- scope of the NPM(s) jurisdiction;
- work methods and work generated;
- staff capabilities;
- culture; and
- resourcing.

At a global level, irrespective of a state's NPM model, undertaking visits was observed as being the most resource intensive function exercised by an NPM, with visiting staff generally the largest component of an NPM office. The exercise of this function is not limited to physical visits, but also requires development of working methodologies, pre-visit planning, information gathering and synthesis, report writing, and post-visit follow-up visits to track progress implementing recommendations.

A key insight was that the resources required to undertake effective, regular NPM visits were often significantly underestimated. Best practice indicated that effective examinations required extensive planning, multiple expert staff, and the engagement of experts by experience. The planned depth and breadth of a visit, and the size of the setting, generally dictated the resource impost. It was observed that a mix of different visit types was necessary to have effective oversight. Broadly categorised, these are:

- **Ad hoc (drop in) visits.** These are typically high-level in nature and less than a day in duration. They typically require two staff, and an expert usually does not attend. As such they are also typically the least resource intensive. These visits do not include a fresh examination of specific expectations. Rather, they tend to serve a wraparound purpose, such as pre-examination familiarisation with a new setting and its administrators, discrete information gathering, or to conduct regular monitoring and speak with individuals in the setting. In exceptional cases, NPM staff may also use this opportunity to consider specific allegations, such as where information is provided by a third party that presents a risk of torture or ill-treatment and requires urgent examination.
- **Thematic visits.** These involve the examination of one or more themes provided in the NPM's expectations. These visits are formal, in-depth, often requiring a moderate to large staff delegation assisted by an expert with experience relevant to the theme. Depending on the expectations being examined, these visits typically involve a detailed examination of the physical setting and equipment, available documentary and electronic information, interviews with large numbers of administrators and people deprived of their liberty.

  The number of staff and experts that participate in a thematic visit is often determined by an assessment of risk, the size of the setting, and the availability of resourcing. The duration of a thematic visit is often at least three full days. This is followed by a report-writing period. Thematic visits frequently require subsequent visits and requests for further information to verify findings, and to ensure that reporting and recommendations are accurate.

  During a thematic visit, NPM staff may also use the opportunity to obtain information relevant to expectations not being examined. For instance, staff may seek information in relation to previously examined expectations, which may inform whether a follow-up visit or other action is required. Persons deprived of their liberty may also raise concerns about an issue concerning a different theme.

- **Omnibus (or 'full/in-depth') visits.** These are the most resource intensive for an NPM. They involve the comprehensive examination of all, or a significant number of, expectations. That is, they are like a thematic visit but on a much more significant scale. They require a multidisciplinary team with a diversity of expertise and competencies. The number of staff required to successfully conduct an examination is typically much larger than a thematic visit, and may require multiple experts. The size of a delegation will depend on pre-visit planning considerations including the setting's size, assessment of risk, and resource availability. Given their comprehensive nature, the duration of these visits is typically a week or longer, followed by an extended information verification and report writing period.

  In practice, it was observed from NPM reporting that being able to undertake omnibus visits was highly dependent on resourcing availability. NPMs with a small staff or under-resourcing (to leverage multiple experts) appeared to have difficulty successfully completing these visits at larger settings. It was observed that NPMs that conducted these visits often did not re-examine the same setting again for an extended period because of the resource impost. Follow up visits, however, may occur.

- **Follow-up visits.** These typically take place in the period following an examination report. Sitting between an ad hoc visit and a thematic visit. They are the most reliable way for an NPM to ascertain if its recommendations have been or are being implemented. This may involve interviews, obtaining relevant information, or viewing aspects of the physical setting or equipment. Their duration is often shorter than a thematic visit and typically do not require the assistance of an expert by experience. These visits may also include the exercise of the NPM's cooperative function, to assist with recommendation implementation, or the educative function to facilitate relevant training.

However, in circumstances where an NPM had noted that they suffered from under-resourcing, it was observed that they generally prioritised conducting visits over exercising other functions, and were constrained in the types, and frequency, of visits they could undertake. Some under-resourced NPMs appeared to prioritise more frequent but less in-depth visits, while some other NPMs sought to prioritise less frequent but more in-depth visits.

A correlation was observed between NPMs that had reported under-resourcing issues, and limited public availability of key operational materials, such as visit expectations, reporting, and accessible (e.g. easy read) materials. Observations indicated that in the absence of creating their own materials, many NPMs generally followed general guidance published by the Association for the Prevention of Torture.

Globally, information published by the Association for the Prevention of Torture indicates that OPCAT most State Parties have implemented a single body NPM framework. The majority of these frameworks have been implemented by way of designation, often to an existing national human rights institution. A smaller number of states have set up a new specialised institution as its NPM. The multiple-NPM model was however commonly used in federal/decentralised states, as is the case for the Australian NPM. Accordingly, it was considered relevant to begin with a high-level review of how this model operated, as well as the single-NPM model.

Turning to consider the performance of multiple NPM models, from an operational perspective this approach was seen to be generally effective in circumstances where each designated NPM maintained jurisdiction over a large number of deprivation of liberty settings. This was generally viewed as occurring within states with large populations. This wide visit jurisdiction in turn provided scale necessary for each individual NPM to obtain adequate resourcing to recruit a multidisciplinary and diverse staff complement capable of exercising all NPM functions effectively.

This factor of scale was observed as necessary to the successful functioning of an NPM in a multiple NPM framework because it was observed that each NPM generally operated within a silo. That is, each NPM primarily focused on the settings and exercise of functions relevant to its jurisdiction. In practice, it was observed that in a multiple-NPM model, some NPMs were often resourced better than others. In smaller jurisdictions, multiple NPM models appeared to lead to under-resourcing issues.

Accordingly, anecdotal feedback provided by some stakeholders indicated that they considered the multiple NPM model less effective in circumstances where NPMs had to make compromises regarding their functions and visits. When designing an NPM framework, it was emphasised that care needed to be taken not to spread resources thinly, such as by designating too many NPMs, and to avoid jurisdictional overlap that might result in multiple NPMs examining the same setting. Feedback also indicated that in multiple NPM models, oversight gaps could arise across certain deprivation of liberty environments, because each component NPM was typically designated jurisdiction over specific environments.

Moving to consider the single NPM model, information published by the Association for the Prevention of Torture indicated that the designated NPM approach, such as by designating an ombudsman or other human rights body, was more common than the creation of a new specialised body. However, research did not identify a clear advantage to selecting one approach over another. It was inferred that the decision to designate or set up an NPM was often based on an internal evaluation within the state (such as this project). Overall, each model carried opportunities and challenges.

A single NPM may provide some efficiency opportunities, such as the capability to strategically plan the deployment of resources and exercise of functions across all settings within its jurisdiction. As a single office, fewer barriers also existed for internal information and insight sharing in relation to different deprivation of liberty settings (when compared with coordinating information sharing across

multiple NPMs). This also enabled the identification of cross-cutting issues across different settings, such as in relation to the treatment of specific populations, or specific conduct such as personal searches. Externally, a single NPM also meant that there was only one public contact point, minimising the potential for confusion or stakeholder fatigue. Civil society engagement was viewed as key to the success of this model, such as through formal agreements to govern cooperation. This model is often described as an 'ombuds-plus' model.

The designation of an existing body as the state's NPM was observed as providing an opportunity to immediately build awareness and trust, as it leveraged the existing community and stakeholder goodwill held by that body, noting that public awareness about OPCAT is often limited. However, this model also carried the risk that public trust in the body designated as NPM could be eroded, such as if stakeholders or the public did not consider that the NPM functions were being exercised effectively. It was also observed that by being attached to an existing body, the NPM may be perceived as a subsidiary component of that body. By contrast, the creation of an NPM as a new specialised body was viewed as raising the standing of the NPM (and OPCAT) to the same level as other existing independent bodies. However, it also faced the challenge of building public awareness and trust from scratch.

From an administrative perspective, adding the NPM mandate to an existing body could create some opportunities for the sharing of corporate resources, broader knowledge transfer, and for professional development. Seizing these opportunities, however, required that additional safeguards were implemented to effectively manage conflicts. It was essential that appropriate measures were implemented, and followed, to maintain the NPM's independence. For instance, where the existing body designated as NPM already holds a complaint assessment function, it is essential that effective information barriers exist to staff having access to confidential information acquired in the exercise of their respective functions.

For existing bodies designated as an NPM, the review did not identify

any body that was able to absorb the additional NPM mandate into its operations without requiring additional resourcing or reform to do so effectively. In fact, it was observed that in circumstances where insufficient NPM-specific resourcing was provided to a designated body, some bodies had facilitated NPM activities by diverting resources allocated to other outputs. Feedback suggested that this form of internal cross-subsidisation had the potential to reduce overall office effectiveness, and increased the challenges of exercising NPM functions.

Overall, irrespective of the NPM model selected, appropriate resourcing, staffing, and planning were viewed as essential to its effective functioning. Internally, appropriate resourcing created the opportunity to recruit multidisciplinary staff in specific roles, greater opportunities for workplace diversity, reduced reliance on consultants and key person dependencies, and greater focus on governance and long term strategy. Externally, this enabled the NPM to be more visible and agile in how it exercised its functions, particularly in terms of exercising its visit function: being able to undertake a variety of visits concurrently, and engage in longitudinal assessments.

5.2.3 Review of the United Kingdom and New Zealand NPM frameworks

Turning next to a deeper review of multiple NPM frameworks, Elm and the project team considered the United Kingdom and New Zealand models. These countries were selected because of their comparable legal systems to Australia, and because each state's NPM framework has been operating for an extended period. The United Kingdom ratified OPCAT in 2003, and New Zealand in 2007. Their multiple NPM frameworks were also broadly comparable to the Australia's overall approach.

The review process included interviews with current and former NPM staff from the UK and New Zealand, as well as reviewing annual and SPT reporting. The Principal Inspection Officer for the Custodial

Inspector met with the Coordinator of the UK NPM Secretariat and NPM members such as His Majesty's Inspectorate of Prisons Scotland and members of an Independent Monitoring Board during a vacation to the UK. The Project Manager and a member of the Office of the Custodial Inspector also visited New Zealand, where they met with staff from the Office of the Children's Commissioner and the Office of the Ombudsman. They joined the Ombudsman OPCAT team on visits to aged care and custodial settings. A summary of key observations and findings is provided below.

The United Kingdom possesses a large multiple NPM model, consisting of 21 designated statutory bodies across its four nations. Each NPM's jurisdiction is generally divided on the basis of setting type and region. To coordinate activities, a small NPM secretariat has been established, which is hosted by the Office of HM Inspectorate of Prisons (England and Wales). This secretariat has a small operational budget, relying on influence and goodwill to fulfil its coordinating function. This was seen as comparable to the additional NPM Coordinator role that the Australian government has designated to the Commonwealth Ombudsman.

Feedback provided about the United Kingdom NPM experience indicated that its multiple NPM model generally functioned well, but was not without ongoing challenges. Feedback emphasised the importance that the NPM maintained its independence, including from government and from complaint or related entities. It was considered vital that the NPM's independence be underpinned by law, which is an ongoing issue among its NPMs that lacked appropriate legislative authority to fulfil their functions.

A noted benefit of the United Kingdom's multiple-NPM model was that it enabled a network of bodies with broad experience, which created opportunities for learning and sharing of insights among the membership. Additionally, the model allowed NPMs to focus on visits and examinations, while engagement with civil society organisations provided opportunities for external advocacy and support, such as awareness raising. However, feedback indicated

that facilitating dialogue among the complex NPM framework had historically been difficult, with further governance reforms, such as establishing a steering group, sub-groups, and independent chair, required to improve coordination.

As repeated above, the need for sufficient resourcing was again stressed, noting that this remained an ongoing issue across the United Kingdom NPM network. Feedback emphasised that sufficient resourcing was essential to retain skilled and competent staff who could be supported by a high performing and diversity led culture and maintain service delivery consistency, as well as to develop a long-term strategy. This included the need to recruit senior staff with universal human rights expertise, noting that amongst its membership retaining individuals with this experience had been a challenge.

Turning to consider the New Zealand NPM, it also maintains a multiple NPM framework, consisting of a comparatively smaller five-body model. Four of these NPMs have been designated with a specific thematic mandate, which cover the entirety of the country. The fifth NPM, the Human Rights Commission, is designated solely as the NPM central coordinator. The NPM's functions and powers are established under specific legislation: the *Crimes of Torture Act 1989* (NZ). However, it was noted that each NPM is funded independently, under the designated body's existing budget processes. Review of annual reporting indicated that that this funding model led to discrepancies in resource allocation across the framework.

It was observed from annual reporting that the New Zealand Ombudsman was the largest member of the New Zealand NPM, with an expansive jurisdiction that included regularly visiting about 450 deprivation of liberty settings. This included correctional settings, immigration detention, and health and social care settings, including mental health settings, disability residential settings, and aged care settings. In contrast to other NPMs reviewed during this project, the Ombudsman was well resourced to undertake NPM activities,

receiving its funding directly from Parliament as one of three Officers of Parliament, alongside the Controller and Auditor-General and Parliamentary Commissioner for the Environment.

To exercise its functions effectively and across the entirety of New Zealand, the Chief Ombudsman maintains a large and independent multidisciplinary OPCAT team of over 30 FTE spread over two offices (Wellington and Auckland). The team includes a diverse unit of dedicated visit inspectors, assisted by legal experts, reporting experts, as well as management staff. Experts by experience were also frequently engaged to provide specialist advice.

To maximise the frequency of visits, it was observed that the OPCAT visit team adopted an agile work plan, with multiple visits occurring at the same time, and, on occasion, visit staff undertaking back-to-back visits. Visits included a mix of drop-in, thematic, and omnibus-style examinations. Detailed visit workbooks were provided to the office-based reporting staff, who in turn prepared a visit report. It was observed that this organisational structure enabled visit staff to remain focused on field work, rather than report writing.

Feedback indicated that office design approach enabled a larger multidisciplinary skillset among the team. For instance, it was noted that highly skilled visit staff may not be similarly skilled at report writing, or legally trained, or vice-versa. Separating these steps in the examination process created opportunities for targeted recruitment, which could improve office diversity and productivity. By way of comparison, in smaller offices there was a need for staff to hold generalist skillsets because they needed to participate in the exercise of all functions. This included conducting visits, preparing reports or advice, maintaining an understanding of relevant legislation and human rights law, and participating in community engagement.

The remaining three New Zealand NPM offices observed as smaller than the Ombudsman's OPCAT team and did not appear to maintain similar office structures. For instance, the Office of the Children's Commissioner, which has since transitioned to a new Children and

Young People's Commission, *Mana Mokopuna*, maintained NPM authority over 29 deprivation of liberty settings in which children or young people are deprived of their liberty. This includes youth justice settings, care and protection residences, youth mental health settings, mother and baby units in women's prisons (by delegation of the Chief Ombudsman), and a special purpose facility. By contrast with the Ombudsman, it was noted that its OPCAT staffing was smaller, and annual reporting indicated that receiving adequate resourcing was an ongoing issue.

Overall, although each NPM holds a different thematic mandate it was noted that some jurisdictional overlap existed in relation to visiting specific settings. Where this happened, some coordination occurred to facilitate joint visits. For instance, both the Ombudsman and the Independent Police Conduct Authority maintained jurisdiction over court custody settings. The NPMs undertook joint visits underpinned by a joint process framework. It was also observed that the Chief Ombudsman and Children's Commissioner jointly visited mother and baby units in women's prisons. Outside these joint activities, however, each NPM office operated separately, and had developed its own expectations and visit approach.

The learnings from New Zealand emphasised the need for diverse competencies in work outputs to achieve balance and efficiency in how functions are delivered. This included specialist monitoring staff, legal staff, community engagement staff, as well as the ongoing engagement of experts by experience. It was identified that, within the context of the New Zealand Ombudsman, a centralised NPM office with a broad authority can promote consistency, financial confidence, cultural capability, and a clear understanding of purpose, albeit with some inherent challenges.

Maintaining staff welfare and a positive workplace culture were also viewed as essential to effective operations. Recommendations from the New Zealand experience included consideration of the role of experts in governance planning, undertaking a progressive implementation approach, ensuring a comprehensive understanding of potential

conflicts of interest and how these might impact decisions related to the degree of centralisation of a new model, and the opportunities for shared services that are not central to the NPM mandate, such as corporate services.

Across this process of review, feedback was universal that for the NPM to be effective it must support a healthy workplace culture with appropriate wellbeing supports, capacity building opportunities, and performance management. The project team observed that meeting these requirements generally required appropriate resourcing and a larger multidisciplinary workforce. This was considered especially important in circumstances where an existing entity was designated as an NPM, with best practice indicating that a new, separately staffed NPM business unit should be established. This enabled NPM staff to maintain confidentiality and information barriers with non-NPM staff, and prevent non-NPM staff from accessing NPM internal information. Establishing a separate business unit was viewed as critical where the NPM entity is also a complaint taking entity, or exercises other functions that may conflict with the NPM.

5.2.4 NPM model evaluation for Tasmania

Following the review of existing NPM models outlined above, the project turned to evaluate Tasmania's independent oversight landscape for compatibility to exercise NPM functions by way of designation, either solely, or as part of a multiple NPM model, or other opportunities for collaboration or delegation. Consistent with Article 3 of OPCAT, the creation of a new specialised body was also considered.

The process of evaluating an appropriate NPM model requires consideration of a number of factors. The Association for the Prevention of Torture states that this needs to include mapping existing oversight and monitoring institutions, and places where people are deprived of liberty. When mapping institutions, it lists the following factors as relevant:

- legislation or other basis of establishment;

- existing mandate and jurisdiction;
- existing powers, including in relation to both public and private places of deprivation of liberty;
- independence (both real and perceived);
- existing human, financial and logistical resources;
- relations with the authorities and other relevant actors;
- working methods, and existing practices and experience, including in relation to detention monitoring; and
- immunities and privileges of both elected and hired members and staff.

These factors are broadly considered in this section, with reference to relevant stakeholder feedback.

With respect to the mapping of places, as detailed above at Part 2, to comply with OPCAT and meet the requirements of the *OPCAT Implementation Act 2021*, any NPM model selected (i.e single or multple-NPM) will need to collectively exercise jurisdiction over the following deprivation of liberty settings in Tasmania:

- adult custodial centres;
- youth detention settings;
- police and court custody settings;
- mental health settings;
- health and social care settings, including disability residential support settings and aged care settings; and
- education settings.

The relevant oversight bodies identified were the Ombudsman, Custodial Inspector, Equal Opportunity Tasmania, and the Commissioner for Children and Young People. Each body was evaluated against insights arising from stakeholder feedback and research outcomes outlined in the report above.

No specific Tasmanian oversight body was identified for evaluation

to exercise NPM functions in relation mental health, and health and social care settings. As outlined above, the New Zealand experience provides that oversight of these settings is exercised by its Ombudsman, and accordingly evaluation of the Tasmanian Ombudsman included consideration of compatibility to exercise functions in relation to these settings.

The Tasmanian Government is also currently developing a Disability Commissioner framework. The project team met with the Interim Disability Commissioner, Ms Mary Mallett, to discuss at a high level where opportunities may lie for this new framework to contribute to the Tasmanian NPM. However, until that framework is developed an evaluation of its NPM compatibility cannot occur.

The project team also considered feedback provided during the expectations development process, and recommendations arising from Report of the Commission of Inquiry into the Tasmanian Government's responses to Child Sexual Abuse in Institutional Settings.

5.2.4.1 The Ombudsman

The Tasmanian Ombudsman's jurisdiction is established under the *Ombudsman Act 1978* (Tas). It is an independent statutory officer appointed by the Governor and answerable to the Parliament. The role has a broad jurisdiction, primarily dealing with complaints concerning the administrative actions of Tasmanian public authorities.

Relevantly, Tasmania has a highly centralised oversight framework: the current Ombudsman, Mr Connock, is concurrently appointed to a substantial number of additional related oversight bodies:

- Health Complaints Commissioner;
- Custodial Inspector;
- Principal Mental Health Official Visitor;
- Coordinator of the Prison Official Visitors Scheme; and

- Tasmanian NPM.

As Ombudsman, Mr Connock's statutory functions include to:

- review decisions and (and other related functions) under the *Right to Information Act 2009;*
- investigate complaints under the *Energy Ombudsman Act 1998;*
- review and investigate disclosures under the *Public Interest Disclosure Act 2002;*
- investigate complaints under *Personal Information Protection Act 2004;*
- take complaints under the *Water and Sewerage Industry Act 2008;*
- examine Tasmania Police compliance with the *Telecommunications (Interception) Tasmania Act 1999*, the *Police Powers (Controlled Operations) Act 2006* and the *Police Powers (Surveillance Devices) Act 2006;*
- prepare a report annually under the *Misuse of Drugs Act 2001.* This relates to the Commissioner of Police's authorisations for police officers' and correctional officers' possession and supply of drug training material;
- review certain decisions of the *Commissioner of Police under the Witness Protection Act 2000;* and
- review decisions about the release of information under the *Adoption Act 1998.*

In evidence provided to the Commission of Inquiry into the Tasmanian Government's responses to Child Sexual Abuse in Institutional Settings, Mr Connock noted that this large number of appointments and their attendant duties made it increasingly difficult him to personally balance the priorities of each jurisdiction. It was noted that this issue had compounded in recent years as the activities and resourcing of each jurisdiction had continued to grow. All Ombudsman staff are administratively employed by Department of Justice. It is recalled that

consultation feedback had questioned the appropriateness of this arrangement and its potential impact on the offices' independence if designated as an NPM.

Despite it being relatively common globally for an ombudsman body to be designated as an NPM – either solely or as part of a multiple-NPM framework – multiple stakeholders submitted that within the context of Tasmania the appointment of the Ombudsman as an NPM could undermine independence and public trust, and was generally not supported. This was not because feedback questioned the integrity or performance of Mr Connock or his office. Rather, stakeholder feedback focused on the fact that Mr Connock led multiple jurisdictions with broad reactive functions, which were seen as potentially compromising NPM independence and may give rise to conflicts when exercising NPM proactive functions. Having regard to Mr Connock's comments regarding the difficulty in exercising his existing functions, it is also unlikely that he (or his successor) will be able to personally exercise NPM functions and will rely extensively on subordinate staff to do so.

Against these insights, the Tasmanian Ombudsman was evaluated as being generally unsuitable for designation as Tasmanian NPM.

5.2.4.2 The Custodial Inspector

The Custodial Inspector jurisdiction is established under the *Custodial Inspector Act 2016*. It provides oversight of all aspects of adult and youth custodial centres in Tasmania. This occurs through onsite inspections, the subsequent publication of reports that detail findings and recommendations, and regular monitoring of custodial centre systems and records. As noted above, Mr Connock is the current Custodial Inspector. He has served in the role since his appointment by the Governor in 2017.

The Custodial Inspector is required to inspect each custodial centre against all inspection standards at least once every three years. Inspections are proactive in nature, with inspection standards based on human rights obligations and intended to minimise the risk of

future abuse to detainees, prisoners, and their children (in mother and baby units). These activities are like the proactive visit function of an NPM. In contrast to some other Custodial Inspector models, such as in Western Australia, it is noted that the Tasmanian Custodial Inspector's jurisdiction does not include visiting police or court cells.

The Custodial Inspector's inspection strategy is focused on regular thematic and drop in visits, rather than less frequent comprehensive visits, covering most or all standards. Each themed visit reflects a thematic grouping contained in the inspection standards, with the objective being to inspect each setting against all themes within its three year statutory requirement. Drop in visits generally focused on isolated matters, such as following up on recommendations made in previous reports or information provided by prisoners or staff.

Office of the Custodial Inspector staff explained that this spread-out thematic inspection approach was preferred to conducting in depth inspections. This was because the approach enabled staff to have a frequent presence in settings and engage with prisoners, detainees, and staff on a regular basis. This was viewed as favourable for building awareness of the Custodial Inspector, familiarity with its activities, and helped to build trust. A frequent presence also enabled the Custodial Inspector to receive information from prisoners and detainees that may be relevant to future inspections.

By contrast, because comprehensive inspections were extremely resource-intensive, including planning, expert engagement, the physical visit, and report writing, it was noted that this approach would result in inspections occurring less frequently. Correspondingly, it would result in a decreased presence. It was additionally noted that confined settings such as the reception prisons were not suited to comprehensive visits, because a large inspection delegation presented a security risk. Staff noted that comprehensive inspections, which often lasted a week or longer, carried a higher risk of unintended harm, such as to young people who may be distressed by the extended presence of a large group of people that it is likely they do not know or trust. This could also result in people being unwilling to

disclose information, impacting the effectiveness of this type of inspection at identifying potential ill-treatment and monitoring compliance with standards.

The Office of the Custodial Inspector currently consists of a dedicated team of three staff; two inspection officers, and one administration and research officer. The small staffing size gives rise to key-person dependencies, which also make it difficult to increase the frequency of inspections. For safety and wellbeing reasons, visits always occur in pairs. It was also observed that due to its size the office was reliant on expert consultants to assist with its inspections.

This resource constraint appeared to be shaped in part by the number of settings to be inspected (five prisons and Ashley Youth Detention Centre), which is a smaller custodial landscape than many other Australian jurisdictions. This staff size was observed as comparable to the Australian Capital Territory's Office of the Inspector of Correctional Services, which also provides oversight of a small adult custodial and youth detention landscape. In discussion with the project team, this Office similarly raised resource constraint issues as restricting its ability to perform its NPM functions.

It was assessed that additional staff and resourcing would be necessary if the Custodial Inspector's functions were extended to include NPM activities, and to visit police and court custody settings. In particular, resourcing should be provided to enable it to engage in all visit types without overreliance on external experts.

From a compatibility perspective, it was observed that the Custodial Inspector's legislative framework (the *Custodial Inspector Act 2016* (Tas)) and statutory functions were broadly comparable with the functions of an NPM. Notably, its inspections were regular, proactive, and conducted in accordance with standards that were not dissimilar to expectations used by an NPM when undertaking visits. This was expected, given the Custodial Inspector was created in contemplation of OPCAT, and globally it is common for custodial inspectorates to receive NPM delegations. However, unlike an NPM, the Custodial

Inspector's statutory functions do not specifically include cooperation, legislative advice, or education.

In view of this compatibility, it was also evaluated that designating the Custodial Inspector as NPM would be likely to replace it, by rendering its existing legislation unnecessary given existence of comparable provisions in the *OPCAT Implementation Act 2021*. This appeared contrary to SPT guidance and the views of stakeholders, which was that an NPM should not replace an existing body. Relevantly, it was also noted that, in 2020, proposed legislation to extend the jurisdiction of the Custodial Inspector to exercise NPM functions in non-custody settings was opposed by stakeholders (under the *Custodial Inspector Amendment (OPCAT) Bill 2020*). Having regard to consultation feedback provided during this project, it is considered that these stakeholder views have not changed.

In addition, it was observed during familiarisation visits that the Custodial Inspector is a recognised body in custodial centres who prisoners and detainees increasingly trust, and is known and respected by administrators of these places. As such, replacement of the Custodial Inspector has the potential to create confusion and erode this goodwill. It is considered that continuity of this office should be preserved.

However, it would also be highly impractical for another body to be designated as NPM and exercise a visiting function that is near identical to the Custodial Inspector, in the same deprivation of liberty settings.

To avoid this duplication the Custodial Inspector should play a key role supporting the Tasmanian NPM operations. Delegating the Custodial Inspector the NPM visits function for custodial centres can avoid duplication of visit activities and allow for the utilisation of the office's corporate knowledge and expertise.

To carry out this delegated function for the NPM, the Custodial Inspector's existing inspection standards will require updating and so as part of this project they were reviewed to ensure OPCAT compliance and greater

uniformity with the NPM expectations approach. As outlined above at Part 4, this work was led by Emeritus Professor Neil Morgan, and a copy of the draft Expectations are included at Appendix 8.

Notably, the Tasmanian Prison Service manages court cells, and provides watch house services in Hobart and Launceston. Accordingly, to promote continuity, it was considered that the Custodial Inspector should be delegated authority to assist the Tasmanian NPM in the exercise of its visits function to these settings along with police cells in remote and rural areas. This approach would provide the Custodial Inspector with oversight of all custodial and police settings in Tasmania. However, it was noted an enlarged Custodial Inspector jurisdiction to assist the Tasmanian NPM could not be implemented without additional resourcing.

Notwithstanding these cooperation opportunities, for the same reasons outlined in relation to the Ombudsman, the Elm and the project team evaluated that the Custodial Inspector should not provide NPM assistance while it was affiliated with the Ombudsman. It was further considered that Custodial Inspector staff should not be administratively employed by the Department of Justice.

5.2.4.3 Equal Opportunity Tasmania

Turning next to consider Equal Opportunity Tasmania, this jurisdiction is established under the *Anti-Discrimination Act 1998* (Tas) and led by the Anti-Discrimination Commissioner, who is also appointed by the Governor. Its aim is to foster a society free of discrimination, prejudice, bias and prohibited conduct by administering the *Anti-Discrimination Act 1998*. It is understood that the body's main function is to investigate and attempt to resolve discrimination and prohibited conduct complaints, and that most office staff are involved in the exercise of this function. The office does not exercise a proactive visiting or investigatory function.

Other functions exercised by the Anti-Discrimination Commissioner include providing legislative advice, training, education and development

programs. These functions were viewed as complementary to the work of an NPM. This included in the development of its expectations, and in the exercise of its educative and advisory roles such as in relation to awareness raising, and advising on draft policy and legislation. It was noted, however, that Equal Opportunity Tasmania staff assisting with NPM visits could create conflict with its complaint investigation and resolution function.

Finally, it was also noted that (similar to the Ombudsman and Custodial Inspector) Equal Opportunity Tasmania staff were also administrative employees of the Department of Justice.

It is noted that the Commissioner and office staff participated in project activities. This included providing consultation and discrete feedback, and meeting with expectations experts to discuss the project.

Having regard to this primary complaint assessment function and specific focus on discrimination and prohibited conduct, Equal Opportunity Tasmania was evaluated as not being ideally suited to designation as an NPM. In particular, any appointment would require substantial reform to this office to develop a new, independently staffed NPM business unit, and that it was unclear what visit jurisdiction it would exercise as an NPM. However, it is considered that the Anti-Discrimination Commissioner should play an active role in the NPM at a strategic advisory level, and engage cooperatively on the development of joint educative resources and legislative advice.

5.2.4.4 The Commissioner for Children and Young People Tasmania

It is understood that the current Commissioner for Children and Young People framework is likely to transition to a proposed 'Commission for Children and Young People' model in due course, in response to findings and recommendations made by the Commission of Inquiry into the Tasmanian Government's responses to Child Sexual Abuse in Institutional Settings.

Noting that timeframes for this transition are unknown, both the current framework and recommended new framework are considered below. This is intended to enable the Tasmanian NPM implementation process to proceed as the transition process continues.

It is acknowledged that this process has required consideration of relevant recommendations made by the Commission of Inquiry in relation to Tasmania's NPM implementation strategy. As outlined in the introduction of this report, it is considered that the outcomes arising from this report are consistent with the spirit of the Commission's recommendations.

5.2.4.4.1 The Commissioner for Children and Young People (current)

The Commissioner for Children and Young People (the Commissioner) is established under the *Commissioner for Children and Young People Act 2016* (Tas). Like other bodies reviewed, the Commissioner is appointed by the Governor for a fixed term and annual reporting is provided to Parliament.

The focus of the Commissioner for Children and Young People is systemic in nature: its primary function is to act as an advocate for all Tasmanian children and young people. This includes acting as advocate for youth detainees under the *Youth Justice Act 1997*, which is assisted by a dedicated Advocate for Young People in Detention based at Ashley Youth Detention Centre. The Commissioner's other functions relevant to the NPM include providing legislative and policy advice, education, and cooperative engagement with relevant authorities.

The Commissioner is not a complaint handling body, although it may assist a child or young person to make a complaint, such as to the Ombudsman, and undertakes systemic monitoring of Out-of-Home Care. Separate advocates are employed by the Department for Education, Children and Young People. This separation between monitoring and advocacy is similar to the separate oversight presence

in youth detention of the Commissioner for Children advocating for young people in detention and the Custodial Inspector conducting monitoring and inspection activities.

With respect to its office administration, similar to the bodies reviewed above, it was noted that office staff are administratively employed by the Department for Education, Children and Young People. In contrast to the Ombudsman, who has a separate appropriation, the Commissioner's budget is also administered by this department.

It is noted that the Commissioner and office staff participated in activities for this project. This included providing information about its operations, consultation responses, and discrete feedback. The Commissioner also met with expectations experts, joining them and the project team on a familiarisation visit to Ashley Youth Detention Centre and the Launceston Reception Prison.

A review of the Commissioner for Children and Young People's functions and activities found that they are mostly compatible with those of an NPM. Its proactive systemic monitoring, educative, and advisory functions are well placed to include the overlay of an NPM mandate; and its staff possess specialist expertise that can ensure a child-centred lens is applied to the Tasmanian NPM landscape. Not exercising a complaint handling function also avoided potential conflict (identified in evaluations of the Ombudsman and Equal Opportunity Tasmania, above). However, review identified that the Commissioner's specific function of providing advocacy in youth detention was at risk of creating a conflict if staff were also involved conducting NPM visits to the same setting(s).

As with the other bodies above, it was considered that the Commissioner's office being directly linked to the Department for Education, Children and Young People also presented as an independence risk. Relevantly, it is noted that the Commissioner said to the Commission of Inquiry into the Tasmanian Government's responses to Child Sexual Abuse in Institutional Settings that resourcing constraints limited her ability to fulfil her current functions. On the presumption that this risk was

able to be overcome (discussed further below), the assessment turned to consider whether the Commissioner would be suitable to exercise NPM functions in settings where it did not exercise a specific advocate role.

Accordingly, the evaluation turned to identifying deprivation of liberty settings where children or young people may be deprived of their liberty. A key observation to arise from this process was that that many settings identified accommodated people of all ages, including:

- secure mental health settings;
- disability support settings;
- health care settings;
- police and court custody settings; and
- adult custodial centres (including young people in prison and children in a mother and baby unit).

While a smaller number of settings were identified as being exclusive to children or young people, including:

- youth detention;
- education settings (although it was noted that adults participated in senior school);
- early learning and childcare; and
- child Safety Service settings, notably Out-of-Home Care.

It was identified that if the Commissioner was designated as an NPM with broad jurisdiction to exercise functions over these deprivation of liberty settings (except for youth detention to avoid conflict with its advocacy function), significant overlap would arise with other NPM(s) whose jurisdiction included oversight of adults in these same settings.

Findings from research of existing NPM models suggested that this jurisdictional overlap would be likely to lead to a duplication in related

resourcing needs, given that each NPM would operate independently with its own staff. Given the breadth of settings, this resource impost was likely to be significant if it was to meet office multidisciplinary, diversity and experience requirements to effectively exercise its functions.

The environmental scan and stakeholder feedback also indicated that multiple-NPM models regularly experienced challenges in coordinating activities, mainly operating in silos. Accordingly, even if a recommendation was made that NPMs coordinate and collaborate in the exercise of their functions, it was unclear that this would occur in practice. Externally, a likely outcome would be the duplication related activities, requiring administrators and people deprived of their liberty to engage with multiple NPM bodies. Having regard to stakeholder feedback and insights from other NPM frameworks, this was assessed as an outcome that should be avoided if a more practicable option existed.

In view of these considerations (expanded in the analysis below), the evaluation turned to consider alternative options to NPM designation. A delegation of authority model was evaluated as the preferred approach for inclusion of the Commissioner for Children and Young People in the exercise of Tasmanian NPM functions (under section 11 of the *OPCAT Implementation Act 2021*). This is outlined in detail at section 5.3, below.

5.2.4.4.2 The Commission for Children and Young People (proposed)

The Commission of Inquiry into the Tasmanian Government's responses to Child Sexual Abuse in Institutional Settings was established by Order of the Governor of Tasmania on 15 March 2021. It gave its Report, *Who was looking after me? Prioritising the safety of Tasmanian children*, to the Governor on 31 August 2023, which was released publicly on 26 September 2023.

The purpose of this section is narrow in scope: it is to consider the Commission of Inquiry Report recommendations related to NPM implementation against the insights and feedback arising during this project, and in relation to the development of an implementation model for the Tasmanian NPM. It begins with a review of the relevant recommendations, followed by wider analysis in view of the discussion detailed above in this report.

Review of relevant Commission of Inquiry Recommendations

The Commission of Inquiry Report includes recommendations to reform oversight of Tasmania's youth justice system, and a recommendation in relation to the implementation of the Tasmanian NPM. In summary, it has recommended the creation of a new Commission for Children and Young People, which will subsume the current functions of the Commissioner for Children and Young People and provide additional functions and powers. Relevantly, this includes the transfer of youth detention monitoring from the Custodial Inspector (Recommendation 12.38), and the designation of the new Commission as an NPM (Recommendation 12.39). These recommendations are reproduced below:

Recommendation 12.38:

The Tasmanian Government should ensure the Commission for Children and Young People (Recommendation 18.6):

a. has functions and powers to monitor the operation of youth detention centres and other residential youth justice facilities, and the safety and wellbeing of, and the provision of services to, children and young people in detention, and in the youth justice system more broadly, by

    i. regularly monitoring and reviewing custodial population data and information on serious or adverse incidents (such as child sexual abuse, assaults, attempted suicide, self-harm, riots,

escapes and property damage) and the use of isolation, force, restraints and searches

ii. conducting regular onsite inspections of youth detention and other residential youth justice facilities

iii. conducting own-motion systemic inquiries into issues that are identified through monitoring

iv. conducting own-motion inquiries into the youth justice services received by an individual child or group of children

b. has the power to enter adult prison facilities to visit children and young people in those facilities to monitor their safety and wellbeing

c. is adequately resourced on an ongoing basis to fulfil its systemic monitoring functions.

Recommendation 12.39:

The Tasmanian Government should:

a. appoint the Commission for Children and Young People (Recommendation 18.6) as an additional National Preventive Mechanism under the United Nations Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), with expertise in child rights, child trauma, the prevention and identification of child abuse, the needs of Aboriginal children and young people and the needs of children and young people with disability, and with power to inspect places where children and young people are detained

b. resource Tasmanian National Preventive Mechanisms sufficiently to allow them to effectively fulfil their functions under OPCAT.

Relevant to these Recommendations are additional Recommendations pertaining to the creation of a new Commission for Children and Young People (Recommendation 18.6); and to establish a new

independent community visitor scheme for children in out of home care, youth detention and other residential youth justice facilities, to be administered by the new Commission and led by the proposed Deputy Commissioner Child Advocate (Recommendation 9.34).

It is important from the outset to note that these two Recommendations need to be treated as indivisible. In practice, the individual that exercises the powers and functions of an NPM where children and young people are detained in accordance with Recommendation 12.39 will by the power of that appointment have oversight jurisdiction of youth justice settings. The exercise of these powers and functions will include the matters included at Recommendation 12.38. Notably, the Draft Expectations on the treatment of Children and Young People deprived of their liberty provided at Appendix 4 of this report details the matters that a proactive monitoring body would be expected to consider when monitoring youth justice settings. To have two separate statutory roles exercising comparable oversight functions and powers would be likely to create service delivery duplication without substantive difference in impact. It may also confuse people deprived of their liberty.

This evaluation is reflected in the analysis above related to the Custodial Inspector, which is why this project evaluated that the Custodial Inspector's existing visit standards should be updated and expanded to adopt the NPM expectations approach (at Appendix 7), and accordingly participate in NPM operations.

It is also important that Recommendation 12.39 be considered in light of its widest possible interpretation, consistent with OPCAT. The Commission's recommendation is that the Commission for Children and Young People be designated as NPM for places where children and young people are detained. The use of the word 'detained' in this recommendation, and it being located within a chapter focusing on children in youth detention, should not be interpreted to limit the Recommendation to only justice and child safety system settings. As identified at Part 2 of this report and discussed above in relation to the current Commissioner for Children and Young People, in Tasmania there is a wide range of settings in which a child or young person

may be deprived of their liberty. It is important that implementation of Recommendation 12.39 include all settings in which a child or young person may be deprived of their liberty.

As this report has identified, the powers, functions, and scope of an NPM are incredibly broad. Operating effectively, inherent from its functions will be a requirement that it review the implementation and long-term effectiveness of the Commission's recommendations related to reforming the way in which children and young people are treated in different settings. As such, and while it is not mentioned in the Commission of Inquiry Report, it is axiomatic that the NPM will be expected to work in complementarity with the proposed Child Sexual Abuse Reform Implementation Monitor (Recommendation 22.1).

The NPM's activities will also go further, engaging cooperatively across government and the community to ensure that its expectations are met, and full respect for human rights is exercised across all deprivation of liberty settings. This will include providing ongoing policy and legislative advice, and delivering education initiatives that promote the human rights of children and young people across Tasmania. Accordingly, although Recommendation 12.39 has been made within the context of children in youth detention, it needs to be read as applying across the entire Report.

In view of this scope, the significance of Recommendation 12.39 cannot be understated. Among the Commission of Inquiry recommendations, NPM designation is perhaps one of the most significant. If implemented effectively, an opportunity exists for the NPM to perform a lead role in advancing long-term systemic reform and preventing the future abuse of children and young people.

Implementing this recommendation will require appropriate planning, and to ensure functions are exercised properly, will be likely to require significant resourcing. However, the Commission's consideration of OPCAT and reasons for the appointment of the Commission as an NPM

are brief and do not address many of the matters raised by stakeholders and experts throughout the course of this implementation project.

Accordingly, having regard to the scope of this Recommendation, it is necessary to consider it against the insights and feedback arising during this project, and to recommend an appropriate interim implementation approach.

Consideration of relevant Commission of Inquiry Recommendations in relation to NPM implementation

Chapter 12.11 (Volume 5) of the Commission of Inquiry Report provides an overview of Tasmania's Independent oversight of youth detention. Section 11.7 of Chapter 12 addresses the appointment of a child-specific NPM, which is the focus of this analysis. Below is a short summary of the Commission of Inquiry's discussion in the Report, before proceeding to provide analysis.

The Commission of Inquiry's discussion provides a short introduction to OPCAT and the NPM, relevantly noting work undertaken by the Australian Human Rights Commission, and that the *OPCAT Implementation Act 2021* provides for one or more NPM appointments. The Commission of Inquiry then turns to consider the Tasmanian Government's February 2022 appointment of Mr Connock as NPM for a two year term, related comments made in the Ombudsman's 2021–22 Annual Report, and oral evidence provided at its hearings. In brief, these comments pertain to Australia's limited progress implementing OPCAT, which Mr Connock noted made it impossible for him to make a Budget Submission at the present time; and that this NPM appointment, as his seventh jurisdiction, constituted a further stretching of his capacity which made it difficult to keep track of everything.

The Commission of Inquiry proceeds to briefly consider the Subcommittee on Prevention of Torture's October 2022 Australia visit, which was suspended and subsequently terminated in February 2023. It then observes that among other jurisdictions to have commenced

OPCAT implementation, multiple NPM appointments have been made for different detention contexts, citing the Northern Territory's proposed model as an example.

The Commission of Inquiry returns to consider Mr Connock's appointment. It explains that given Mr Connock's many statutory roles there would be considerable benefit in the Tasmanian Government appointing another NPM with expertise in children and young people to focus on examining facilities where children and young people are detained. This view is expressed with consideration of its preceding Recommendation (12.38), to transfer systemic monitoring functions for youth detention from the Custodial Inspector to the new Commission for Children and Young People. In discussing that decision, the Commission of Inquiry acknowledges that a small number of children may be in the adult correctional system and that the Commission for Children and Young People will not be a body with general expertise in that system. It notes that despite this, the significant number of children in youth detention who are also involved in the out of home care system makes the new Commission an appropriate NPM for children and young people.

The Commission of Inquiry concludes its discussion by noting that Article 18 of OPCAT requires States Parties to guarantee the functional independence of the NPM (and its staff), and says that to achieve this, the Commission for Children and Young People's NPM office should be funded and resourced separately from its other functions.

There is no question that the Commission of Inquiry's observations are accurate. They are, however, brief, and require wider consideration in light of the insights and feedback arising during this project. In particular, the Commission of Inquiry Report does not mention if it considered key materials published by the United Nations related to implementation, such as the SPT analytical self-assessment tool on NPMs, guidance provided by the Association for the Prevention of Torture, or consulted with stakeholders/civil society when considering

its recommended approach. It is also unclear if the Commission of Inquiry consulted with any existing NPM bodies, and if it undertook any mapping to ascertain the scope of its recommendation.

In relation to the Commission of Inquiry reference to the Ombudsman's 2021-22 Annual Report and Mr Connock being unable to provide a Budget Submission due to there being little Australian guidance, it is relevant to note that in the Annual Report, Mr Connock proceeds to outline that he had consequently received funding to establish the OPCAT Implementation Project. Mr Connock relevantly explains that the project's objective will be to provide the Tasmanian Government with an accurate estimate of the resourcing and other requirements needed to make Tasmania compliant with its OPCAT obligations. In other words, while a Budget Submission was unable to be submitted by Mr Connock upon being appointed as Tasmanian NPM, work had commenced to fill this gap in available implementation guidance and make appropriate recommendations.

Turning next to Mr Connock's oral evidence, it is reasonable that the Commission of Inquiry has placed weight on Mr Connock's comment that his appointment as NPM had further stretched his capacity to keep on top of his many jurisdictions. And it is rational that the Commission of Inquiry cited this comment by Mr Connock among its reasons for recommending that some aspects of his jurisdictions as Tasmanian NPM and Custodial Inspector be reassigned to its proposed Commission for Children and Young People.

It is important to note that Mr Connock's appointment as Tasmanian NPM is due to conclude in mid-2024 (in unison with his other existing appointments). This will coincide with the conclusion of the OPCAT Implementation Project, at which point it is expected that work will have commenced to implement this report's recommendations. It is inferred that the Commission of Inquiry has made Recommendation 12.39 taking into consideration that Mr Connock and his successor as Obudsman will retain the jurisdiction of the Tasmanian NPM (and Custodial Inspector, among other jurisdictions). As outlined above, informed by expert and stakeholder feedback this implementation

project has assessed that the Ombudsman should not concurrently serve as Tasmanian NPM (and Custodial Inspector).

The Commission of Inquiry has correctly observed that some jurisdictions have adopted multiple NPM frameworks. However, within the context of Australia, there is currently no way to know whether any other jurisdiction's existing or proposed NPM frameworks are effective, and if any learnings can be applied to Tasmania. This is because the Australian NPM is firmly in its infancy. As indicated in the Australian Human Rights Commission's 2022 *Road Map to OPCAT Compliance*, NPM funding and establishment among other Australian jurisdictions remains a significant issue. A year on from this Road Map and little has changed: many jurisdictions have yet to pass enabling legislation or even commenced setting up their NPM framework. Tasmania is the first jurisdiction to release a comprehensive NPM implementation analysis and key draft expectations materials; and it is understood to be the only jurisdiction to have been provided resourcing allowing it to undertake this work.

The analysis provided in this report has indicated that while a multiple-NPM model can operate effectively, they are not without coordination challenges and should be evaluated against other NPM model options to determine if it is the most optimal implementation option. This evaluation is provided immediately below at Section 5.3 (NPM design outcomes).

Having regard to the Commission of Inquiry's brief review of OPCAT and the Tasmanian NPM, it is considered that its NPM recommendation is best understood in light of its preceding recommendation: to transfer oversight of children and young people in the correctional system from the Custodial Inspector to the recommended Commission for Children and Young People (Recommendation 12.38). This is a sensible position to adopt, as there would likely be a duplication of resources to have two separate statutory bodies (the Commission as NPM, and the Custodial Inspector) undertaking examinations of the same settings.

However, the Commission of Inquiry focuses its analysis in this paragraph on children and young people in custodial settings and out of home care. As outlined above, appointing the Commission for Children and Young People as NPM to focus on examining facilities where children and young people are detained must be interpreted expansively, in accordance with OPCAT Article 4.

As analysis in this report has identified, the scope of settings in which children and young people may be deprived of their liberty is much wider than custodial centre and out of home care settings. It includes health and social care settings, education settings, and mental health settings. It would certainly go against the spirit of the Commission of Inquiry's recommendation if a narrow view was taken. And it may also result in different NPMs examining the treatment of children and young people in different deprivation of liberty settings, which appears at face value to be a less optimal outcome because it will mean that children and young people will need to become familiar with multiple oversight bodies.

Turning to Recommendation 12.38 (at Section 11.6 of Chapter 12), it is considered beyond the scope of the OPCAT Implementation Project to review the Commission of Inquiry's recommendations related to the reform of the Custodial Inspector mandate. However, it is relevant to observe that the Commission of Inquiry begins its analysis by noting, as with its analysis with respect to the NPM, that the Custodial Inspector is one of Mr Connock's seven jurisdictions, and that he has said he has limited capacity to exercise this function. It is worth repeating again that this report has made an equivalent observation, and recommends that the Custodial Inspector be separated from the Ombudsman.

In addition, within its discussion of this recommendation, the Commission of Inquiry includes reference to the Victorian Commission for Children and Young People, and the Northern Territory Children's Commissioner, as examples of bodies with systemic monitoring functions for children and young people in youth detention. It is understood that neither body currently exercises NPM functions.

Among Australia's existing NPM frameworks, it is relevant to note that under the Australian Capital Territory's multiple-NPM framework (consisting of three independent bodies), the Inspector of Correctional Services maintains responsibility for the monitoring of youth detention (Bimberi Youth Justice Centre). The Children and Young People Commissioner, who is also an NPM, as part of the ACT Human Rights Commission, does not undertake separate equivalent visits. It is understood that it instead provides cooperative specialised assistance and exercises other statutory functions including as advocate.

This example is provided to highlight that flexibility can exist in the performance of NPM and oversight functions between appointed bodies. Similar examples were also identified earlier in this Part, when considering the New Zealand NPM framework. Like other Australian NPMs, the Australian Capital Territory NPM is currently progressing through its implementation process. Feedback provided by the Inspector of Correctional Services has noted that under-resourcing and the absence of an NPM legislative framework remain barriers to full implementation.

Finally, the Commission of Inquiry has not provided guidance on how its recommendation should be implemented under its recommended Commission for Children and Young People model, outlined at Recommendation 18.6 (Volume 8). The Commission of Inquiry has recommended that 'the Commission for Children and Young People' be appointed. However, it is noted that the model will include two Commissioners: a Commissioner for Children and Young People, and a Commissioner for Aboriginal Children and Young People; as well as a Child Advocate as Deputy Commissioner. If the Commission in its entirety was designated as an NPM, it is unclear if this would extend to the independent community visitor (Recommendation 9.34) and child advocacy officer (Recommendation 9.36) programs that will be overseen by the Child Advocate. While the Commission of Inquiry has addressed the separation of regulatory and advocacy roles briefly, at Chapter 5.4 (Volume 8), this commentary does not include mention

of oversight roles, including the NPM and the monitoring of youth detention and out of home care.

As this report has outlined, it is imperative that the NPM is independent and free from any actual or perceived conflict of interest. It is in consideration of this requirement that stakeholders questioned the appropriateness of the Ombudsman being appointed as an NPM, in view of its other complaint handling and oversight roles. It is also why it was evaluated that the Commissioner for Children and Young People should not exercise NPM visit functions where it also exercises an advocacy role. The appropriateness of the proposed Child Advocate (Deputy Commissioner) being involved in any NPM appointment merits reflection. Consideration will also need to be given to the creation of appropriate information barriers.

At a high level, consideration also needs to be given to how the Commission of Inquiry's recommended NPM approach will fit within the Tasmanian NPM framework, particularly if (as recommended in this report) the Ombudsman ceases to be NPM. This includes NPM resourcing, operations, and cooperation. Notably, while the Commission of Inquiry has recommended greater collaboration among oversight bodies (Chapter 11.8, Volume 5), in practice feedback received from current and past NPM staff indicated that in multiple NPM frameworks, each NPM generally operated separately and that joint activities can be challenging to coordinate.

These matters are discussed in the next section below, having regard to the evaluation process for implementation of the Tasmanian NPM in its entirety.

5.3 NPM design outcomes

The evaluation of an appropriate implementation model for the Tasmanian NPM has been a complex process. Feedback provided by stakeholders throughout the consultation process, and the review of existing NPM frameworks and related literature has led to an

understanding of key factors relevant to the design of an NPM that is suitable for Tasmania.

In particular, it is essential that the NPM model recommended is evaluated as satisfying the five overarching insights listed at the beginning of this Part of the report: trust, independence, diversity, engagement, and person-centred. The review of existing NPMs also emphasised that for an NPM to be effective, it must be capable of exercising all functions competently. This includes ensuring that the office is capable of being appropriately resourced to operate with agility and to conduct all visit types.

Having regard to these considerations, the ongoing appointment of the Ombudsman as Tasmanian NPM is not recommended.

This finding raises complexity for the design of an NPM implementation framework that similarly involves the designation of a single existing body as Tasmanian NPM. This is because Tasmania does not possess another human rights institution with broad oversight capable of exercising all NPM functions (such as a Human Rights Commission).

Accordingly, the remaining implementation options available are to:

1. Designate multiple existing bodies (the multiple NPM approach); or
2. Create a new specialised institution.

For reasons provided below, option 2 (creation of a new specialised institution) is recommended.

5.3.1 Considerations weighing against a multiple NPM model in Tasmania.

The evaluation process above has identified that the Custodial Inspector and Commissioner for Children and Young People are not complete fits for NPM designation.

To recall, relevant factors included that the Custodial Inspector's legislative framework would in effect be subsumed by the NPM, replacing

this existing body; and that advocacy and oversight functions should operate independently. In addition, the creation of two NPM jurisdictions that visited many of the same settings would create a duplication of activities and resourcing that risked being less effective than a single entity. For both bodies, having their corporate services (including staff employment) provided by an agency over which they exercise oversight was also seen as creating potential for conflict, and may not meet the requirements of OPCAT Article 18(4).

Notwithstanding these considerations, it is helpful to consider multiple NPM approach in further detail.

A key challenge immediately faced when evaluating a two-body multiple-NPM model for Tasmania is that the Custodial Inspector and Commissioner for Children and Young People currently do not have oversight over many settings that fall within the jurisdiction of the NPM. To avoid any gaps in NPM oversight, which is essential, these bodies would need their respective jurisdictions to be extended.

For example, the Custodial Inspector would be required to commence NPM visits to settings unrelated to the justice system, including disability residential support, aged care settings, and health care. This arrangement would be comparatively similar to the scope of the New Zealand Ombudsman's jurisdiction. While the Custodial Inspector could theoretically exercise this jurisdiction with additional resourcing, this approach does not align with stakeholder consultation feedback, particularly feedback that did not support a wide extension of the Custodial Inspector mandate.

Turning to resourcing and activities, as discussed above in discussion about the Commissioner for Children and Young People, a significant duplication in resourcing and activities is also likely to occur. This relates to both the duplication of oversight over certain settings, and the duplication of staffing and resources to exercise functions, particularly visits and engaging experts.

It is important to reiterate that to be able to fulfil its functions effectively, each NPM will require an experienced, diverse and multidisciplinary staff

with knowledge and capabilities relevant to the function being exercised. An appropriate governance structure should also be implemented.

A key observation to arise from the review of existing NPM frameworks is that resourcing is generally scale-dependent, based on the scope of the visiting function. That is, an NPM with oversight of a significant number of deprivation of liberty settings will require a larger office to exercise these functions. This larger office footprint can create opportunities for diversified recruitment and a more comprehensive operational and governance structure. The New Zealand Ombudsman is a good example, discussed above, where its broad oversight mandate (about 450 deprivation of liberty settings) and corresponding resourcing have enabled it to establish a large, structured office.

By contrast, the disadvantages that may arise from a smaller NPM office included reduced opportunity for staff diversity, the emergence of key-person dependencies, limited professional advancement opportunities, potentially frequent staff turnover and limited corporate knowledge retention. This could result in challenges effectively exercising functions, such as completing large in-depth examinations, or exercising the non-visit functions.

Tasmania is a small state in population terms, and its deprivation of liberty landscape has been assessed as smaller than most Australian jurisdictions. As such, a smaller NPM staff complement will be needed than in the larger jurisdictions to fulfil the NPM visit functions. However, to effectively exercise the NPM functions, staffing will still need to meet these core capability requirements. This creates a dilemma for achieving appropriate scale.

A multiple-NPM framework in Tasmania has the potential to result in each respective NPM office being smaller in size than a combined single office, reducing its agility and capacity to undertake in depth examinations. Despite each office likely being individually smaller, the overall combined resource impost for Tasmania would also be likely to be greater than a single NPM office. This is because each NPM would be likely to require a core staff complement of similarly qualified staff

to exercise the NPM functions and require expert consultants to assist with thematic or more in-depth visits.

A smaller individual office size is also likely to be duplicative in its core staffing capabilities and work output. For instance, the Custodial Inspector and Commissioner for Children and Young People are likely to each examine the same custodial, health and social care, and mental health settings, focusing their visits on different populations in those settings.

However, noting that each NPM will be independent, this would be likely to lead to a duplication of activities in the same deprivation of liberty settings. Each NPM's expectations would overlap substantively as well, leading to oversight duplication in these settings. For people deprived of their liberty in these settings, administrators, and stakeholders, this would also create two contact points, which may lead to fatigue and confusion.

While cooperation between NPMs is encouraged, the review of existing multiple NPM frameworks found that coordinating visit activities and maintaining consistency in service delivery across NPMs was challenging.

It is acknowledged that some stakeholders recommended a multiple NPM approach, however the considerations above weighed against supporting this type of NPM model within Tasmania when compared to the creation of a new specialised body, as discussed below.

5.3.2 Recommended approach: a new specialised institution for Tasmania.

Based on this evaluation of existing bodies in Tasmania and concerns associated with a multiple-NPM approach, the creation of a new specialised institution is evaluated as the preferred NPM implementation model for Tasmania.

Under this model, a unique opportunity exists to establish a specialised, multidisciplinary team that can share resources to fulfil all NPM functions

across all deprivation of liberty settings in the state. The proposed single-NPM approach also aims to avoid key coordination, resourcing, duplication, and staffing challenges observed in multiple-NPM frameworks. Importantly, reflecting analysis outcomes with respect to the Ombudsman, this new NPM office should be entirely independent.

Recommendation 1: That the Tasmanian NPM be established as a new specialised institution, separated from the Ombudsman.

By creating a new, standalone NPM office for Tasmania, expertise is centralised under one roof, allowing monitoring activities to be planned across different types of settings, in particular, where thematic expert consultants are required, and insights and learnings to be shared among all staff. This can improve agility, productivity, and enable service delivery and reporting consistency to be effectively managed.

While it will be a single office, it should leverage opportunities to draw on the expertise of both the Custodial Inspector and Commissioner for Children and Young People in the fulfilment of its functions. Elm and the project team identified that the most effective way to achieve this outcome was through the creation of a joint office governance model that leveraged the Tasmanian NPM's power to delegate its functions. It is considered that this approach can be achieved while ensuring that appropriate safeguards exist to uphold each respective office's independence.

Recommendation 2: That the person appointed as Tasmanian NPM concurrently serve as Custodial Inspector, which is also to be separated from the Ombudsman, and offices combined following the recommended governance model.

To ensure independence, this joint office model will also require that the Custodial Inspector also be detached from the Ombudsman. The objective of this model is to draw on the Custodial Inspector's expertise and experience in custodial centres, while operating as a separate business unit with collocated staff.

At a high level, this new joint 'Office of the Tasmanian National Preventive Mechanism and Custodial Inspector' will create a new office focused on proactive oversight, separate to reactive jurisdictions exercised by the Ombudsman. This will allow each entity to focus on its proactive/reactive functions without consideration of potential conflict and will outwardly promote each other's functional independence. The Ombudsman will retain its official visitor programming role.

For this model to be most effective, it is recommended that the Custodial Inspector be administratively and physically joined to the Tasmanian NPM. This will include the person appointed as Tasmanian NPM being concurrently appointed as Custodial Inspector, the creation of a joint governance framework, and occupying a shared office.

From an administrative perspective, as a single office, service delivery can be streamlined and attendant budgeting more accurately modelled, staff performance management and professional development can be coordinated to mitigate key-person dependencies, career progression opportunities may be explored, and corporate knowledge can be maintained when staff depart. Staff safety and wellbeing is also enhanced.

Importantly, the proposed single-NPM model will create a single contact point with whom stakeholders, people in places of detention, and government can engage. For the community in particular, this approach can minimise the bureaucratic confusion that may arise from having multiple bodies designated as an NPM.

Having one NPM will also enable the creation of an individual brand and identity, which it is noted can improve public awareness in OPCAT and confidence in the NPM. There will also be a single website through which reports, expectations, advice, and educational materials can be obtained. As a single contact point, this arrangement may also promote enhanced information flows with the Commonwealth NPM, as well as other national and international counterparts.

As part of the project, the web domain 'npm.tas.gov.au' was established, and brand identity and web design work has commenced with the assistance of Tasmanian design agency, The20.

Further detail about this governance model and the exercise of NPM functions is provided in the next section.

Recommendation 3: That the Tasmanian NPM delegate authority to the Commissioner for Children and Young People and establish a joint process agreement for the exercise of functions pertaining to children and young people.

With respect to the Commissioner for Children and Young People, the preferred option identified was for it to operate in cooperation with the Tasmanian NPM through a delegation of authority and a documented joint process framework. This reflects that unlike the Custodial Inspector, the Commissioner for Children and Young People exercises additional functions beyond proactive monitoring, which meant that it was not suitable to incorporate it directly into the joint office model.

In practical terms, this approach would likely involve delegation to the Commissioner (or nominated staff) to join NPM office staff when exercising functions in settings where a child or young person may be deprived of their liberty, to assess specific expectations. The Commissioner and NPM would also collaborate in the exercise of advisory, educative and cooperative functions related to children and young people. This should include joint development of expectations materials, and when evaluating best practice child-specific NPM practice.

By bringing the Commissioner for Children and Young People within the framework of the Tasmanian NPM, manifold opportunities exist for collaboration, information and insight sharing, and the development of joint materials promoting the human rights of children and young people in Tasmania. This will also enable the Commissioner's staff to familiarise themselves with the inspection process while the transition to the Commission for Children and Young People occurs.

Recommendation 4: That the Commissioner for Children and Young People and the Custodial Inspector be specifically resourced to contribute to the delivery of the Tasmanian NPM.

In preliminary discussions with the Office of the Commissioner for Children and Young People, it was estimated that if the recommended approach was adopted, two additional full-time staff would be required by her office to assist the Tasmanian NPM during the initial implementation period. Further resourcing or a different operating model may be required upon commencement of the proposed Commission for Children and Young People (discussed in further detail below).

Recommendation 5: That the Tasmanian NPM and Commissioner for Children and Young People be co-located in a purpose designed office setting.

To enhance this delegated model of cooperation between the Tasmanian NPM and the Commissioner for Children and Young People, it is recommended that the two offices be co-located within the same premises. This would enable the development of a new purpose designed (disability inclusive, child-centred, and culturally safe) office setting, which allows the Commissioner and NPM to maintain their functional independence while sharing key resources.

Under this co-location model, staff from both offices would share key physical spaces that foster association, such as board rooms, meeting rooms, staff break out rooms and communal spaces; and administratively would also share reception and corporate services.

This close proximity and opportunity for regular contact would offset the potential collaboration obstacles that may arise from the Commissioner for Children and Young People and Tasmanian NPM being independent bodies. In particular, it would enable each head of office to meet in person frequently, and for delegated staff to easily participate in the activities of both offices. For wider staff, co-location and shared common spaces would facilitate a shared child safe culture, enable the regular sharing of insights and information, and the exploration of collaboration opportunities.

Recommendation 6: That the Tasmanian NPM establish a formal and permanent Civil Society Advisory Council, which is integrated into its governance structure.

Stakeholders also recommended that the Tasmanian NPM introduce a formal and permanent mechanism for civil society engagement be created, which will informally report and provide advice.

To promote regular civil society engagement with the Office of the Tasmanian NPM and Custodial Inspector, an Advisory Council is recommended to provide specialist advice on matters critical to the success of the Tasmanian NPM.

This framework will enable individuals with specialised knowledge and lived experience of detention to inform delivery of the Tasmanian NPM's functions. Research identified that many other NPMs have integrated similar civil society engagement initiatives into their governance frameworks.

Its recommended makeup should consist of a fixed number of stakeholders with expertise in specialist areas, and people with lived experience. At a minimum it should meet three times per year.

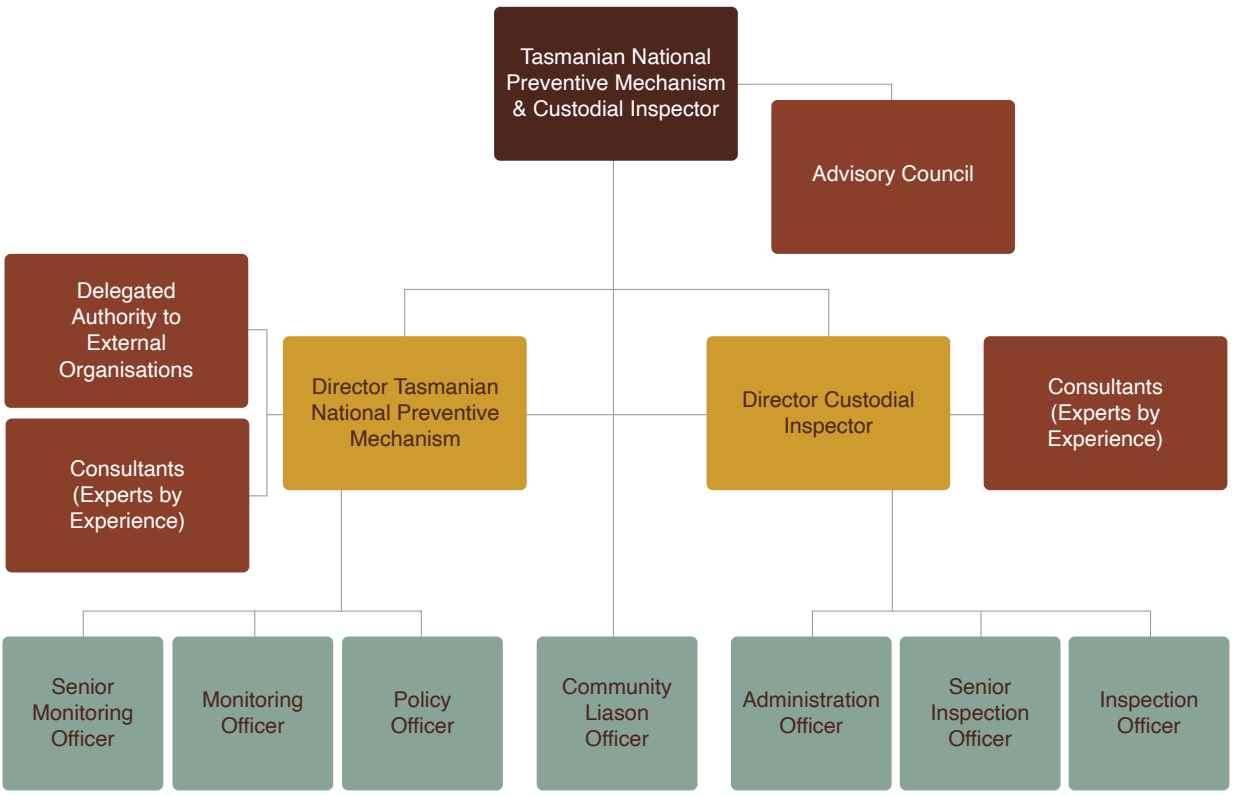

Figure 3: proposed governance model for the Office of the Tasmanian NPM and Custodial Inspector

5.3.3 Recommended governance model

The appropriate joint governance model to arise from the organisation design process for the Tasmanian NPM and Custodial Inspector is illustrated above in **Figure 3**.

This model assumes that the person appointed as Tasmanian NPM and Custodial Inspector will play a direct and full-time role in the exercise of the Tasmanian NPM functions.

In comparison to a model where most functions are exercised by employees through delegations (as is the case currently with the Ombudsman), having the Tasmanian NPM personally involved in visits, educative outreach, and cooperation is expected improve the efficiency

and quality of outputs, and assist with awareness raising building community trust. The governance model also assumes that with the Tasmanian NPM directly involved, a Deputy-level position is not required.

Reflecting Commission of Inquiry recommendations, the person appointed as Tasmanian NPM (and Custodial Inspector) should be selected following a transparent, publicly advertised, and merit-based recruitment process. The Tasmanian NPM should be employed at an equivalent level to other independent statutory authorities, understood to be SES Band 4.

To retain (and not replace) the Custodial Inspector, the model recommends a governance framework whereby each office will maintain dedicated staff, operating under individual Directors that report to the Tasmanian NPM and Custodial Inspector. It is proposed that each director will initially have 3.5 substantive direct reports. The Office will be supported by a 1FTE business manager (not pictured in **Figure 3**), who will also be responsible for liaising with the Agency providing corporate services.

Turning to the exercise of statutory functions, the Custodial Inspector will continue to operate under its legislative framework, and its standards will be updated to meet OPCAT requirements (at Appendix 7), with authority to undertake NPM visits to custodial centres.

In addition, the Custodial Inspector will also be delegated authority to undertake NPM visits to police and court custody settings. In Tasmania, court cells, and the two main watch house facilities are managed by the Tasmanian Prison Service (at Hobart and Launceston Reception Prisons).

Having the Custodial Inspector complete these examinations will promote consistency of oversight across all criminal detention settings in Tasmania. It will also promote a smoother transition as the Tasmanian NPM operationalises, as relevant administrators and staff within the Department of Justice are familiar with the Office of

the Custodial Inspector, and current inspectors have established trust with many people deprived of their liberty in these places.

Importantly, under the proposed governance model, monitoring staff from both offices can coordinate and pool staff resources to conduct examinations, improving agility and enabling larger visit delegations if required.

The new Office of the Tasmanian NPM will be responsible for the exercise of the NPM visiting function to non-custodial settings. This will include mental health settings, health and social care settings, and the broad range of settings in which children and young people may be deprived of their liberty (e.g. in out of home care, hospitals, and education settings).

The Office of the Tasmanian NPM will additionally coordinate delivery of the NPM's education, cooperation and advisory functions. Where relevant to do so, assistance will be obtained from Custodial Inspector staff (such as where advice relates to justice system reform).

As outlined above, the governance model incorporates delegated authority to external organisations, to contribute to the delivery of the NPM functions. This includes delegation to the Commissioner for Children and Young People, as discussed above. A similar delegation arrangement could also be contemplated with the Disability Commissioner, once it is established, in relation to visits to disability support settings.

It is important to emphasise that the NPM's non-visiting functions are equally important in the prevention of torture and ill-treatment. Accordingly, a dedicated policy officer is proposed with human rights or legal experience, to assist with delivery of the advisory function, particularly with respect to commenting on draft legislation, reviewing visit reports. And a community liaison officer is proposed to assist with the delivery of the education function.

In contrast to the policy officer position, an evaluation outcome was that the community liaison officer should work across (and be resourced equally by) both offices. This reflects that community and stakeholder engagement is key to both offices successfully exercising their functions. For the Office of the Tasmanian NPM, the community liaison officer will design, and assist with the delivery of, educative services both within settings and within the community. During the Office's initial years of operationalisation, this work will importantly involve awareness raising about the Tasmanian NPM, its functions, and its expectations. For the Custodial Inspector, the community liaison officer will be involved in producing relevant materials and engaging with stakeholders about the results of custodial inspector inspections and recommendations.

With respect to the proposed size of the Office of the Tasmanian NPM's visiting staff complement, 3 FTE of progressive seniority (including the Director) was evaluated as reasonable for this period of operationalisation. Noting that this office will focus on non-custodial settings, priority will be for staff to be recruited with relevant experience in secure mental health care, and health or social care. This proposal reflects an evaluation outcome that regular engagement of specific subject matter experts will be required to assist with thematic visits. This includes both professional experts by experience (which is existing practice for the Custodial Inspector), and by delegating authority to external bodies where potential complementarity exists without giving rise to conflicts.

Recommendation 7: That the Tasmanian NPM's corporate services are provided by an agency over which it will not have oversight, and consideration be given to its designation as a State Authority under the *State Service Act 2000*.

This recommendation is provided to safeguard and uphold the office's independence.

It arises from the fact that the Tasmanian NPM's activities will involve independent oversight of operations falling under the remit of multiple

departments; namely, the Department of Premier and Cabinet, the Department of Justice, the Department of Health, the Department for Children, Education and Young People, and the Department of Police, Fire and Emergency Management.

In addition, the recommendation responds to noted stakeholder concerns and a similar observation made by the Commission of Inquiry. In particular, in relation to Recommendation 18.8 (Chapter 5.7, Volume 8) the Commission of Inquiry says that any funding arrangements or conditions for the Commission for Children and Young People should be structured to ensure it has power to control its budget and staffing. Ideally, this approach should be adopted for all independent oversight bodies.

5.3.4 Consideration of Commission of Inquiry Recommendations

Recommendation 8: That the Tasmanian NPM and Commission for Children and Young People engage cooperatively and advise Government on a response to Commission of Inquiry recommendations related to the Tasmanian NPM and youth justice inspections, or any other suggested changes to the Tasmanian NPM framework.

It is acknowledged that the recommendation for the Tasmanian NPM to be established as a new specialised institution does not align directly with the Commission of Inquiry's proposed multiple-NPM model. It is considered, however, that the recommendations in this report are complementary, retaining the spirit of the Commission of Inquiry's recommendations and related observations are reflected across the organisational design and governance model.

As a new specialised institution, the Tasmanian NPM and Custodial Inspector will be separated from the Ombudsman's other jurisdictions. This recommendation responds directly to the Commission of Inquiry's observations regarding difficulties expressed by Mr

Connock in exercising seven jurisdictions, as well as the resourcing constraints that have faced the Custodial Inspector. If implemented,

the Ombudsman and its associated reactive oversight jurisdictions will be entirely separate to the Tasmanian NPM.

Under the recommended governance framework, the Commissioner for Children and Young People will be directly integrated into Tasmanian NPM operations that relate to children and young people, by way of delegation and a joint process framework. This includes participating in visits, joint development of visit methodologies (e.g. expectations, as included at Appendix 4), and in the delivery of the Tasmanian NPM's educative, advisory and cooperative functions. Under the OPCAT Implementation Act 2021, this delegated model will mean that the Commissioner for Children and Young People will exercise NPM functions, but it will not be required to establish an entirely new office. This integrated model incorporates key elements of the Commission of Inquiry's consideration that the Tasmanian NPM requires specific expertise in children and young people.

In addition to operational integration, this report has additionally recommended the physical co-location of the Tasmanian NPM and Commissioner for Children and Young People within a new, purpose designed premises. This would carry over to the Commission for Children and Young People, upon being created. This approach is considered noticeably more conducive to cooperation and collaboration than being separately located; particularly if established as two separate NPM offices. Under this approach, the Commission of Inquiry's desire that the Commission and NPM work together closely will be met.

Finally, notwithstanding these considerations, it is relevant to note that the Tasmanian NPM implementation model recommended in this report does not definitively exclude the Commission of Inquiry's recommendations from being adopted in the future, after the proposed Commission for Children and Young People is established.

However, given that establishing this new Commission for Children and Young People is likely to take time before it is fully operational, it is strongly encouraged that this recommended NPM model be implemented in the meantime and provided an opportunity to be evaluated. This will enable the many benefits of the Tasmanian NPM, working with the existing Commissioner for Children and Young People, to begin to flow through to children and young people deprived of their liberty as a matter of priority.

Following the commencement of the Commission for Children and Young People, it is suggested that the Commissioners and the Tasmanian NPM develop a timeline to review if the delegation model recommended is effective, and if any reform is required. It will also be for these bodies, acting independently, to advise the Tasmanian Government at this time whether the appointment of the Commission (or Commissioners) as NPM is desired, and any other related matters related to this revised approach.

5.4 Strategy

As a new specialised body, it is essential that a strategic plan exists to guide implementation of the governance model. As part of the organisation design process, a proposed implementation strategy for 2023-2025 has been developed.

The suggested strategy below reflects that implementation will be a long-term process, which will take time to scale up. For instance, implementation will involve appointing a person to lead as Tasmanian NPM and Custodial Inspector (in 2024), progressive recruitment of new Tasmanian NPM staff, physical office development, any required onboarding/training, developing internal policies and materials, and visit commencement.

As with all strategic plans, it is essential that periodic reviews occur, and that the next strategy should include an outcomes measurement approach to evaluation. This strategic plan may also require revision as Commission of Inquiry recommendations are implemented.

As the first strategy for the Tasmanian NPM, it is an important tool for setting its intention and ambition, and to ensure solid foundations are in place. It was developed via multiple strategic planning workshops between Elm and the Tasmanian NPM project team, and draws on learnings from other NPMs, other Tasmanian Government strategies, and key findings from the stakeholder consultation process.

5.4.1 Vision and purpose

The proposed vision for the proposed Office of the Tasmanian NPM and Custodial Inspector is that *Tasmanians trust that the human rights of people deprived of their liberty will be fully respected.* It is intended to reflect the office's aspirations and desired change in Tasmania, while recognising that the vision is shared with many organisations and communities, and that achieving this vision will require a collaborative effort.

Wording of the vision is linked to the text of OPCAT, which as outlined above restates State Parties' obligation to uphold full respect for human rights. The use of the word trust signals that the Tasmanian NPM has accountability to the public; trust requires transparency, active listening, education, and awareness. It is aspirational in that not only does torture and ill treatment need to be eliminated, but prevention be embedded in a way that the public is confident it won't happen in the future. Importantly, many places of detention are closed environments and the NPM can help Tasmanians to trust that people held in them have their human rights respected. This is done through exercising its various functions effectively including regular visits along with reports to the public and places of detention with recommendations for change.

The proposed purpose statement for the office is *preventing the torture and ill-treatment of people deprived of their liberty by embedding best practice human rights.* This wording intends to articulate the Tasmanian NPM's specific role in achieving its vision, and objectives.

Use of the word 'prevent' encapsulates the core purpose of the Tasmanian NPM's work, and how it differs from other oversight entities. It recognises that the promotion or championing of human rights is in pursuit of the prevention of torture and ill-treatment. Meanwhile, the phrase 'best practice' recognises that our stakeholders expect facilities will not be complacent in just 'meeting' minimum standards, but will strive to achieve best practice human rights and be drivers of that change.

5.4.2 Values

For the Office of the Tasmanian NPM and Custodial Inspector, these proposed values will be the foundation of its culture and provide a distinguishing feature of organisational identity. They will represent the shared principles and beliefs underpinning all of its activities, including how staff work with each other and stakeholders.

Each value is accompanied by a value statement that communicates the intent behind each value.

Independence: We strive to maintain our effectiveness as a proactive oversight body.

Inclusion: We believe having multiple perspectives makes us stronger.

Leadership: We inspire our community to promote and protect human rights.

Collaboration: We work with stakeholders to find robust solutions

The value proposition accompanying these values is that the Office will be *building public trust through independent oversight*. This articulates the unique value that the Tasmanian NPM will provide to stakeholders, how its services will effectively address their needs, and why they should engage with it.

Repeating the word 'trust' in this value proposition reflects stakeholder feedback that an overall outcome of the Tasmanian NPM's work is the building of trust. This includes that people deprived of their liberty trust that they are safe and that their human rights will be respected; the broader community trusts that places of detention are implementing best practice human rights, and that this is a result of independent oversight and reporting; and that staff in places of detention trust that their workplace is safe and that they are delivering best practice human rights.

5.4.3 Strategic pillars

Strategic pillars are the critical areas of focus that will ensure the Tasmanian NPM achieves its vision and purpose. Through consultation, Elm identified that the Tasmanian NPM's strategic pillars should be: *strong foundations, preventive functions, a culture first NPM,* and *stakeholder relations*. Each strategic pillar contains an overarching

objective, measures of success and initiatives. **Figure 4** is designed to demonstrate the Tasmanian NPM's strategic pillars supporting the NPM's purpose.

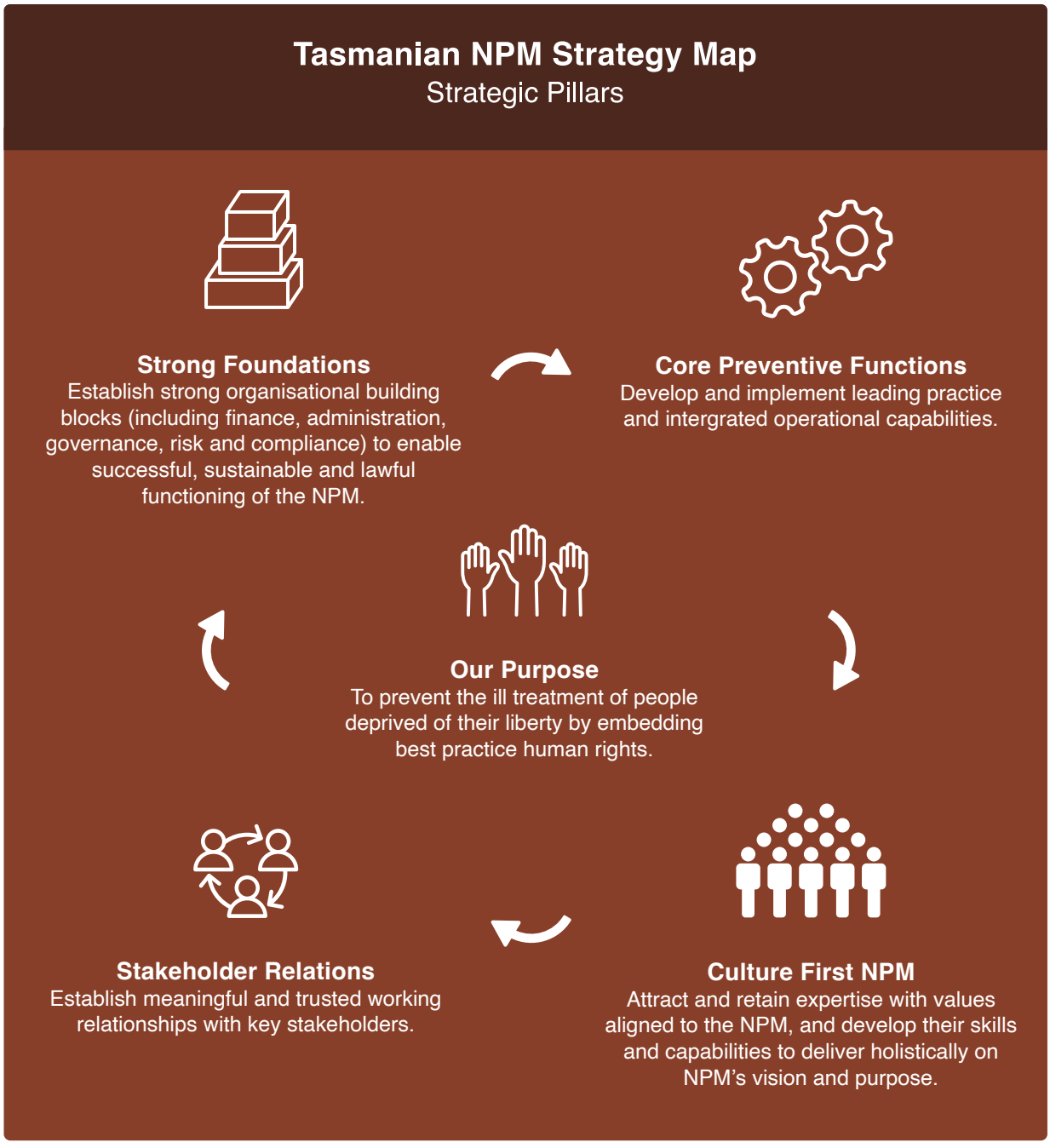

Figure 4: Overview of recommended Tasmanian NPM strategic pillars

The first pillar, *strong foundations*, refers to the 'back-of-house' functions that are critical to establish at the start of the Tasmanian NPM, including finance, administration, governance, risk management and compliance. Without these functions, the Tasmanian NPM cannot begin and continue service delivery.

The objective under this pillar is to establish strong organisational building blocks to enable successful, sustainable, and lawful functioning of the Tasmanian NPM. Implementation initiatives that can support this pillar include: embedding the vision, purpose and values in all activities; embedding the operating model and governance models; developing risk management and compliance systems; and establishing secure data, information and technology systems.

The second pillar, *preventive functions*, refers to the Tasmanian NPM's core functions (i.e. visiting, educational, advisory, and cooperation). As noted above, these functions will be implemented in a staged approach, with all functions to be established by the end of the Strategy.

The objective during the implementation period is to establish operational capability to deliver effective visits, education, advice, and cooperation. Key initiatives that can support this pillar include establishing and regularly updating the NPM's website as its key information portal; developing a comprehensive long term strategic visit plan with targets; develop accessible informative materials to raise stakeholder understanding of the Tasmanian NPM's role and of best practice human rights; begin to provide strategic advice in alignment with visit and educative priorities; and establishing the Advisory Council and implementing a stakeholder engagement strategy.

The third pillar, *culture first NPM*, refers to the skills, capability and culture required for an effective Tasmanian NPM. It encompasses internal staff, external experts, and stakeholders directly involved in the delivery of the Tasmanian NPM's services (e.g. assisting pursuant to delegated authority).

The objective for this pillar is to attract and retain expertise with

values aligned to the Tasmanian NPM, and develop their skills and capabilities to deliver holistically on the Tasmanian NPM's vision and purpose. Key initiatives that can support this pillar include:

- the recruitment, onboarding and upskilling of diverse and expert staff in accordance with the Act;
- developing an organisational culture plan that describes how the Tasmanian NPM's values translate into behaviours;
- implementing an Equity, Diversity and Inclusion Plan; and
- ensuring that trauma informed practice training is provided, and that appropriate care and practice supports are in place for all staff.

The fourth pillar, *stakeholder relations*, refers to the Tasmanian NPM's engagement with its external stakeholders. This includes government agencies, other government bodies, unions, the legal services sector, civil society organisations, the Commonwealth NPM, other NPM bodies and the general public.

The objective for this pillar is to establish meaningful and trusted working relationships with stakeholders. Initiatives that can support implementation of this pillar include implementing a stakeholder engagement strategy; implementing a communications plan, including media engagement; establishing a nuanced understanding of the needs and cultures of key stakeholders and the populations they serve; and setting up mechanisms to obtain ongoing stakeholders input (in addition to the Advisory Council).

5.4.4 Implementation roadmap

The implementation roadmap comprises two interlinked parts: organisational implementation, and strategy implementation. Reflecting the implementation practice of other NPMs, it is suggested that implementation be an iterative process, both in terms of the size of the Tasmanian NPM office and its capabilities, and how it exercises its functions.

In the foundational year of the Tasmanian NPM commencing (2023 – 2024), the office will begin undertaking visits to custody settings by leveraging the capabilities of the Office of the Custodial Inspector, and corporate services capabilities from the Department of Justice.

In practical terms, during this initial implementation period there should be no disruption to the ongoing operations of the Office of the Custodial Inspector beyond transitioning over to new examination expectations (to replace the existing inspection standards), and beginning to commence visits to police and court custody settings. The Office of the Tasmanian NPM will commence recruitment of its Director, and the Community Liaison Officer.

In its second year, the Tasmanian NPM will commence its visit program to non-custodial settings, with prioritisation of corresponding staff recruitment; and commence exercising its advisory function. This will include recruitment of the Principal Officer for visits; and the Senior Officer for legislative and policy advice. It is proposed that the visit function commence by way of announced and 'drop in' orientation visits, with a view to developing preliminary impressions, obtain general information, and to engage cooperatively with staff and people deprived of their liberty to familiarise them with the Tasmanian NPM and what to expect during a thematic visit.

Concurrently, the Tasmanian NPM and Custodial Inspector will be appointed, and recruitment of a business manager will be undertaken. It is also proposed that by this time an appropriate joint process agreement and delegated authority will have been settled with the Commissioner for Children and Young People (or Commission for Children and Young People).

In its third year, the Tasmanian NPM will transition to conducting a full complement of visits, including commencing a visit program for in depth visits to previously unmonitored deprivation of liberty settings. This will include recruitment of the Senior Officer for visits. Organisational implementation should be complete by the end of financial year 2025-2026.

Turning to strategy implementation, the implementation roadmap overview at **Figure 5** depicts when the strategy's pillars should commence, following the same progressive approach as the organisational implementation plan. It is important to note that as the implementation of the Tasmanian NPM's strategy progresses, the Tasmanian NPM will define performance indicators to measure the success of the body's programs and activities and the impact achieved.

	FY23/24	FY24/25	FY25/2
Pillar 1: Strong Foundations	Risk and compliance frameworks established Secure data, information and technology systems defined	Governance and operating model embedded Secure data, information and technology systems established	
Pillar 2: Preventive Functions	**Start of Education function** Visit Plan and supporting procedures developed **Start Visiting function** Public Policy advice framework developed	**Start of Advisory function**	**Start of Cooperation function** Knowledge Hub established
Pillar 3: Culture First NPM	Organisational culture plan developed Initial NPM staff recruited External support requirements defined, and connections established	Equity, Diversity and Inclusion Plan developed Trauma-informed supports established	
Pillar 4: Stakeholder Relations	Stakeholder Engagement Strategy implementation started Marketing and Comms Plan developed, and implementation started	Mechanisms for stakeholder input defined and developed	

Figure 5: Tasmanian NPM implementation roadmap overview

(Note: the knowledge hub refers to the publication of materials by the NPM through its website developed when exercising its functions. This includes its expectations for the treatment of people in different

deprivation of liberty settings, visit reports, educative materials, public communications and media releases, and any general advice.)

5.4.5 Stakeholder engagement

As part of the strategy, a stakeholder engagement plan has been designed to provide a framework which will guide the Tasmanian NPM's related activities during its first three years of operation. This plan connects to Strategic Pillar 4 and is intended to act as a tool for Tasmanian NPM leaders and staff to ensure consistent and best practice engagement with stakeholders. Relevantly, the plan builds on the activities undertaken and stakeholder relationships developed throughout the implementation project.

This Plan recognises the importance of effective engagement to building community trust in the work of the NPM and co-developing solutions to prevent torture and ill-treatment. Effective stakeholder engagement is necessary for the Tasmanian NPM to achieve its vision, that: *Tasmanians trust that people deprived of their liberty will have their human rights respected.* Stakeholder engagement is particularly important in the period from 2023 to 2025, given there will be low community awareness about the role of the Tasmanian NPM, and how it relates to other oversight and human rights bodies.

The objectives of the Tasmanian NPM's engagement activities with stakeholders are to:

- maximise community awareness of the work of the Tasmanian NPM and of best practice human rights obligations;
- maintain positive working relationships with stakeholders that promote co-designing of solutions to prevent torture and ill-treatment;
- obtain expert and lived experience input into the Tasmanian NPM's Strategy; and
- deepen stakeholder trust in the work of the Tasmanian NPM.

This Plan was informed by applicable legislation and regulation, best practice stakeholder engagement resources and practice methods (International Association for Public Participation's Public Participation Spectrum), civil society responses to consultation papers, and Tasmanian Government guidance. It is designed to assist with the selection of the level of public participation required for different decisions.

Table 1 outlines that depending on the engagement goal, the level of engagement increases from 'inform' (lowest engagement level) to 'empower' (highest engagement level). And **Table 2** outlines the key engagement objectives for each stakeholder group.

Level of engagement	Engagement goal	NPM engagement example
Inform	Provide stakeholders with information to assist in their understanding of the work of the Tasmanian NPM	Provide information on the Tasmanian NPM's functions on website
Consult	Obtain stakeholder feedback on the work of the Tasmanian NPM and future strategies	Seek stakeholder submissions in response to consultation papers
Involve	Work directly with stakeholders to ensure their concerns and aspirations are understood and considered in developing Tasmanian NPM strategies	NPM lived experience advisory group input into visits methodology
Collaborate	Partner with stakeholders in decision-making and co-development of solutions	Co-design solutions to ill-treatment with operators of places of detention
Empower	Place final decision-making power in the hands of stakeholders by adopting their preferred approach	Delegate Tasmanian NPM functions to other individuals or bodies

Table 1: Stakeholder engagement level overview

Level of engagement	Internal NPM	Govt.	Non-Govt.	Non-Tas NPM	People
Maximise community awareness of the work of the NPM and of best practice human rights obligations		✓	✓		✓
Maintain positive working relationships with stakeholders that promote co-designing of solutions to prevent torture and ill-treatment		✓	✓		
Obtain expert and lived experience input into the NPM's Strategy		✓	✓	✓	✓
Deepen stakeholder trust in the work of the NPM	✓	✓	✓	✓	✓

Table 2: Stakeholder engagement objective overview

Engagement principles will determine *how* the Tasmanian NPM should engage with its stakeholders. The Tasmanian NPM will undertake all stakeholder engagement with regards to six engagement principles listed at **Table 3** on the next page.

Principle	What this looks like
1. Accessible	• Convenient and flexible engagement methods • Plain English language • Engagement barriers removed • Tailored and useful for different stakeholder needs
2. Resourceful	• Utilises existing channels • Prioritises methods that enable input from wide representation within available resources • Avoids unnecessary duplication
3. Consistent	• Key messages are the same across channels and stakeholders • Any changes to key messages are clearly explained
4. Transparent	• Transparency from Tasmanian NPM on engagement activities • Transparency from Tasmanian NPM on how engagement findings will be considered in decision-making
5. Safe	• Stakeholders feel safe providing input, including confidential input • Stakeholders trust that the Tasmanian NPM will use their input appropriately and sensitively • Tasmanian NPM provides safe spaces to provide input that do not risk harm to the person providing input or to other stakeholders
6. Genuine	• Tasmanian NPM engages genuinely, with a focus on building better outcomes for the sector • Tasmanian NPM engages early so that findings can be meaningfully considered in decision-making

Table 3: Stakeholder engagement principles

Tasmanian NPM will use a variety of methods to engage with its stakeholders. The methods chosen will depend on the context, and will consider the needs of the particular stakeholder, the objective of the engagement, and the Tasmanian NPM engagement principles. These methods are depicted in **Table 4.**

Method	Detail
NPM website	• To include information on the Tasmanian NPM's Strategy and functions, best practice human rights resources, and engagement activities • Accessible to all stakeholders including the public
Resources & fact sheets	• To include role of and best practice human rights obligations • Located on website, mail outs, and direct engagement with stakeholders
Ad-hoc emails to mailing list	• Notify stakeholders of important updates (e.g. to best practice) • Useful for operators of places of detention and non-government organisations with direct interest in the work of the Tasmanian NPM
Media	• Media to be used sparingly and where appropriate • Used to increase public awareness of, and trust in, the Tasmanian NPM
Presentations	• For example, human rights conferences, universities, organisations • To educate future workforces in places of detention (e.g. social workers, medical students, psychology students)
Formal Stakeholder submissions	• Formal stakeholder responses to Tasmanian NPM consultation papers released • Time intensive for organisations to complete and should be preserved for important issues
NPM attends existing meetings	• For example, existing Tasmanian government interagency committees • Requires less effort and cost for Tasmanian NPM to participate

Method	Detail
Advisory groups	• May include thematic experts, lived experience representatives, or representatives from key stakeholder groups • Meet on regular basis
Outreach engagement	• Conduct pop-up engagement activities around the state • Used to raise awareness of the Tasmanian NPM with community organisations and general public in their own location • May be conducted in partnership with peak body or local bodies
Individual stakeholder briefings	• Useful for updating key stakeholders on important issues or changes that may be impacting them • Helps form frank and trusting relationships and co-design solutions

Table 4: Stakeholder engagement methods

5.4.6 Risk management

Effective risk management will be critical for the Tasmanian NPM to achieve its objectives and fulfil its mandate. By proactively identifying and managing risks, the organisation can anticipate and respond to potential challenges, make informed decisions, build resilience, maintain its stakeholders' trust and confidence, and meet its risk and compliance obligations

To develop an appropriate risk management strategy, Elm undertook a comprehensive risk assessment following the ISO 31000:2018 standard. Risks were identified through meetings with the Tasmanian NPM Project Implementation Team and the evaluation of annual reports, practices of NPMs in other jurisdictions, relevant legislation, and United Nations publications concerning NPMs. Stakeholder feedback to the Tasmanian NPM's consultations were also a key input for this process. The identified risks were categorised into five categories, outlined at **Table 5**.

Risk category	Overview of risks identified
Strategic	Ability of the Tasmanian NPM to maintain its independence and deliver its functions effectively
Stakeholder & Reputation	Ensuring that the Tasmanian NPM has well-established lines of communication with its key stakeholders and is adequately cooperating and addressing concerns raised by them
Financial	Appropriate use of Tasmanian NPM funds
Operational	Ability to access people and information required to undertake the Tasmanian NPM's functions, information management and communication, consistency of processes and adherence to relevant framework requirements
People & Safety	Effective management of the health, wellbeing, and safety of the Tasmanian NPM's staff and collaborators
Compliance	Conflict of interest, data protection and confidentiality, and ethical matters

Table 5: Risk management overview

These risks were captured in a proposed internal risk register, assessed, and prioritised based on the Tasmanian NPM's ability to respond to the risk and the potential consequences if the risk materialises.

Elm and the NPM project team defined the response strategies to address the risks. These strategies include the development of guidelines, frameworks, policies and plans to support the core functions of the Tasmanian NPM, as well as robust collaboration and engagement with key stakeholders to ensure that the Tasmanian NPM's practices are compatible with external requirements.

The risk register should be regularly reviewed internally by the Tasmanian NPM team and updated as necessary. As part of its strategy, the Tasmanian NPM will need to establish a Risk and Compliance Framework to define governance, risk appetite and tolerances, staff roles and responsibilities, and processes for managing and reporting risk. This framework will help ensure that the Tasmanian NPM can effectively manage and respond to risks as they arise, and minimise their impact on the Tasmanian NPM's objectives.

5.5 Budget

A proposed budget for the Tasmanian NPM and office has been developed in line with the proposed governance model, to ensure that the body has sufficient resources to effectively operationalise and deliver the functions detailed in the *OPCAT Implementation Act 2021.*

This budget **does not** include resourcing for the Custodial Inspector, including the balance of costs detailed in the assumptions (below) that are proposed to be shared between both the Tasmanian NPM and the Custodial Inspector.

It also does not include additional resourcing that will be required by other entities authorised to exercise NPM powers/functions under delegated authority. This notably includes the 2FTE estimated by the Commissioner for Children and Young People. As noted earlier in this Report, additional resourcing is likely to be required if the Tasmanian NPM is to visit private residential disability support and aged care settings. These visits are not expected to commence before FY25/26.

5.5.1 Overview

The development of this budget has incorporated the following:

- legislative requirements, particularly operational and financial independence;
- recommened NPM design and governance model;

- Tasmanian NPM vision, purpose and values;
- organisational design and capabilities;
- recommended strategy;
- NPM risks covering strategy, operations, reputation, stakeholders, people and safety, finance and compliance; and
- outcomes from the stakeholder consultations undertaken throughout the NPM implementation project.

The scope of this budget covers the establishment and operations of the Tasmanian NPM between FY23/24 and FY25/26. In summary, the budget covers the following:

1. the establishment of the NPM
2. the operationalisation of the four functions of the NPM, which will be fully operational by the end of FY25/26:
    i. Visits
    ii. Advisory
    iii. Educational
    iv. Cooperation.

It is important to note that the Tasmanian Government will be the sole source of funding for the Tasmanian NPM. **Table 6** provides the total operational expenses for the Tasmanian NPM budget. A detailed budget analysis underpinning these estimated figures is provided at **Appendix 8**.

	FY23/24	FY24/25	FY25/26
Total Operational Expenses	$907,045.03	$1,487,024.27	$1,740,429.99

Table 6: Total estimated operational expenses for the Tasmanian NPM until FY25/26

5.5.2 Assumptions

These budget assumptions are divided into three component parts, each representing a different responsibility grouping for the office:

1. The Office of the Tasmanian NPM;
2. The core function costs; and
3. General business enablement.

Each is outlined below in turn.

5.2.2.1 Office of the Tasmanian NPM costs

The Office of the Tasmanian NPM is responsible for the leadership and strategic delivery of the Tasmanian NPM's functions. For the Tasmanian NPM and office Director, this includes strategy development, high level stakeholder engagement, operational oversight, and providing human rights leadership. The Community Liaison Officer will be responsible for stakeholder outreach and coordination and delivery of educative services. Its costs include the following:

- Office salaries and wages for:
    - Director of the NPM (1FTE Band 8) – to be engaged on FY2023/24
    - Community Liaison Officer (1FTE Band 6) – to be engaged on FY2023/24
    - Head of Agency for the Office of the NPM and the Office of the Custodial Inspector (1FTE) – to be engaged from FY2024/25

Note: the salaries and wages of the Community Liaison Officer and Head of Agency will be split equally by the Office of the NPM and the Office of the Custodial Inspector. While it is expected that joint budget submission will be submitted in the future, for the purposes of this report only .5 FTE for each position has been included in costings (the

balance to be paid by the Office of the Custodial Inspector). The Head of Agency has been costed at SES 4, which is observed as equivalent to related oversight entities in Tasmania.

- Cooperation function related costs, including:
  - Implementation of a Stakeholder Strategy, which will commence in FY23/24, with precise mechanisms for stakeholder input defined and developed in FY24/25.
  - Establishment of an Advisory Committee, which will be undertaken in FY 25/26
  - Refresh of the strategic and stakeholder strategy to be conducted in FY25/26.
- Delivering the educational function, which is planned to commence in mid FY23/24, with the NPM team to focus initially on promoting high level stakeholder understanding of the NPM's role. This includes development of the website and key information materials.
- Contingency costs: the contingency fund covers any unforeseen expenses or emergencies that may arise during the year (the contingency was set as 10% of the overall budget).

5.5.2.2 Core function costs

This component comprises staff that will conduct visits and prepare educative and advisory materials, under the direction of the Director and Tasmanian NPM; as well as expert by experience engagements. The costs to deliver these preventive functions include:

- Salaries and wages of:
  - Principal Officer – Visits (1FTE Band 7) – to be engaged on FY2024/25
  - Senior Officer – Visits (1FTE Band 6) – to be engaged on FY2025/26
  - Senior Officer – Policy (1FTE Band 6) – to be engaged on FY2024/25

- Consultants' fees of experts that support the delivery of these functions, as well as costs associated with delegating these functions.
- Logistics costs, including a motor vehicle for the Office of the NPM, and a motor vehicle for the Head of Agency (cost to be split evenly between the NPM and the CI), travel and communications expenses.
- Training and professional development costs to ensure efficient and effective delivery of the NPM functions.
- Enabling the visits function, which is expected to start by the end of FY23/24 and operate with a progressive implementation schedule from FY24/25.

5.5.2.3 General business enablement

This component part relates to the establishment and maintenance of the office's 'back end'. It includes organisational capabilities, processes, and systems. Its purpose is to ensure the office's strategic, financial, and operational position is known and understood by the office and that appropriate governance and compliance measures are in place, so effective decisions can be made.

Having regard to the size of the office (including the Custodial Inspector), the proposal is that most corporate services will be outsourced to a larger government entity under a service level agreement. This reflects same format that is currently undertaken by the Office of the Ombudsman, with corporate services provided by the Department of Justice.

To ensure full independence and remove connections to departments the NPM will have oversight of, it is recommended that corporate services be outsourced to another entity from FY24/25 onwards, when the Office of the Tasmanian NPM and Office of the Custodial Inspector are combined through the creation of a new separate entity.

The costs of the business enablement component include:

- Business Manager (1FTE Band 5) – to be engaged on FY2024/25;
- Corporate services;
- Costs associated with the day-to-day operations of the NPM, including rent, utilities, equipment, and supplies; and
- Information, Communication and Technology (ICT) expenditure, including equipment and computer lease, software and licenses and other related costs.

The Business manager will be responsible for managing day to day spending, tracking the office budget, and liaising with the external corporate services provider. This mirrors the current arrangement in the Office of the Ombudsman. The cost of the Business Manager will be split by the Office of the NPM and the Office of the CI. Accordingly, only 50% of the Business Manager's costs have been accounted for under this proposed budget.

Service level agreement costs are based on advice provided by the Office of the Ombudsman and the Department of Justice in June 2023. It is presumed that costs will be the same or similar if another Department or entity performs this service in place of the Department of Justice. Budget revisions will be required if these costs change (it is understood that they are due to increase).

Expenditure has been CPI-adjusted [source: IBISWorld]. It is presumed that vehicles and ICT equipment will be leased, so capital expenditure has not been budgeted.

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Appendix 1: Consultation Expression of Interest

Tasmanian national preventive mechanism
Implementation project

Civil society organisation engagement expression of interest

December 2022

Tasmania
Explore the possibilities

About: This document provides information about the expression of interest process relating to the creation of the Tasmanian national preventive mechanism. It is intended for civil society organisations interested in participating in consultations.

The creation of the Tasmanian national preventive mechanism forms part of Australia's ratification of the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT).

OPCAT is an international human rights agreement that complements and enhances compliance with the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT). Australia ratified the CAT in 1989, and OPCAT in 2017.

OPCAT provides a framework aimed at strengthening the protection of people deprived of their liberty in places of detention through preventive engagement. It does this by establishing a system of regular visits to places of detention under the jurisdiction and control of a State Party. The visiting bodies also provide related policy feedback, observations and recommendations to government; and deliver education programmes.

The body that exercises this mandate at the domestic level is known as the 'national preventive mechanism' (NPM). At the international level, a United Nations body named the 'Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment' has also been established, which will visit Australia periodically.

Under Australia's OPCAT ratification model, each state, territory, and the Commonwealth government will create its own NPM framework. To give effect to Tasmania's responsibilities, in 2021 the Tasmanian Government passed the *OPCAT Implementation Act 2021* (Tas). In February 2022, the Governor of Tasmania, the Honourable Barbara Baker AC, appointed Mr Richard Connock as Tasmanian NPM.

Civil society is an essential actor in the prevention of torture and other forms cruel, inhuman or degrading treatment or punishment. It will play a key role in the implementation and ongoing activities of the Tasmanian NPM.

Through this expression of interest, Mr Connock warmly invites civil society organisations to have a say on what is important for priority communities. The consultation process will enable the Mr Connock to develop best practice insights, informing key decisions on how the Tasmanian NPM office will operate.

Enquiries related to this expression of interest may be made to Mark Huber, Project Manager, OPCAT Implementation Project, at enquiries@npm.tas.gov.au.

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Acronyms and key words

Civil society	This includes a wide range of organisations, including non-governmental organisations and associations, professional associations, trade unions, academia, and faith-based groups.
CAT	*Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.*
OPCAT	*Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.*
NPM	National preventive mechanism.
SPT	Subcommittee on Prevention of Torture.
'the Act'	*OPCAT Implementation Act 2021* (Tas).
Ill-treatment	All forms of cruel, inhuman or degrading treatment or punishment.
Place of detention	Any place under [a State Party's] jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence. (OPCAT, Article 4(1))
Deprivation of liberty	Any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority. (OPCAT, Article 4(2))

Introduction: what is the purpose of this expression of interest?

This expression of interest process is intended to provide civil society organisations with an opportunity to register their interest in participating in consultations on the development of the Tasmanian NPM.

Tasmania is embarking on the next stage of its journey to implement OPCAT, which will see the Tasmanian NPM become operational in 2023. This follows from the Tasmanian Government passing the *OPCAT Implementation Act 2021* (Tas) (the Act), creating a legal framework establishing the Tasmanian NPM as a new specialist institution; and in February 2022, the appointment of Mr Richard Connock as inaugural Tasmanian NPM.

To fulfil the functions of the Tasmanian NPM, as set out in the Act and provided under OPCAT, Mr Connock is now scoping how this new institution should be designed, and how it will operate. Stakeholder collaboration is sought to provide insights and inform key decisions made throughout this scoping process.

It is widely acknowledged that civil society played a leading role in advocating for Australia's ratification of OPCAT. It has a crucial role to play in strengthening the development and ongoing operations of Australia's network of NPMs. Indeed, in Tasmania, civil society has already played an important role, contributing valuable feedback on development of the Act.

Civil society possesses a deep substantive and applied understanding of the day to day matters to be considered by the Tasmanian NPM in the discharge of its functions. In particular, civil society organisations hold longstanding knowledge and experience working in closed places, places of restriction and other places where people are or may be deprived of their liberty or held against their will; and in assisting people who are victims of torture and other forms cruel, inhuman or degrading treatment or punishment ('ill-treatment'). For vulnerable communities, civil society organisations play a crucial role providing support services, advocating for policy reform and on behalf of individuals, and in illuminating their experiences and stories to the public.

Civil society engagement with the NPM is a key recommendation of the United Nations Subcommittee on Prevention of Torture (SPT). Recognising that this approach is best practice, NPMs around the world have adopted various models to ensure civil society actively participates in their activities. The Tasmanian NPM intends to follow this approach.

Developing an NPM operating model that includes ongoing engagement and collaboration with civil society can strengthen each-other's ability to generate preventive change, and reduce the risk of torture and ill-treatment occurring. Participating in this consultation provides a valuable opportunity to have a say on what is important for priority communities, and to learn more about how the Tasmanian NPM will operate.

To operationalise the office of the Tasmanian NPM, this stage of implementation process will seek to address important applied matters that have yet to be fully explored in the Australian context. This includes, for instance, understanding the places that the Tasmanian NPM will visit, identifying key visit themes, and developing standards and guidelines to

prevent torture and ill-treatment. Feedback provided through this consultation process will directly shape development of the Tasmanian NPM's operating model, the identification of budget requirements, and any related stakeholder or community needs.

The Tasmanian NPM, Mr Richard Connock, wants to hear from anyone interested in the work of the NPM, particularly organisations who work in places of detention and/or represent people deprived of their liberty, as well as individuals with relevant lived experience. This includes in particular civil society organisations representing the following populations:

- People in places of detention
- People who have been released from places of detention
- Victims, detained as (alleged) perpetrators
- Aboriginal and Torres Strait Islander people
- Children and young people
- Women
- Pregnant people
- People with children
- Older people
- People who are gay, lesbian, bisexual, transgender, intersex and queer
- People with disability and impairment
- People with mental illness
- People from culturally and linguistically diverse backgrounds
- Refugees and people seeking asylum
- People living in regional, rural and remote communities
- People affected by substance misuse
- People with poor literacy skills
- People experiencing or at risk of homelessness

To assist in evaluating whether this process is relevant to an organisation's activities, this document provides below a general overview of OPCAT and the NPM framework.

Instructions on how to respond to this expression of interest process are provided below.

How to respond to this expression of interest

Civil society organisations and individuals are invited to respond to this expression of interest by registering to participate via email as follows:

> **Address**: enquiries@npm.tas.gov.au
>
> **Subject**: 'EOI – Tasmanian NPM implementation'
>
> **Body**: Name of your organisation and contact details to receive correspondence (contact name, email address, and phone number).
>
> Please include a brief (1 – 2 page) background of your organisation's mission and activities, which includes:
>
> (1) How your mission relates to the work of OPCAT
> (2) What populations you represent
> (3) What places of detention/places where people may be deprived of their liberty you have expertise in (if any).

A summary of each consultation round will be included in the Tasmanian NPM's implementation report. Individual consultation responses will not be published. Please indicate in your expression of interest if you would prefer that your participation in this consultation process be treated as confidential. Civil society organisations are welcome to publish their submissions to this consultation process on their respective websites.

Parties are encouraged to respond to this expression by **9 January 2022**.

Late registrations to this expression of interest will not be excluded, but may not receive an extension of time to provide a submission under any active round of consultations.

Enquiries related to this expression of interest may be made to Mark Huber, Project Manager, OPCAT Implementation Project, at enquiries@npm.tas.gov.au.

What will the consultation process look like?

Collaboration under this stakeholder engagement process is expected to occur through several rounds of consultation, commencing in early January 2023.

The anticipated progression of consultations is as follows:

1. Developing a shared understanding of the places that the Tasmanian NPM will be expected to visit, as required by OPCAT.

   This will be an opportunity for civil society organisations to understand the scope of the Tasmanian NPM's visiting mandate, and provide feedback on how it could apply to their community.

2. Identification of applicable human rights obligations, norms, law, and best practice.

   This will be an opportunity for civil society organisations to understand and contribute feedback on national and international obligations applicable to their community, and best practice to prevent torture and ill treatment. Insights provided will assist the Tasmanian NPM to develop appropriate visit methodologies, including themes for visits to places of detention, and appropriate visit standards and guidelines.

Due to the high number of anticipated participants, each consultation round will consist of the distribution of a background information document, which stakeholders may provide feedback on, accompanied by a request for responses to a series of key questions, and any additional information considered relevant.

Stakeholder feedback may be followed up with individual or group discussions. Stakeholders are not required to participate in each consultation round.

The first round of consultations is anticipated to commence in mid-January 2023, with feedback due by late-February 2023. Further information will be provided in the consultation paper.

Background

1. What is OPCAT?

OPCAT is a new type of international human rights agreement aimed at strengthening the protection of persons in places of detention. It is open to be joined by any State that has signed the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the CAT).

International law provides that torture is a crime in all circumstances; it is never allowed nor justifiable. It is what is known as an absolute and non-derogable prohibition, and a *jus cogen*, meaning it is binding on all States.

Australia ratified the CAT in 1989, and OPCAT in 2017.

Article 2 of the CAT imposes a positive obligation on a State Party to adopt effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. Article 16 of the CAT extends this obligation to the prevention of ill-treatment.

Despite these obligations, torture and ill-treatment continues to occur in many locations globally.

To improve a Member State's compliance with the CAT, OPCAT provides a complementary framework developed to strengthen the protection of people deprived of their liberty in places of detention through preventive monitoring, providing advice and recommendations, cooperating with authorities, and education. Recognising that torture and ill-treatment is more likely to occur in places not subject to external scrutiny, OPCAT establishes a system whereby regular visits are made to places of detention by independent, external person(s).

OPCAT is a unique international agreement, requiring that its functions be carried out by both international and national independent monitoring bodies.

At the international level, OPCAT has established a new, standing subcommittee to the CAT, called the 'Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (the SPT). OPCAT provides that the SPT may visit any place of detention under the jurisdiction of a State Party (to OPCAT). Following a visit, the SPT recommends action to be taken to improve the treatment of detainees or persons being held against their will, including conditions of detention. States party to OPCAT are obligated to receive the SPT and grant it unfettered access to places of detention, certain information, and agree to engage cooperatively with the SPT during its visits. The SPT will visit Australia periodically.

At the national level, upon ratifying OPCAT, the State Party is required to establish a new NPM framework. OPCAT is the first international agreement that includes as a mandatory component the creation of a national body to play a key role in its implementation. Similar

to the SPT, NPMs are independent visiting bodies, established at domestic level. Because SPT visits may be multiple years apart and short in duration, the NPM plays a critical role in effectively preventing torture and ill-treatment by being a permanent, regular presence that is able to engage actively with State authorities, stakeholders and civil society.

Australia's SPT obligations commenced upon ratifying OPCAT in 2017, while it is required to be NPM compliant by January 2023.

2. What is a national preventive mechanism?

The NPM is a visiting body established for the purpose of preventing torture and other cruel, inhuman or degrading treatment or punishment. It is required to be independent in the exercise of its mandate, operations, and finances. The NPM mandate consists of four functions: visiting, advisory, educational, and cooperation. OPCAT does not create any new substantive human rights obligations.

The NPM's primary function is undertaking preventive monitoring of places of detention. Under this function, the NPM is required to regularly examine the treatment of the persons deprived of their liberty, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment.

Article 4 of OPCAT defines places of detention and deprivation of liberty in broad terms. This recognises that torture and ill-treatment can occur in a wide range of settings. The places visited by the SPT and by NPMs goes beyond prisons and youth justice facilities. In other States, NPMs visit places such as police stations, military detention, detention centres (including pre-trial detention centres and immigration detention centres, and transport vehicles to and from those facilities), mental health facilities, and social care facilities (such as hospitals, aged care, and educational facilities).

During these visits, places of detention are evaluated for compliance with the State's international human rights obligations, other relevant United Nations norms, applicable domestic laws, and relevant best practice. To effectively exercise their mandate, NPMs are required to have unfettered access to places of detention, private access to persons held in those places, access to related things and information, and contact with authorities. Consistent with their preventive focus, NPMs do not investigate complaints.

Following a visit, NPMs exercise their advisory function by making recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and ill-treatment. The relevant authorities are required by OPCAT to enter into dialogue with the NPM to discuss possible measures to implement its recommendations. The NPM does not have the power to enforce implementation, although it may emphasise observed failures in follow-up reporting.

Alongside these recommendations, NPMs also submit feedback on draft legislation and proposed policy; review rules, methods and practices; deliver education programmes to relevant authorities, stakeholders and the wider public; and cooperate with government and

non-government entities to share experiences and improve their effectiveness. The NPM issues an annual report on its activities, and may publish other reports or information relevant to its functions.

NPMs are required to uphold the principle of confidentiality. This means that a person's personal information obtained by the NPM in the exercise of its functions cannot be published without that person's consent.

Reprisal against a person for providing information to an NPM or the SPT (or because they may provide information in the future) is prohibited. With respect to the Tasmanian NPM, protection from reprisal has been made a specific offence under Tasmanian law.[1]

3. What is preventive monitoring?

Under OPCAT, the NPM exercises its functions through a preventive lens. Article 19 of OPCAT outlines the objective of visits as being to strengthen, if necessary, the protection of persons against torture and other cruel, inhuman or degrading treatment or punishment, and with the aim of improving the treatment and the conditions of the persons deprived of their liberty. In other words, visits are aimed at preventing future occurrences of torture and ill-treatment.

The Association for the Prevention of Torture notes that this process "can be understood as any visit to a place of deprivation of liberty, with the objective of identifying root causes of ill-treatment and other human rights problems, understanding systemic issues and finding ways to address them."[2]

This means that the NPM's aim is not to respond to specific events, allegations or complaints. Instead their approach is proactive; aiming to ensure that circumstances in which such events, allegations or complaints may occur are less likely to arise. In Tasmania, such complaints or allegations would be made to the Ombudsman, or Tasmania Police. Visits to places of detention are regular, focusing on systemic improvement rather than on any particular individual, and involve ongoing dialogue with relevant authorities.

The prevalence of torture and ill-treatment can be influenced by many factors. Addressing all factors on each visit can be difficult to achieve, and resource intensive. Preventive visits accordingly can take a number of forms, and can be announced or unannounced. Follow-up visits often occur.

To ensure that visits are appropriately thorough, a common approach is for visits to a place to be broken down into 'themes', although this may vary on a case-by-case basis. A visit

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[1] *OPCAT Implementation Act 2021* (Tas), section 36.
[2] Association for the Prevention of Torture, *Knowledge Hub – NPM Toolkit – Activities – Preventive Visits* https://www.apt.ch/en/knowledge-hub/npm-toolkit/activities/preventive-visits [Accessed 30 November 2022].

may be comprehensive, in the sense that it will aim to address many or all themes in-depth, on a single occasion. These visits typically take several days. Or a visit may focus on one particular theme only, which may take less than a day. Under each theme, the NPM will typically have regard to relevant standards and guidelines, and may include the involvement external experts (e.g. specialist medical practitioners).

The choice of visit type (e.g. comprehensive, specific theme, ad hoc, or follow-up) and prioritisation of regularity of visits to certain places, and relevant themes, is determined following the principle of proportionality. This principle takes into consideration factors such as strategy, available resources, and analysis of a situation, which can include the identified risk of likelihood of torture and ill-treatment occurring. NPMs are expected to develop an internal program to ensure that it deploys its resources as effectively as possible.

4. What does Australia's NPM model look like?

OPCAT does not specify a particular NPM organisational model, enabling a State Party to set up, designate or maintain one or several NPMs. Around the world, States that have established NPMs have generally done so differently. In a similar way, Australia's approach to NPM implementation will also be unique.

The 'Australian NPM' collectively consists of a network of NPMs set up by each state and territory government, and the Commonwealth government.

This multi-NPM approach was selected by Australian governments due to jurisdictional complexities arising from Australia's federated system of government. In Australia, each state and territory government, and the Commonwealth government, operate and maintain power over certain places of detention—notably prisons and other detention facilities, court cells, police cells, health facilities, and social care facilities. Accordingly, Australian governments will each give effect to Australia's NPM obligations separately, for persons deprived of liberty under their respective jurisdiction and control. Similarly, all Australian governments are required to take steps to ensure that the SPT can exercise its visiting mandate.

All Australian NPMs will operate independently, while the Commonwealth NPM (the Commonwealth Ombudsman) holds an additional responsibility of coordinating and facilitating information flows among the network.

In Tasmania, the NPM framework currently consists of a single, dedicated and independent body, which has been established by the Tasmanian Parliament under standalone legislation, the *OPCAT Implementation Act 2021* (Tas). This legislation sets out all of the NPMs powers, functions and duties, and includes specific provisions to facilitate SPT visits.

Further information about OPCAT:

OPCAT came into force globally in 2006. Over this time a great deal has been published about OPCAT, Australia's ratification, and other countries' existing NPMs. Below is a short list of freely available materials for those seeking further information.

- UN General Assembly, *Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment,* 9 January 2003, A/RES/57/199 https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-against-torture-and-other-cruel

- UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, (resolution 39/46), United Nations, Treaty Series, vol. 1465, p. 85 https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading

- *OPCAT Implementation Act 2021* (Tas) https://www.legislation.tas.gov.au/view/html/asmade/act-2021-026

- UN OHCHR, website of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (also provides information about NPMs): https://www.ohchr.org/en/treaty-bodies/spt

- UN OHCHR, *Preventing Torture – The Role of National Preventive Mechanisms – A Practical Guide* (2018) https://www.ohchr.org/en/publications/professional-training-series/preventing-torture-role-national-preventive-mechanisms

- UN OHCHR, *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (2022 ed.) https://www.ohchr.org/en/publications/policy-and-methodological-publications/istanbul-protocol-manual-effective-0

- Association for the Prevention of Torture (relevant information about OPCAT and the NPM is provided in the 'Knowledge Hub') https://www.apt.ch/en

- Commonwealth Ombudsman, *Monitoring places of detention – OPCAT* https://www.ombudsman.gov.au/what-we-do/monitoring-places-of-detention-opcat

- Australian Human Rights Commission, *OPCAT: Optional Protocol to the Convention against Torture* https://humanrights.gov.au/our-work/rights-and-freedoms/projects/opcat-optional-protocol-convention-against-torture

Appendix 2:
Consultation Paper 1

Tasmanian national preventive mechanism

Implementation project

Consultation paper 1

Approach to OPCAT Article 4: identifying places of detention

January 2023

Tasmania
Explore the possibilities

About: This consultation paper invites stakeholders to have their say in shaping the Tasmanian national preventive mechanism's (NPM) approach to identifying places where people are or may be deprived of their liberty. Stakeholders are also invited to provide important feedback on places relevant to their populations, and key issues.

The Tasmanian NPM forms part of Australia's ratification of the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT). OPCAT is an international human rights agreement that complements and enhances compliance with the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT).

Additional background information about OPCAT and the Tasmanian NPM is available at www.npm.tas.gov.au.

Key anticipated outcomes from this consultation paper are:

- The development of a shared understanding among stakeholders and the Tasmanian NPM of the scope of its visiting function;
- Identification of potential opportunities for civil society to prioritise resources or assist the Tasmanian NPM, to prevent torture and ill-treatment; and
- Identification by the Tasmanian NPM of places of detention, and related priority issues for vulnerable communities who are or may be deprived of their liberty in those places.

Stakeholder feedback is sought on the questions included in this document, as well as in relation to the analysis contained in this consultation paper generally.

Enquiries related to this consultation may be made to Mark Huber, Project Manager, OPCAT Implementation Project, at enquiries@npm.tas.gov.au.

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Acronyms and key words

CAT	*Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.*
Civil society	This includes a wide range of organisations, including non-governmental organisations and associations, professional associations, trade unions, academia, and faith-based groups.
Custodial centre	A prison within the meaning of the *Corrections Act 1997*; and a detention centre
Deprivation of liberty	Any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority. (OPCAT, Article 4(2))
ECtHR	European Court of Human Rights
Ill-treatment	All forms of cruel, inhuman or degrading treatment or punishment.
NPM	National preventive mechanism.
OHCHR	Office of the High Commissioner for Human Rights
OPCAT	*Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.*
Paris Principles	Principles relating to the Status of National Institutions
Place of detention	Any place under [a State Party's] jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence. (OPCAT, Article 4(1))

SPT	Subcommittee on Prevention of Torture.
'the Act'	*OPCAT Implementation Act 2021* (Tas).
UN	United Nations
Vienna Convention	*Vienna Convention on the Law of Treaties* (1969)

How to respond to this consultation paper

Stakeholders are invited to respond to this consultation online, at www.npm.tas.gov.au.

Alternatively, submissions can be provided via email as follows:

> **Address**: enquiries@npm.tas.gov.au
>
> **Subject**: 'Submission – consultation paper 1'

A summary of this consultation round will be included in the Tasmanian NPM's implementation report. Individual consultation responses will not be published, however stakeholders that provide a submission will be acknowledged. Please indicate in your expression of interest if you would prefer that your participation in this consultation process be treated as confidential. Stakeholders are welcome to publish their submissions to this consultation process on their respective websites.

This consultation round will close on **28 February 2022**. Please contact us before this date if you require an extension of time to make a submission.

Background information about the Tasmanian NPM and OPCAT is provided at www.npm.tas.gov.au

Enquiries related to this consultation, including a request for extension of time, may be made to Mark Huber, Project Manager, OPCAT Implementation Project, at enquiries@npm.tas.gov.au.

1. Foreword

It is a privilege to release this first consultation paper, on OPCAT Article 4, which will shape the implementation and fulfilment of my role as Tasmanian national preventive mechanism (NPM).

On 28 February 2022, I was appointed inaugural Tasmanian NPM by the Governor of Tasmania, the Honourable Barbara Baker. My appointment forms part of Australia's overall ratification of the *Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT). As its name suggests, OPCAT is an optional treaty, which in accordance with its Article 27 may be joined by any State that is already a Party to its parent treaty, the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT).

Fundamental to the CAT is a commitment by States to ensure that no one shall be subjected to torture or to ill-treatment, and to take effective measures to criminalise and prevent its occurrence. Australia became a party to the CAT in 1989. Ratification of OPCAT is one such measure that complements and enhances compliance with the CAT. Recognising that torture and ill-treatment is more likely to occur in places not subject to external scrutiny, OPCAT establishes a system of regular visits, carried out by independent bodies, to places where persons are or may be deprived of their liberty. A key objective is to strengthen the protection of persons deprived of their liberty and maintain full respect of their human rights. OPCAT does not create new human rights obligations.

Treaties are a formal source of international law. They are binding on States that ratify them. Australia's ratification of OPCAT, in 2017, brings with it a set of binding obligations. The core obligations are twofold: to receive visits by members of a United Nations treaty body, the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT); and, to establish a domestic national preventive mechanism. My appointment flows from this second obligation.

Whilst it is often the case in Australia that treaty ratification occurs at the national level, led by Commonwealth law, in this instance each state and territory—as well as the Commonwealth—has agreed to give effect to OPCAT separately. Accordingly, for Tasmania, the requirements of OPCAT have been legislated under the *OPCAT Implementation Act 2021* (Tas) (the Act), pursuant to which I have been appointed. I am pleased to see that Tasmania's legislation aligns with OPCAT, follows standards provided under the Paris Principles, and has been well received by stakeholders. I am also encouraged by the Tasmanian Government's expressed commitment to appropriately resource this new independent body.

Stakeholders may be aware that in addition to my appointment as Tasmanian NPM, I also currently serve as Tasmanian Ombudsman, and as the Custodial Inspector. It is important to emphasise that, consistent with OPCAT, my role as Tasmanian NPM will complement rather than replace these existing systems of oversight, operating as a separate independent office.

As Tasmanian NPM, my mandate is to prevent future occurrences of torture and ill-treatment, in accordance with the Act. NPMs are required to fulfil their mandate through the exercise of four key functions: *visiting*, *advisory*, *educational*, and *cooperation*. Each function is carried out through a proactive, preventive lens, rather than by responding to specific events, allegations or complaints.

Chief among these functions is the visiting function. NPMs are required to regularly examine places of detention with the objective of identifying any root causes of ill-treatment and other human rights problems, understanding issues, and finding ways to address them. Following OPCAT and SPT guidelines, my focus will be on systemic improvement (rather than on any particular individual), and will involve ongoing dialogue with relevant authorities. Consistent with OPCAT, the Act provides me with unfettered access to these places.

Understanding the scope of this visiting function is the focus of this consultation paper.

Section 9(1)(a) of the Act specifies my visiting function, which is to 'regularly examine the treatment of persons deprived of their liberty in places of detention'. This mirrors the text of OPCAT, at Article 19. Consistent with Article 19, sections 4 and 5 of the Act further define these key terms 'deprivation of liberty' and 'place of detention', by reference to the definition found in OPCAT, at Article 4.

Article 4 of OPCAT defines places of detention and deprivation of liberty in broad terms. This reflects that torture and ill-treatment can occur in a wide range of settings, and that the first hours of detention are often considered as being a time period where persons are the most at risk of this happening. Notably, these definitions extend beyond custodial centres, which I currently inspect as Custodial Inspector. Acknowledging this breadth, the Act provides an illustrative list of additional places. However, as this consultation paper identifies, other places in Tasmania are also likely to fall within my mandate.

Collaboration with stakeholders is essential to developing a robust understanding of OPCAT Article 4, and its application in Tasmania. In addition to shaping how I perform this function, at this early stage in the establishment of my office, feedback provided will also inform how this office is designed, and its resourcing needs.

Equally, it is my desire that through this consultation process stakeholders will advance their own understanding of the scope of my visiting function, enabling them to better assess how the Tasmanian NPM may be relevant to their activities and the populations they represent, provide relevant feedback, and consider potential opportunities to work together to prevent torture and ill-treatment. It is well known that minority and vulnerable communities are disproportionately represented in places of detention, and that understanding their priority issues is important to the work of the NPM. Ongoing engagement and collaboration between my office and stakeholders will be essential to the successful fulfilment of my mandate.

This consultation paper summarises my understanding of OPCAT Article 4, and includes relevant indicators that I intend to have regard to when considering if a place is a place of detention. Accompanying this summary is a series of key consultation questions, relating to

the identification of places of detention in Tasmania and related issues. I invite stakeholders to provide feedback on the analysis, and a response to the consultations questions. Stakeholders may also provide any other information that they consider relevant to this consultation.

In forming this understanding of OPCAT Article 4, I wish to acknowledge the valuable communication and assistance I have received from experts, including Ms Regina Weiss, Dr Alice Edwards, Mr Ben Buckland, the office of the New Zealand Ombudsman, my NPM counterparts, and members of the SPT whom I met during their recent visit to Australia.

While effort has been made to prepare this consultation paper in plain terms, I am conscious that certain language used and concepts discussed are complex. If stakeholders would like assistance with the document or have related questions, they are welcome to contact my project manager, Mr Mark Huber, at enquiries@npm.tas.gov.au.

Finally, I thank stakeholders for their ongoing support of OPCAT, their consideration of this consultation paper, and their enduring efforts to eradicate torture and ill-treatment. I look forward to receiving feedback on this consultation paper and working collaboratively on the implementation of my office.

Sincerely

Richard Connock

Tasmanian National Preventive Mechanism

2. Summary and consultation questions

The analysis in this consultation paper provides an overview of the broad scope of the OPACT visiting function, and the many factors that the Tasmanian NPM may take into account in determining if a setting or place is one that it may examine under the Act.

The analysis reveals that in light of OPCAT's object and purpose, any evaluation of whether a place or setting is a 'place of detention' as defined at Article 4 should be approached in an open manner. This definition includes not only the traditional criminal detention facilities such as prisons and police cells, but also civil facilities (e.g. medical treatment), social care places, temporary places, and transportable places, irrespective of whether they are public or private.

In addition, no time limits or restrictions should be placed on the related definition of 'deprivation of liberty', which covers all circumstances in which a person is (or may be) held against their will, even if that will was initially surrendered voluntarily or is temporary in nature. Finally, the link between the place where deprivation of liberty occurs on the one hand, and the involvement of a public authority on the other hand, does not need to be direct. If a private place operates subject to government regulations or standards; or, operates with implied approval (such as by receiving a grant, subsidy or similar), that may satisfy the threshold.

Against this background, the Tasmanian NPM seeks stakeholder input on the application of its visiting mandate in Tasmania, and in the design of its office. Feedback is requested in response to the following questions:

1. Are you aware of any places in Tasmania where populations that your organisation represents are or may be deprived of their liberty (other than places listed at section 5(3) of the Act)?
2. What places in Tasmania does your organisation consider the NPM should visit as a matter of priority?
3. What is important for the NPM to consider in order for its functions to be responsive to the populations that your organisation represents? (needs, risks, barriers)
4. What cultural attributes does the office of the NPM require to ensure that the intent of OPCAT is realised?

3. Introduction

In Australia, a treaty does not automatically have force of law when it is signed. For a treaty's obligations to take effect, the process of ratification requires that it be incorporated into the legal system. This applies to OPCAT.

OPCAT, at Article 3, requires that States "set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment" as the national preventive mechanism (NPM). In Australia, each state and territory government and the Commonwealth government have agreed to create their own NPM in conformity with the requirements of OPCAT. Collectively, these bodies will form the Australian NPM. The Commonwealth NPM has been given the additional task of coordinating all NPM bodies and submitting an annual report to the SPT on their behalf.

Consistent with this NPM model, in Tasmania legislation has been passed to give effect to OPCAT: the *OPCAT Implementation Act 2021*. This legislation establishes the Tasmanian NPM as a new independent body, sets out its functions, and addresses other matters related to OPCAT, such as visits to Tasmania by the SPT and protection from reprisal. Accordingly, the Tasmanian NPM's power comes from the Act, and not from OPCAT directly.

Article 19 of OPCAT requires that States grant NPMs at a minimum the power:

> *(a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;*
>
> *(b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;*
>
> *(c) To submit proposals and observations concerning existing or draft legislation.*

For the Tasmanian NPM, these minimum powers and other related functions are outlined at section 9(1) of the Act:

> *(1) A Tasmanian national preventive mechanism has the following functions:*
>
> *(a) 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;*
>
> *(b) to require the provision of, or access to, or to copy and retain copies of, information held by any person concerning –*
>
> *(i) detainees, including the number and treatment of such detainees and the conditions of their detention; and*
>
> *(ii) places of detention, including the number of such places and their location;*
>
> *(c) to access, inspect and review places of detention in accordance with section 13 ;*

(d) to interview detainees, and any other persons whom he or she believes may supply relevant information, in accordance with Article 20(d) of the Optional Protocol;

(e) to have contact, meet and exchange any information obtained in accordance with this Act with the Subcommittee and a national preventive mechanism of any other Australian jurisdiction;

(f) to refer matters relating to a detainee or place of detention to an appropriate agency for consideration or action;

(g) to receive information from any person, body or agency in relation to a detainee or place of detention;

(h) to make recommendations, and provide advice, to the relevant authorities with the aim of improving the treatment and the conditions of persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;

(i) to develop and publish guidelines and standards in respect of detainees or places of detention;

(j) to submit proposals and observations concerning existing or draft legislation that relates to detainees or places of detention;

(k) to publish reports, recommendations, advice or findings in relation to detainees or places of detention;

(l) to engage in consultation in relation to policy relating to detainees or places of detention with a responsible Secretary or a responsible Minister;

(m) such other functions as may be conferred or imposed on a Tasmanian national preventive mechanism under this or any other Act;

(n) to do all things necessary or convenient to be done in connection with, or incidental to, the exercise of his or her functions.

The visiting function of the Tasmanian NPM, outlined at section 9(1)(a) above, requires that it regularly examine the treatment of persons 'deprived of their liberty' in 'places of detention'. These two key terms are defined in OPCAT, at Article 4, which provides:

1. Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.

2. For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

These key definitions are incorporated through sections 4 and 5 of the Act [emphasis added]:

4. Interpretation

(1) In this Act –

…

deprivation of liberty has the meaning that it has in the Optional Protocol

5. Meaning of place of detention

(1) In this section –

closed psychiatric facility means the following facilities within the meaning of the Mental Health Act 2013:

(a) an approved facility;

(b) a secure institution.

(2) In this Act, ***a place of detention is any place, subject to the jurisdiction and control of Tasmania, that the Subcommittee must be allowed to visit under Article 4 of the Optional Protocol****.*

(3) Without limiting subsection (2), each of the following places that are subject to the jurisdiction and control of Tasmania and in which persons are deprived of their liberty is a place of detention for the purposes of this Act:

(a) a correctional centre, prison, detention centre or other similar place (however described);

(b) a hospital or other similar place;

(c) a closed psychiatric facility;

(d) a police station or court cell complex;

(e) a vehicle used or operated to convey detainees;

(f) a place prescribed for the purposes of this section.

Stakeholders will notice that the definition of 'deprivation of liberty' at section 4 of the Act provides a direct reference to the definition provided in OPCAT, at Article 4.2.

By contrast, the definition of 'places of detention', at section 5(2) of the Act, includes an important qualification to the OPCAT definition. Whereas the OPCAT definition includes the words "under its jurisdiction and control", referring to the State Party (in this instance, that is Australia), section 5(2) of the Act qualifies that the definition applies only to places "subject to the jurisdiction and control of Tasmania". This reflects Australia's ratification arrangement outlined above.

In practical terms, this qualification at section 5(2) of the Act means that the Tasmanian NPM does not have power to visit places that are under the jurisdiction and control of another state or territory, or the Commonwealth. It is noted that the Commonwealth NPM (the Commonwealth Ombudsman) will visit Commonwealth regulated places such as military and immigration detention facilities, and Australian Federal Police holding cells. Accordingly, if places such as these operate within Tasmania, they will be visited by the Commonwealth NPM.

In addition, section 5(3) of the Act provides a short list of categories of places of detention, including a power for a place to be prescribed, at paragraph (f). This list is provided for clarity, as outlined by the Attorney-General of Tasmania, the Hon Elise Archer MP, during the second reading speech supporting the *OPCAT Implementation Bill (2021)*:

> *Under OPCAT, places of detention is defined in open terms, and this is appropriately reflected in the Bill. It is any place under Tasmania's jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at their own*

instigation or with their consent or acquiescence. For clarity, the Bill provides a list of places of detention that the Government has assessed to be within the scope of this definition.

It is important to emphasise that this list is non-exhaustive. That is, the Tasmanian NPM has discretion to examine places not listed. In these circumstances (i.e. the place does not fall under one of the categories listed at section 5(3) of the Act) it will need to satisfy the meaning of place of detention provided in the Act, at section 5(2). This provision requires that the place:

1. Is subject to the jurisdiction and control of Tasmania; and
2. Can be characterised as a place of detention under OPCAT, at Article 4.

To make a decision under step 2, an analysis of Article 4 of OPCAT is required.

4. Background to treaty interpretation

Because OPCAT is an international treaty, ratified by the Commonwealth and incorporated into Tasmanian law, the process for interpreting OPCAT must follow both national and international rules.

In Australia, the interpretation and construction of legislation is governed by law. In Tasmania, this law is the *Acts Interpretation Act 1931* (Tas), and at the Commonwealth level it is the *Acts Interpretation Act 1901* (Cth).

In the same way, the interpretation and construction of treaties is also governed by a treaty: *Vienna Convention on the Law of Treaties (1969)* (Vienna Convention). Australia ratified the Vienna Convention in 1968. Relevantly, Articles 31 and 32 of the Vienna Convention have codified customary international law and have been applied in Australian courts, in line with Australia's treaty obligations.[1]

Article 31.1 of the Vienna Convention requires that a treaty be interpreted in good faith, in accordance with the ordinary meaning of its terms in their context, and in light of the treaty's object and purpose. That is, consideration must foremost be given to the express terms of the treaty provisions (the words themselves) but considered in the treaty's context, object and purpose.[2] The 'good faith' element has been interpreted to justify express references to finding the intention of the parties. Additionally, the interpretation of a term should be preferred which gives it some meaning and role rather than one which does not.[3]

In Australia, the High Court has referred to treaty interpretation as a 'holistic exercise',[4] which needs to be adopted domestically in a liberal manner. Australian courts have also determined that a treaty provision must be capable of providing assistance in construing the meaning and effect of national law.[5]

Although not binding, principles originating from relevant courts and judicial bodies internationally can also be relied upon for guidance to assist with the interpretation of treaties. International judicial bodies such as the International Criminal Court,[6] and the International Court of Justice,[7] operate under this rule so long as the relevant principles are

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[1] *Commissioner of Taxation v SNF (Australia) Pty Ltd* [2011] FCAFC 74 at [113].
[2] As the Full Court of Appeal did in *El Greco Australia PTY Ltd v Mediterranean Shipping Co SA* [2004] FCAFC 202 at [142].
[3] Gardiner, Richard, *Treaty Interpretation(2nd Ed)*, p. 168, (Oxford Public International Law).
[4] *Applicant A v Minister for Immigration and Ethnic Affairs* (1997) 190 CLR 225 at [230 – 231], [240], [251-256] and [277].
[5] *Al Kateb v Godwin* (2004) 219 CLR 562 at [238].
[6] *Rome Statue of the International Criminal Court*, Article 21.
[7] *Statute of the International Court of Justice,* Article 38.

not inconsistent with internationally recognised human rights.[8] It is also well settled that guidance for treaty interpretation can be found in the *travaux préparatoires,* which are the preparatory works underpinning a treaty. [9]

In Australia, the *Acts Interpretation Act 1901* (Cth), at section 15AB(2)(d), expressly allows material that can be considered when interpreting the provision of an Act to include "*any treaty or other international agreement that is referred to in the Act.*" The High Court has referred to international decisions for guidance, despite their decisions not having a binding effect domestically.[10]

Following the principles founded in the Vienna Convention and High Court jurisprudence, the interpretation of the words '*places of detention*' in this consultation paper has been approached in accordance with their ordinary meaning and in the context of the object and purpose of OPCAT.

To provide context, OPCAT includes at its Preamble an agreement by the State Parties that "further measures are necessary to achieve the purposes of the [CAT] and to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment". In addition, OPCAT, at Article 1, outlines that its objective is to:

> *establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.*

Relevant to the Preamble and this objective is the definition of 'torture' in the CAT, at Article 1.1:

> *1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.*

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[8] Expressly stipulated in the *Rome Statue of the International Criminal Court* at Article 21(3), and implied under customary international law at the ICJ.

[9] This can include deliberations and discussions of the drafting committees and bodies and can provide specific guidance regarding the intention of the insertion (or absence) of a particular provision or wording found in a treaty/foundation document.

[10] *Macoun v Commissioner of Taxation* [2015] HCA 44 at [81]. *See also* impugned AAT decision at [204] AATA 155. Despite Deputy President Tamberline QC's finding being overturned by the High Court, the principle at [56] was not: "*It is appropriate to have regard to reasoned decisions in other jurisdictions, and to consider whether a decision is consistent with the reasoning in recent decisions of other superior courts which have considered the questions."* In this case, the High Court did so by referring to decisions of the Netherlands and France in the same matter.

In addition to this definition, the CAT, at Article 16.1, extends the obligation to prevent torture, to include ill-treatment:

> *1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.*

In 2005, the then UN Special Rapporteur on Torture stated that whether a person's treatment amounts to torture or ill-treatment will depend on "the purpose of the conduct and the powerlessness of the victim rather than the intensity of the pain or suffering inflicted."[11] OPCAT applies equally to the prevention of torture and ill-treatment.

Importantly, these definitions in the CAT, at Articles 1 and 16, do not specify a minimum duration, nor do they restrict torture or ill-treatment to specific settings or places. Indeed, the CAT, at Article 5, obligates State Parties to criminalise acts of torture when the offences are committed "in any territory under its jurisdiction or on board a ship or aircraft registered in that State", among other situations.

It is also important to note that the legal prohibition against torture is non-derogable, that is, the prohibition cannot be waived, even in exceptional or emergency circumstances. It is an absolute and unrestricted human right. It was initially established under treaty in the *International Covenant on Civil and Political Rights* (ICCPR) in 1966, and is now well established customary international law and a norm of *jus cogens*, meaning it applies to the international community as a whole.

[11] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, UN Doc. E/CN.4/2006/6 (23 December 2005), at [39].

5. Analysis of Article 4 of OPCAT

Having regard to the object and purpose of OPCAT, and the CAT, the SPT has advocated for a broad interpretation of Article 4:

> *The preventive approach which underpins the OPCAT means that as expansive an interpretation as possible should be taken in order to maximise the preventive impact of the work of the NPM.*

OPCAT, at Article 4.1, requires that two elements (in addition to jurisdiction and control) be satisfied for a location to be a *'place of detention'*. In summary, these are places (including any suspected places) where:

1. Persons are or may be deprived of their liberty; and
2. That liberty is deprived either by virtue of an order given by public authorities or at their instigation or with their consent or acquiescence, within the jurisdiction of the States.[12]

Each element is analysed below, in turn.

1. Deprivation of liberty

As outlined above, OPCAT explicitly defines deprivation of liberty, at Article 4.2. The definition can be read as providing three separate circumstances, that is:

> Any form of
>
> (a) Detention; or
> (b) Imprisonment; or
> (c) Placement in a public or private custodial setting
>
> which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

It is observed that this broad approach taken in OPCAT follows the broad approach adopted under international law. In particular, the catch all reference to 'other authority' indicates that a wide lens is to be applied to determining the degree of connection between a person not being permitted to leave at will, and the involvement of the State.

Turning to consider the words 'detention', 'imprisonment', and 'placement', the European Court of Human Rights (ECtHR)—although not binding in Australia but persuasive nevertheless—relevantly provides the following guidance with respect to the objective factors one must take into account when defining 'deprivation of liberty':

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[12] Preventing Torture: The Role of National Preventive Mechanisms – A Practical Guide (OHCHR, 2018) at [6].

> *Factors to be assessed are 'the existence of a possibility of leaving the restricted area, the degree of supervision and control over the person, his or her is isolation, and the availability of social contacts.*[13]

Importantly, a person who voluntarily gives up their liberty can still be deprived of it for the purposes of Article 4. This applies, for example, in places such social care facilities where a person is not allowed to leave during certain hours, including those used for rehabilitation purposes. On this point, the ECtHR has also decided, in relation to a mentally incapacitated person kept in hospital as a 'voluntary patient', that:

> *the right to liberty is too important in a democratic society for a person to lose the benefit of Convention protection for the single reason that he [the applicant] may have given himself up to be taken into detention, especially when it is not disputed that that person is legally incapable of consenting to, or disagreeing with, the proposed action.*[14]

Put simply, to have one's liberty deprived means the inability to freely leave a setting or place. [15] That is, being held against their will. It follows that persons deprived of their liberty are vulnerable and at risk of human rights violations. It is not limited to places where people are deprived of their liberty, but where persons could be deprived of their liberty. This is reflected in OPCAT, at Article 4.1, through the use of the words "are or may be".

In determining whether a person's liberty has been deprived, the place in which this is occurring need not be purpose-built or solely used for that function. Rather, the qualification attaches to the use of a facility, which may be a point-in-time assessment. This would apply, for instance, to hotels or other like facilities used as temporary quarantine centres—as many were globally in response to the COVID-19 pandemic.

Importantly, there is no fixed duration after which deprivation of liberty can be said to have occurred; time is only one factor that may be considered among others, depending on the circumstances (such as type, effects, and manner of implementation of the measure in question).[16] Research has shown that it is within the first three to four hours of detention—including from the moment of arrest—that the greatest risk of torture and other inhuman or degrading treatment is prevalent.[17] In practical terms, for example, it is often in the first few hours of detention that searches are conducted, which at times include

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[13] *Guzzardi v Italy* App no 7367/76 (ECtHR, 6 November 1980) at [95].
[14] *HL v the United Kingdom* App no 45508/99 (5 October 2004) at [90].
[15] SPT, 'Ninth Annual Report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (2016) UN Doc CAT/C/57/4, Annex on 'Compilation of advice provided by the Subcommittee in response to requests from national preventive mechanisms, at [3], available at https://digitallibrary.un.org/record/1306972/?ln=en.
[16] *Guzzardi v Italy* App no 7367/76 (ECtHR, 6 November 1980) at [92]
[17] See in general CTI *Safeguards in the first hours of police detention* – UNCAT Implementation Tool 2/2017. Noting also the Joint Statement in 2017 by UN Special Rapporteur on torture, Mr. Nils Melzer and three former Special Rapporteurs .on torture, Mr. Juan Méndez, Mr. Manfred Nowak, and Mr. Theo van Boven: "*It is well-known that the risk of torture and other ill-treatment is significantly greater during the first hours of police custody.*"

invasive processes which put persons at risk of torture or other cruel, inhuman or degrading treatment or punishment. This risk is heightened for persons with vulnerabilities.

2. By virtue of a public authority

This element requires that the established deprivation of liberty be linked to a public authority. For some settings or places, such as those expressly listed at section 5(3) of the Act, satisfying this requirement will be a straightforward exercise. However, other settings or places may require a more nuanced assessment of the definition. Broken down into component parts, Article 4.1 provides three separate circumstances:

1. order of public authority (which may be Commonwealth, State or local government authorised body or agency); or
2. instigation (of a public official or person acting in an official capacity); or
3. by consent or acquiescence (of a public official or person acting in an official capacity).

In interpreting these options, it is important that a broad approach be followed, and that Article 4.1 be read together with Article 4.2. Notably, Article 4.1 does not require that a public authority be the operator of the setting or place, and it does not require that the place's staff be employed or contracted by a public authority. This is consistent with Article 4.2 of OPCAT, which specifically mentions, for instance, that deprivation of liberty may occur in either 'public or private' custodial setting.

In advice provided to the New Zealand NPM, the SPT has expressed its view that a connection to a public authority can be established "if the deprivation of liberty relates to a situation in which the State either exercises, or might be expected to exercise a regulatory function." [18] Accordingly, this would include situations where a setting or place is subject to national (or Tasmanian) standards, rules or guidelines, which are managed by or with acquiescence of the State. It may also include situations where, despite a place not being regulated by the State, it receives support such as through grant funding or specific subsidies.

It is observed, for instance, that the New Zealand Government has expressly required its NPM (the Chief Ombudsman) to examine "health and disability places of detention including within privately run aged care facilities".[19] It is noted that similar approaches have been taken by other State NPMs, and that the Office of the High Commissioner of Human Rights

[18] SPT, 'Ninth Annual Report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (2016) UN Doc CAT/C/57/4, Annex on 'Compilation of advice provided by the Subcommittee in response to requests from national preventive mechanisms, at [3], available at https://digitallibrary.un.org/record/1306972/?ln=en.

[19] New Zealand Government, Gazette, *Designation of National Preventive Mechanisms*, 2 July 2020. Available at https://gazette.govt.nz/notice/id/2018-go2603

(OHCHR) has specifically included social care homes on its non-exhaustive list of places that an NPM should visit (among other places that are subject to State regulations or licensing).[20]

Finally, having regard to the breadth of this interpretation, the SPT has cautioned that NPMs should also "be mindful of the principle of proportionality when determining its priorities and the focus of its work."[21]

This principle of proportionality relates to the need for NPMs to focus resourcing on areas of greatest risk when determining priorities with respect to their mandate. That is, to ensure that those places of detention which hold the highest risk of persons being exposed to torture or cruel, inhuman or degrading treatment or punishment. This is an exercise performed by the NPM itself, in its capacity as an independent body, based on its own strategy, resources and analysis of the situation.

[20] OHCHR, *Preventing torture: the role of national preventive mechanisms – a practical guide*, available at https://www.ohchr.org/sites/default/files/Documents/Publications/NPM_Guide_EN.pdf

[21] SPT, 'Ninth Annual Report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (2016) UN Doc CAT/C/57/4, Annex on 'Compilation of advice provided by the Subcommittee in response to requests from national preventive mechanisms, at [3], available at https://digitallibrary.un.org/record/1306972/?ln=en.

6. Information on the next consultation paper

The second consultation round is scheduled to commence in mid-March 2023. Its content will be informed by feedback provided in response to this consultation paper.

The second consultation round will relate to the development of the Tasmanian NPM's working methodologies. In focus will be the identification of applicable international and national standards (including of applicable human rights obligations, norms, and law), and related best practice. It is intended that feedback provided will assist the Tasmanian NPM in identifying key expectations through which it will examine places of detention, under its visiting function.

This will be an opportunity for civil society organisations to understand and contribute feedback on national and international obligations applicable to their populations, and identify best practice to prevent torture and ill-treatment. Insights provided will assist the Tasmanian NPM to develop appropriate visit methodologies, including themes for visits to places of detention, appropriate visit standards, and related guidelines.

Appendix 3:
Consultation Paper 2

Tasmanian national preventive mechanism
Implementation project

Consultation paper 2

Australia's international obligations related to the prevention of torture and ill-treatment

May 2023

About: This consultation paper invites stakeholders to assist the Tasmanian National Preventive Mechanism (NPM) in identifying Australia's international obligations related to the prevention of torture and ill-treatment, relevant best practice, and related issues of importance.

The paper builds upon Consultation Paper 1, which focused on identifying places where people may be deprived of their liberty, by turning to now identify the human rights standards that the NPM should expect to be applied in those places, to prevent torture and ill treatment. In particular, consideration is given to Australia's international obligations with respect to the absolute prohibition of torture with a view to ensuring that places of detention in Tasmania and those responsible for them are in compliance with those obligations.

The Tasmanian NPM forms part of Australia's ratification of the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT). OPCAT is an international human rights agreement that complements and enhances compliance with the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT).

Additional background information about OPCAT and the Tasmanian NPM, and a copy of consultation paper 1, are available at www.npm.tas.gov.au.

Key anticipated outcomes from this consultation paper are:

- Developing of a shared understanding among stakeholders and the Tasmanian NPM of Australia's core international obligations relating to torture and ill-treatment;
- Identifying applicable human rights instruments; and
- Understanding how these obligations and instruments may be relevant to different places of detention, and to different vulnerable populations.

Stakeholder feedback is sought on the questions included in this document, as well as in relation to the analysis contained in this consultation paper generally.

Enquiries related to this consultation may be made to Mark Huber, Project Manager, OPCAT Implementation Project, at enquiries@npm.tas.gov.au.

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Acronyms and key words

Bangkok Rules	the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders with their Commentary
CAT	*Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.*
Civil society	This includes a wide range of organisations, including non-governmental organisations and associations, professional associations, trade unions, academia, and faith-based groups.
CESCR	UN Committee on Economic, Social and Cultural Rights
CRC	UN Committee on the Rights of the Child
Custodial centre	A prison within the meaning of the *Corrections Act 1997*; and a detention centre
Deprivation of liberty	Any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority. (OPCAT, Article 4(2))
ECtHR	European Court of Human Rights
IACHR	Inter-American Court of Human Rights
ICCPR	*International Covenant on Civil and Political Rights*
ICJ	International Court of Justice
Ill-treatment	All forms of cruel, inhuman or degrading treatment or punishment.
Istanbul Protocol	the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
Nelson Mandela Rules	United Nations Standard Minimum Rules for the Treatment of Prisoners
NPM	National preventive mechanism.
OHCHR	Office of the High Commissioner for Human Rights
OPCAT	*Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.*
Paris Principles	Principles relating to the Status of National Institutions

Place of detention	Any place under [a State Party's] jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence. (OPCAT, Article 4(1))
Refugee Convention	*Convention Relating to the Status of Refugees*
SPT	Subcommittee on Prevention of Torture.
'the Act'	*OPCAT Implementation Act 2021* (Tas).
Tokyo Rules	the United Nations Standard Minimum Rules for Non-custodial Measures
UDHR	*Universal Declaration of Human Rights*
UN	United Nations
UNGA Declaration	the UN General Assembly Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
Vienna Convention	*Vienna Convention on the Law of Treaties* (1969)

How to respond to this consultation paper

Stakeholders are invited to respond to this consultation online, at www.npm.tas.gov.au.

Alternatively, submissions can be provided via email as follows:

> **Address**: enquiries@npm.tas.gov.au
>
> **Subject**: 'Submission – Consultation Paper 2'

A summary of this consultation round will be included in the Tasmanian NPM's implementation report. Individual consultation responses will not be published, however stakeholders that provide a submission will be acknowledged. Please indicate in your expression of interest if you would prefer that your participation in this consultation process be treated as confidential. Stakeholders are welcome to publish their submissions to this consultation process on their respective websites.

This consultation round will close on **Friday 23 June 2023**. Please contact us before this date if you require an extension of time to make a submission.

Background information about the Tasmanian NPM and OPCAT is provided at www.npm.tas.gov.au

Enquiries related to this consultation, including a request for extension of time, may be made to Mark Huber, Project Manager, OPCAT Implementation Project, at enquiries@npm.tas.gov.au.

1. Foreword

In releasing this second consultation paper, I first take the opportunity to express my gratitude to the many stakeholders who responded to Consultation Paper 1, which focused on the scope of OPCAT article 4.[1] Insights provided by stakeholders have informed this next step in my office's development.

Important progress has been made following Consultation Paper 1. Not least has been the release of the United Nations Subcommittee on the Prevention of Torture's (SPT) "Draft general comment No. 1 on places of deprivation of Liberty (OPCAT article 4)".[2] Under this document the SPT has undertaken essential work to interpret OPCAT's central concepts of 'places of detention' and 'deprivation of liberty'. I welcome the SPT's work to provide substantive clarity on this matter. In the future, my Office will approach OPCAT article 4 in line with the SPT's guidance, which I observe aligns with the approach I outlined in Consultation Paper 1.

In response to stakeholder consultation feedback, I have commenced engaging experts to lead development of draft 'Expectations' in relation to the following types of deprivation of liberty:

1. **Adult criminal detention**. This includes settings such as prisons, the transport of detainees, and other court-ordered deprivations of liberty, such as home detention.

2. **Police and court custody**. This includes settings in which a person may be deprived of their liberty by police or within a court facility. It will include places such as police and court cells, and transport vehicles.

3. **Children and young people**. Applicable to any setting in which a child or young person may be deprived of their liberty, including youth detention.

4. **Mental health**. This will apply to settings in which a person is deprived of their liberty under relevant legislation, such as Tasmania's *Mental Health Act 2013*, and by order of a court or tribunal.

5. **Health and social care**. This includes settings where a person is deprived of their liberty for medical reasons, along with social places where support is provided to older people or people with disability, such as aged and disability care.

[1] A copy of Consultation Paper 1 is available at npm.tas.gov.au.
[2] See: https://www.ohchr.org/en/calls-for-input/2023/call-comments-draft-general-comment-subcommittee-prevention-torture-spt

This approach is similar to that adopted by other established NPMs.[3] These Expectations will set out the criteria used to examine places visited, to assess the treatment of persons deprived of their liberty and ensure that Australia's human rights obligations are met. As part of this process, I will also be updating the Custodial Inspector standards. Each draft Expectations document will be developed with stakeholder input, and released for feedback.

Alongside expert engagement, I have met with relevant government agencies to discuss OPCAT, my functions as Tasmanian NPM, and I have requested (and received) relevant information to assist with the development of my Expectations. I have also commenced familiarising myself with places of detention in Tasmania. This has included a range of places not currently inspected as Custodial Inspector, including police and court facilities, and health and social care places. I observe that there is genuine curiosity across the Tasmanian government to understand how the NPM will operate, and how its preventive focus and functions can assist to improve the treatment of people deprived of their liberty. I am grateful for this assistance and I look forward to ongoing proactive engagement.

This consultation paper provides a background of Australia's international obligations associated with the prevention of torture and ill-treatment. It also provides an overview of related non-binding sources of human rights law that, as a matter of good practice and as a model State in the international community, Australia should be following.

The paper is structured in two parts: it begins with an overview of the sources of Australia's international obligations, binding and non-binding.[4] It then proceeds to identify the key obligations arising for Australia from the Convention against Torture.

The overview provided is not intended to be definitive, and it certainly does not cover the breadth of the human rights field. Rather, stakeholders should regard the obligations and other instruments discussed in this consultation paper as a baseline overview, which I intend to update and add to as my Expectations are developed, and through ongoing stakeholder engagement.

Accompanying the overview are four consultation questions. This consultation paper is an opportunity for civil society organisations to contribute feedback on the human rights obligations applicable to their populations, identify key issues, and identify best practice to prevent torture and ill-treatment in different settings where a person may be deprived of their liberty.

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[3] *See:* United Kingdom, National Preventive Mechanism, *Monitoring places of detention 13th Annual Report of the United Kingdom's National Preventive Mechanism 2021/22*, available at <https://www.nationalpreventivemechanism.org.uk/>.

[4] Additional background information on the CAT and OPCAT is provided in Consultation Paper 1, a copy of which is available at npm.tas.gov.au.

I invite stakeholders to provide feedback on the overview, and a response to the consultation questions. Stakeholders may also provide any other information that they consider relevant to this consultation.

While effort has been made to prepare this consultation paper in plain terms, I am conscious that language used and concepts discussed are complex. If stakeholders would like assistance with the document or have related questions, they are welcome to contact my project manager, Mr Mark Huber, at enquiries@npm.tas.gov.au.

In forming this understanding of Australia's obligations, I wish to acknowledge the valuable assistance I have received from Ms Regina Weiss, and Ms Louise Finer. Finally, I thank stakeholders for their ongoing support of OPCAT, and the implementation of my office and other NPMs in Australia. I look forward to receiving feedback.

Sincerely

Richard Connock
Tasmanian National Preventive Mechanism

2. Summary and consultation questions

The analysis in this consultation paper provides an overview of Australia's international obligations related to torture and ill-treatment, and identifies supplementary human rights materials that provide guidance on the obligations' scope and application. At a high level, Australia's overarching international obligations relating to the prohibition of torture and ill-treatment include:

a) prevention;
b) education on prevention and prohibition; and
c) ongoing review of the steps it has taken in relation to these obligations.

To fulfil the prevention obligation, Australia is required to actively uphold full respect for human rights. In addition to its obligations under the CAT and OPCAT, Australia is a party to 12 significant international human rights agreements, each of which identifies specific conduct that can amount to torture and ill-treatment in particular circumstances. These agreements are complimented by 18 further sources of detailed 'soft-law' developed by the international community that, although not binding, are reflective of the minimum standards of conduct expected by the UN.

Against this background, the Tasmanian NPM seeks stakeholder input on the application of its mandate to prevent torture and ill-treatment. This will assist in the identification of initial priority areas for examination when exercising its visiting function. Feedback is requested in response to the following questions:

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

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

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

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

3. Introduction

The purpose of an NPM is, first and foremost, to prevent torture and ill-treatment in places where people are or may be deprived of their liberty. It achieves this through the exercise of four functions: the (primary) **visiting** function, **cooperation** with State and other relevant authorities, and by providing **education** and **advice**.

The question that naturally flows from this mandate is: when exercising these functions through its preventive lens, what criteria is the NPM supposed to consider to improve treatment and strengthen people's protections?

In answering this question, OPCAT takes an expansive approach. In its Preamble, OPCAT refers broadly to the common responsibility shared by all, being 'full respect for human rights'. And in its body, Articles 2 and 19 (which establish the SPT and NPM respectively) make reference to United Nations norms. However, in contrast, while Article 2 refers specifically to norms "concerning the treatment of people deprived of their liberty", Article 19 refers in general terms to any "relevant norms". This implies that the NPM is to have regard to a broader range of criteria when exercising its functions than one can expect of the SPT.

For the NPM, therefore, implementing OPCAT in practice requires it to consider two key questions:

1. What are the human rights that apply to a particular setting that the State must fully respect? And,
2. What relevant UN norms apply to inform how these human rights should be respected?

This consultation paper is the first step in scoping answers to these important questions. It aims to identify the main sources of Australia's obligations in the context of torture and ill-treatment, and the corresponding normative requirements that arise under these sources. It proceeds on the basis that, as a model State in the international community and as a matter of good practice, Australia will follow these sources of human rights, and relevant best practice adopted by NPMs in other States.

4. The sources of Australia's obligations

A broad range of obligations apply to Australia under international law in the context of torture and ill-treatment. Many of these obligations are rooted in customary international law (meaning they arise from established international practice), and some are now regarded as *jus cogens*.[5] Importantly, the prohibition of torture is a peremptory norm of general international law, being absolute and non-derogable.

Through the process of arranging these customary obligations into treaty, the scope of their application has become more clearly defined. And, through the international human rights movement in particular, States have continued to raise the bar by further elaborating in subsequent treaties the human rights and freedoms that are inherent to all; and establishing mechanisms to monitor the way that a treaty is implemented and enforced at the domestic level.

A. Binding obligations

Australia's legally binding obligations with respect to torture and ill-treatment are found predominantly in key international legal instruments that it has ratified, primarily the:

- *Convention against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment* (CAT)
- OPCAT
- *Convention Relating to the Status of Refugees* (Refugee Convention)
- *International Covenant on Civil and Political Rights* (ICCPR)
- *Universal Declaration of Human Rights* (UDHR)

That is, Australia is legally bound under international law to comply with the obligations contained in these treaties.[6]

Central to the role of an NPM is the CAT. This treaty codifies customary international law in relation to torture and ill-treatment, and expands on core principles found in the *Charter of the United Nations*, *Universal Declaration of Human Rights*, the *Covenant on Civil and Political Rights*, and the *Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.*[7]

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[5] As outlined in Consultation Paper 1, this means that that the obligation applies absolutely, and universally to all States. A copy of Consultation Paper 1 is available at npm.tas.gov.au.

[6] There are additional binding obligations related to torture and ill-treatment that apply to Australia, but are specific to situations outside the jurisdiction of the Tasmanian NPM. This includes, for instance, international obligations relating to armed conflict, under the *Geneva Conventions of 1949* and *Rome Statute of the International Criminal Court.*

[7] See the Preamble to the CAT.

In particular, the CAT sets out the prohibition of torture and ill-treatment in detail, establishing clear obligations for States. This includes the obligation to take effective legislative, administrative, judicial or other measures to prevent acts of torture and ill-treatment.[8] (Ratification of OPCAT being one measure that many States have agreed to implement, in order to meet this obligation.) It also defines key terms, such as the definition of torture.[9]

In addition to these treaties, Australia is party to international agreements that expand on the prohibitions of torture and ill-treatment against certain categories or groups.[10] These treaties, which are also legally binding, set out in particular that breaching specific obligations or protections can amount to ill-treatment under international law. This includes:

- *Convention on the Rights of the Child*.[11]
- *International Covenant on Economic, Social and Cultural Rights*.[12]
- *Convention on the Rights of Persons with Disabilities*.[13]
- *International Convention on the Elimination of All Forms of Racial Discrimination*.[14]

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[8] Article 2.

[9] Article 1 defines torture as: "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.
The definition requires a level of severity, a specific purpose, and for the act to be committed or instigated by, or with the consent of, a person acting in an official capacity. Such acts committed or instigated by, or with the consent of, a person acting in an official capacity which do not amount to torture may nevertheless be covered under other acts of cruel, inhuman or degrading treatment or punishment, to which many operative provisions of the CAT apply.

[10] Australia is also party to a large number of international economic agreements, such as free trade and bilateral investment agreements, under which it has agreed to afford certain foreign individuals and groups a minimum level of protection that may be breached if torture or ill-treatment occurs. While an NPM will not examine places of detention with these economic agreements in mind, it is relevant to note that breaches of these agreements can give rise to international disputes, under which monetary damages may be awarded and payable by Australia.

[11] Ratified by Australia on 17 December 1990 (with reservation relating to Article 37). For instance, Article 37 provides an express provision relating to deprivation of liberty and torture.

[12] Ratified by Australia on 10 December 1975. For instance, Article 12 relates to the right of all people to the enjoyment of the highest attainable standard of physical and mental health.

[13] Ratified by Australia on 17 July 2008. For instance, Article 15 expressly precludes medical or scientific experimentation without consent, and requires States Parties to take all measures to prevent torture or ill-treatment of persons with disabilities on an equal basis with other persons.

[14] Ratified by Australia on 30 September 1975. This agreement is relevant in general with respect to equal treatment of persons by way of their race, in particular Article 5 which lists rights without distinction as to race, colour, or national or ethnic origin, to equality before the law.

- *Convention on the Elimination of All Forms of Discrimination against Women.*[15]
- The International Labour Organization *Abolition of Forced Labour Convention.*[16]
- *International Convention for the Protection of all Persons from Enforced Disappearance.*[17]
- The OHCHR *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.*[18]
- *Declaration on the Rights of Indigenous People.*[19]

As outlined in Consultation Paper 1, when interpreting an international agreement, guidance can be sought from the negotiating history of the treaty itself, as well as any principles set out by international courts and other judicial bodies. And, although these principles may not be binding on Australia, they can be regarded as reflective of best practice and should certainly be taken into consideration when considering Australia's obligations.

B. Soft law (or non-binding) obligations

Looking beyond obligations arising under treaty and customary international law, there are also supplementary sources of so-called 'soft' law, related to torture and ill-treatment, which are generally not binding on States, but are representative of good practice and reflect the minimum standards expected by the UN. These are regarded as normative, and as such fall within the scope of OPCAT Article 19.

It is expected that these sources be given considerable weight in interpreting and implementing related binding obligations, outlined above. In some cases, these sources have been developed to directly assist States in understanding and applying their legal obligations.

Despite their non-binding nature, Australia as a model State ought to apply these sources as if they had binding effect.

The main supplementary sources of Australia's obligations are

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[15] Ratified by Australia on 28 July 1983. 1. This agreement applies broadly to obligations relating to equality of women, particularly at Article 2.
[16] Ratified by Australia on 7 June 1960. For instance, Article 2 imposes obligations on State Parties to abolish forced or compulsory labour as a means of discipline, which in turn could amount to ill-treatment.
[17] Adopted by the UN General Assembly on 23 December 2010. For instance, Article 1 declares that no person shall be subjected to enforced disappearance (which is defined in Article 2).
[18] Adopted by the UN General Assembly on 25 November 1981. For instance, Article 4 imposes a legal obligation for States to "*take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.*"
[19] Adopted by the UN General Assembly on 13 September 2007. For instance, this agreement affirms the human rights and fundamental freedoms of indigenous people as recognised in the UN Universal Declaration of Human Rights and international human rights law (at Article 1) and confirms equality of indigenous persons in particular to be free from any form of discrimination.

- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;[20]
- Basic Principles on the Role of Lawyers;[21]
- Code of Conduct for Law Enforcement Officials;[22]
- Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief;[23]
- Declaration on the Human Rights of Individuals who are not Nationals of the Country in which they live;[24]
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities;[25]
- 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;[26]
- Principles for the protection of persons with mental illness and the improvement of mental healthcare;[27]
- United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules);[28]
- The United Nations Rules for the Protection of Juveniles Deprived of Their Liberty;[29]
- the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders with their Commentary (the Bangkok Rules);[30]
- the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);[31]

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[20] G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988).
[21] Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990).
[22] Adopted by General Assembly resolution 34/169 of 17 December 1979.
[23] Proclaimed by General Assembly resolution 36/55 of 25 November 1981.
[24] Adopted by General Assembly resolution 40/144 of 13 December 1985.
[25] Adopted by General Assembly resolution 47/135 of 18 December 1992.
[26] G.A. res. 37/194, annex, 37 U.N. GAOR Supp. (No. 51) at 211, U.N. Doc. A/37/51 (1982).
[27] Adopted by General Assembly resolution 46/119 of 17 December 1991.
[28] A/RES/70/175, 8 January 2016 (Resolution adopted by the General Assembly on 17 December 2015, 67th Session, Agenda item 106).
[29] Adopted by General Assembly resolution 45/113 of 14 December 1990.
[30] A/RES/65/229, 16 March 2011 (Resolution adopted by the UN General Assembly, 65th Session, Agenda item 105).
[31] A/RES/45/110, 14 December 1990 (Resolution adopted by the UN General Assembly, 68th plenary meeting).

- the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol);[32]
- the UN General Assembly Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNGA Declaration);[33]
- UN Committee on the Rights of the Child (CRC), General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration;[34]
- UN Committee on the Rights of Persons with Disabilities, Guidelines on Article 14: The right to liberty and security of persons with disabilities;[35]
- UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 23 on the right to just and favourable conditions of work;[36]
- CESCR, General Comment No. 14: The right to the highest attainable standard of health;[37] and
- various reports by the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment.[38]

Similar to treaty interpretation, decisions of international courts and tribunals also offer persuasive guidance in applying Australia's obligations. In particular, the International Court of Justice (ICJ), the European Court of Human Rights (ECtHR), the Inter-American Court of Human Rights (IACHR) and the African Court in Human and People's Rights offer relevant insights into the nature and scope of States' obligations pertaining to torture and ill-treatment as interpreted by courts.

For instance, the prohibition of torture and ill-treatment has been considered extensively by the ECtHR. It has ruled that deplorable living conditions in detention, particularly when dealing with minors can amount to ill-treatment,[39] while a lack of appropriate medical supervision for inmates with suicidal tendencies or other psychosocial disabilities can also

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[32] Published by OHCHR in 2001; updated 2004; comprehensive review by practitioners and academics, updated 2022. Accessible at: https://www.ohchr.org/sites/default/files/documents/publications/2022-06-29/Istanbul-Protocol_Rev2_EN.pdf. While the Istanbul Protocol is not binding on States, the UN Special Rapporteur on Torture has recommended adopting the Protocol. *See*: Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 23 September 2012, A/69/387 at [67].
[33] A/RES/3452(XXX), 9 September 1975 (Resolution adopted by the UN General Assembly, Resolution 3452).
[34] May 2013.
[35] September 2015.
[36] April 2016.
[37] August 2000.
[38] *See* OHCHR, Special Rapporteur on torture, available online: <https://www.ohchr.org/en/special-procedures/sr-torture> accessed 20 April 2023.
[39] *Popov v. France*, ECHR, application Nos. 39472/07 and 39474/07, Judgment, 19 January 2012, paras. 91–103; *Mahmundi and Others v Greece*, ECHR, application No. 14902/10, Judgment, 31 July 2012, paras. 61–76.

constitute torture or ill-treatment.[40] Rape in certain conditions can amount to torture, and interference with reproductive rights can amount to ill-treatment.[41]

Although the decisions of the various courts are not binding on Australia as such, principles established by the ECtHR have, for example, been referred to in Australian High Court jurisprudence, which demonstrates their standing domestically.[42]

In practice, it is observed these sources of soft law are considered by NPMs and the SPT in the exercise of their respective mandates.[43] And, because OPCAT obliges States to examine recommendations of the SPT,[44] and the NPM,[45] with a view to implementation, there is a positive obligation to take active steps to follow them.

5. Summary of key legal obligations

A significant body of international obligations, principles and norms spring from the sources of law listed above. Listed below are the legal obligations that have been identified as being central to the overall purpose of the CAT—which states in its Preamble, that is "*to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world*."

These are obligations that the Tasmanian NPM will have regard to when exercising its functions. It is stressed though that they are not the only obligations that the Tasmanian NPM will have regard to. As the office of the Tasmanian NPM is implemented, it will develop comprehensive criteria for different types of deprivation of liberty, expanding on these core obligations considerably, having particular regard to the soft sources of law noted above. These will be known as the Tasmanian NPM's 'Expectations'.

Stakeholders are encouraged to provide feedback on the consultation questions in this paper, which will inform the initial Expectations development process. Draft Expectations will be released for public consultation.

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[40] *Rivière v. France*, ECHR, application No. 33834/03, Judgment, 11 July 2006, paras. 59–77 (official version available in French); *Renolde v. France*, ECHR, application No. 5608/05, Judgment, 16 October 2008, paras. 119–130

[41] *Aydin v Turkey*, European Court of Human Rights, application No. 23178/94, Judgment, 25 September 1997, para 86; *R.R. v Poland*, ECHR, application No. 27617/04, Judgment, 26 May 2011, paras 148–162.

[42] See for example *Macoun v Commissioner of Taxation* [2015] HCA 44 at [81].

[43] *See*: United Kingdom, HM Inspectorate of Prisons, 'Our Expectations', available online: <https://www.justiceinspectorates.gov.uk/hmiprisons/our-expectations/> (accessed 20 April 2023).

[44] Article 12(d). This extends to any guidance provided by the SPT in the form of interpretive materials, which NPMs are also expected to apply in the exercise of their functions. These materials are published by the SPT through its website: https://www.ohchr.org/en/treaty-bodies/spt (accessed 20 April 2023).

[45] Article 22.

A. The obligation to take measures to prevent torture and ill-treatment

There exists an overarching general obligation under international law for Australia to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.[46] Conversely, no circumstances or rationalisation whatsoever can be used to justify the use of torture or ill-treatment,[47] which stems from the prohibition against torture being non-derogable. That is, an absolute and unrestricted human right, initially established under treaty in the ICCPR in 1966.[48]

There are two key obligations which flow from the obligation to prevent torture and ill-treatment, being to educate and to review. Each is discussed briefly below.

i. The obligation to educate

The obligation to take measures to prevent torture includes a specific obligation to educate relevant personnel. Under Article 10 of the CAT, each State Party must

> "ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil and military, medical personnel, public officials and other persons involved in the custody, interrogation or treatment of any individual subject to any form of arrest, detention or imprisonment."

This obligation applies equally to education and information regarding other acts of cruel, inhuman or degrading treatment or punishment.[49] In addition, rules 75 and 76 of the Nelson Mandela Rules specifically apply this obligation to prison staff.

ii. The obligation to review

Australia is obliged to systematically review the rules, instructions, methods and practices used in interrogation, as well as arrangements for custody and treatment of persons in detention (including arrest).[50] While this is expressly aimed at preventing cases of torture, it also forms part of the broader obligation to monitor and review. This obligation applies equally to preventing cases of other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture.

B. The obligation to criminalise torture and ill-treatment

As a State Party to the CAT, Australia must make all acts of torture a specific offence under domestic law, punishable by 'appropriate penalties' taking into account the grave nature of the offence.[51] Australia has enacted Div 274 of the *Criminal Code Act 1995* (Cth), which

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[46] Article 2.1 of the CAT.
[47] Article 2.2; UNGA Declaration Article 3; ICCPR Article 7; Nelson Mandela Rules, Rule 1.
[48] Ratified by Australia in 1980.
[49] Article 16 of the CAT; UNGA Declaration, Article 5.
[50] Article 11 of the CAT.
[51] CAT art 4; *See also* CAT/C/GC/2, Committee against Torture, General Comment No. 2, 24 January 2008, at [8]-[11].

adopts the definition of torture from the CAT and makes torture an offence punishable by 20 years imprisonment. The CAT further requires that Australia extend this offence to acts that attempt to commit torture, or being complicit or participating in torture. However, there are no express offences present in Australian law that address this obligation.

Flowing from this obligation to criminalise torture and ill-treatment are the specific obligations to establish jurisdiction, including geographical, extra-territorial and universal jurisdiction;[52] and to not provide for amnesties and/or pardons for crimes involving torture and ill-treatment.[53]

C. The obligation to investigate and prosecute

Australia has an obligation to conduct prompt and impartial investigations when reasonable grounds to believe that an act of torture has been committed exist.[54] This applies equally to other acts of cruel, inhuman or degrading treatment or punishment.[55] The ICJ in its Judgment in *Belgium v Senegal*, the Court determined that

> It is not sufficient […] for a State party to the Convention to have adopted all the legislative measures required for its implementation; it must also exercise its jurisdiction over any act of torture which is at issue, starting by establishing the facts'.[56]

Importantly in the context of understanding Australia's obligations at a national level, and consistently with Article 7.2 of CAT, the Court determined that it is irrelevant whether the jurisdiction being exercised is national or universal – the same standards apply.[57] The IACHR in *Velasquez-Rodriguez v. Honduras* applying the American Convention on Human Rights found that

> The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction.[58]

Guidance on the manner in which investigations of alleged torture ought be conducted is stipulated in the Istanbul Protocol:

> The fundamental principles of any viable investigation into incidents of torture are competence, impartiality, independence, adequate resources, promptness, effectiveness,

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[52] Article 5.1 and 5.2 of the CAT.
[53] Including amnesties and immunities, and procedural restrictions such as statutes of limitations. See CAT/C/GC/3, Committee Against Torture, General Comment No 3 (13 December 2012) at [38]; Istanbul Protocol p 44, para 186.
[54] Article 12 of the CAT; Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 23 September 2012, A/69/387 at [25]; Nelson Mandela Rules, rule 57.3.
[55] Article 16 CAT.
[56] *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v Senegal), Judgment* (International Court of Justice, 20 July 2012), at [85].
[57] *Ibid.,* at [84].
[58] *Velasquez-Rodriguez v. Honduras*, Judgment, (Inter-American Court of Human Rights, 29 July 1988) para. 176.

> thoroughness, sensitivity to gender, age, disability and similarly recognized characteristics, victim involvement and public scrutiny. These elements can be adapted to any legal system and should guide all investigations of alleged torture.

This extends to providing bespoke training and education specifically relating to, and in compliance with, international standards on investigating allegations of torture or ill-treatment.[59]

Of particular interest is the 'soft' obligation relating to monitoring bodies, including national preventive mechanisms, which "while not tasked with investigating complaints, should also be provided with training on the [Istanbul Protocol]. Such bodies should be able to receive confidential allegations of torture or ill-treatment and be mandated to identify issues of concern, which must be raised with the authorities concerned, as part of their regular visits."[60]

Australia's best practice when conducting investigations into allegations of torture and ill-treatment at minimum should comply with the benchmark outlined in the Istanbul Protocol and should apply equally to monitoring bodies. Investigations must be prompt and impartial in order to fully comply with international obligations, with Article 6.2 of the CAT stipulating that at minimum, a preliminary inquiry shall be made "immediately."[61]

With respect to impartiality, Australia must ensure that investigations relating to torture are carried out by an independent and impartial body, which has no institutional links to the alleged perpetrator(s) and is free from bias,[62] such as a properly resourced commission of inquiry or similar procedure.[63]

Under Article 7.1 of the CAT, if a person is alleged to have committed an act of torture, the State in which the person is found must either submit the case for prosecution, or extradite the person within a reasonable timeframe.[64] This is fairly uncontroversial as Australia would apply the Commonwealth prosecution policy to allegations of torture or ill-treatment in the same manner it does to all Commonwealth prosecutions.[65]

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[59] Istanbul Protocol p 50 para 203, referencing Committee against Torture, General Comment No. 3 (2012), para 35; and Inter-American Court of Human Rights, *Espinoza Gonzáles v Peru*, paras 323–327.

[60] Istanbul Protocol p 64 para 262.

[61] See also *Belgium v Senegal* where at [86] the Court interpreted 'immediately' for the purposes of Article 6.2 as requiring "*that steps must be taken as soon as the suspect is identified in the territory of the State, in order to conduct an investigation of that case*." Senegal was found to be in breach of its obligation under Article 6.2 by not immediately initiating a preliminary inquiry as soon as they had reason to suspect Mr. Habré, who was in their territory, of being responsible for acts of torture. Similarly, in *Servellón-García et al. v. Honduras*, Judgment, (Inter-American Court of Human Rights, 21 September 2006) at [119], the court found that the duty to investigate arises "as soon as authorities become aware or have grounds to believe that torture has occurred."

[62] Nelson Mandela Rules, Rule 71.

[63] The Istanbul Protocol referencing the Special Rapporteur, A/HRC/19/61 at [187].

[64] *Belgium v Senegal* at 94–95 and 114–115.

[65] Commonwealth Director of Public Prosecutions Prosecution Policy available at https://www.cdpp.gov.au/prosecution-policy

D. The obligation to protect victims and witnesses and provide redress and compensation

Article 13 of the CAT requires States to take steps to ensure that complainants and witnesses are protected from all ill-treatment or intimidation as a result of making the complaint or giving evidence. States must guarantee rights of victims and witnesses at all stages of the investigation, including the right to lodge complaints, to participate in proceedings, to be protected from threats and harassment.[66] This includes the obligation to implement an effective and impartial complaint-handling mechanism, free from retribution or threat.[67] Article 21 of the OPCAT prohibits any sanction or prejudice against any person or organisation as a result of having communicated information to the NPM.

Article 14 of the CAT requires States to provide legal avenues for redress for any victim of an act of torture, as well as an enforceable right to fair and adequate compensation:

> "Reparation must be victim-oriented, gender-sensitive, adequate, effective, prompt and comprehensive, tailored to the particular needs of the victim(s) and proportionate to the gravity of the harm suffered."[68]

E. Obligation to monitor and review

Australia is obliged to systematically review rules, instructions, methods and practices regarding interrogation, as well as arrangements for custody and treatment of persons under detention and including arrest.[69]

In addition to implementing the Istanbul Protocol principles as best practice, Australia as a matter of course should monitor and ensure the quality of all official evaluations in which torture or ill-treatment is alleged or suspected and take remedial action for non-compliance.[70]

The obligation to monitor extends to an obligation to report, which is emphasised by the Nelson Mandela Rules at Rule 34.[71]

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[66] CAT/C/GC/3, Committee Against Torture, General Comment No 3 (13 December 2012) at [29]-[36]. *See also* Rule 71.3 of the Nelson Mandela Rules, which states that "*steps shall be taken immediately to ensure that all potentially implicated persons have no involvement in the investigation and no contact with the witnesses, the victim or the victim's family.*"

[67] Istanbul Protocol p 5, at [10(k)]; CAT/C/GC/3, Committee Against Torture, General Comment No 3 (13 December 2012) at [2].

[68] Istanbul Protocol p 45, para 186, referencing (Committee against Torture, General Comment No 3 (2012), paras 6–18; Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law; and African Commission on Human and Peoples' Rights, general comment No. 4.).

[69] Article 11 of the CAT.

[70] At [641].

[71] 'if…professionals become aware of any signs of torture or other cruel, inhuman or degrading treatment or punishment, they shall document and report such cases to the competent medical, administrative or judicial

F. Non-refoulement

The principle of non-refoulement is stated primarily in the 1951 Refugee Convention at Article 33(1).

> No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

Australia is a State Party to the Refugee Convention, though the principle of non-refoulement is also accepted as customary international law.[72] It has since been codified in the CAT as applying explicitly to cases "*where there are substantial grounds for believing that [the person] would be in danger of being subjected to torture.*"[73]

The principle applies equally to cases of extradition. It follows, then, that Australia is under an international obligation to not locate or relocate any person to any State where there is reason to believe they would be subjected to torture. Article 3.2 of the CAT implies that the danger of torture may not need to be proven on an individual basis. Instead, authorities shall take into account (where applicable) *"the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights."*

G. The obligation to establish an NPM, and to allow visits by the SPT

Finally, OPCAT requires each State Party to establish *at least* one NPM, and allow visits from the SPT.[74] The creation of the Tasmanian NPM under the *OPCAT Implementation Act 2021* (Tas) forms part of Australia's compliance with this obligation. It is noted that the SPT visited Tasmania in accordance with OPCAT requirements in 2022.

Associated with this obligation is a requirement that Australia prevent reprisals against any person or organisation for having communicated with the SPT or NPM. In Tasmania, section 36 of the *OPCAT Implementation Act 2021* makes this a specific offence:

> **36. Protection from reprisal**
>
> A person must not –
>
> (a) prejudice, or threaten to prejudice, the safety or career of; or
> (b) intimidate or harass, or threaten to intimidate or harass; or
> (c) do any act that is, or is likely to be, to the detriment of; or

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authority. Proper procedural safeguards shall be followed in order not to expose the prisoner or associated persons to foreseeable risk of harm.'

[72] See UNHCR Advisory opinion on the extraterritorial application of non-refoulement obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (Geneva, 2007), at [14]-[16].

[73] At Art 3.1.

[74] The requirements of these obligations are set out in detail across OPCAT. General background information is provided on the Tasmanian NPM's webpage: www.npm.tas.gov.au

(d) incite or permit another person to take any of the actions specified in paragraph (a) , (b) or (c) in relation to –

another person because the other person has provided, is providing or may in the future provide information, whether true or false, to a Tasmanian national preventive mechanism or the Subcommittee for the purposes of this Act.

Appendix 4: Draft Expectations on the treatment of Children and Young People deprived of their liberty

Tasmanian NPM National Preventive Mechanism

Expectations on the treatment of CHILDREN AND YOUNG PEOPLE deprived of their liberty

Version 1 – October 2023

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Introduction

CHILDREN AND YOUNG PEOPLE

Deprivation of liberty settings covered by these Expectations	**All places in which a child or young person may be deprived of their liberty, including: youth detention; adult prisons; police and court custody; remand; secure out of home care (for example residing under a Special Care Package), mental health settings, education settings, and health and social care settings.**
Expert engaged	**Megan Mitchell AM**
Date	**October 2023**

About the Tasmanian NPM's expectations on the treatment of children and young people deprived of their liberty.

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.

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 or not 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.

What is the purpose of these expectations?

This document sets out how the Tasmanian NPM expects children and young people to be treated in places (known as 'settings') where they are not free to leave at will.

The expectations are aimed at creating organisational cultures and practice that foster child safety and wellbeing. This will help to keep children and young people safe and reduce future harm in organisational settings where children are deprived of their liberty.

The expectations were drawn up after extensive consultation and are based on and referenced against international and domestic human rights standards, including the National Principles for Child Safe Organisations. The National Principles were endorsed by all first Ministers across Commonwealth, state and territory governments in response to recommendations made by the Royal Commission into Institutional Responses to Child Sexual Abuse (2012-2017). The expectations also build on existing inspection standards, and in particular, those relating to custodial inspection functions across Australia and internationally. A complete list of international human rights instruments and acronyms is provided at **Attachment 1**.

Specific expectations have been developed for children due to their inherent vulnerabilities and distinct developmental needs. It aims to ensure independent and objective assessments of outcomes for children, reflecting that treatment should take into account their rights, their developmental stage and vulnerability, and the care due to any child. Each expectation theme is presented alongside summaries of the relevant human rights standards and indicators that the expectation has been met.

Within this document, the term 'children' is used to refer to children and young people under 18 years of age, as defined in the UN Convention on the Rights of the Child.

Settings covered by these expectations include:

- youth detention;

- children held in custody in prison facilities;
- police and court custody;
- police or custodial transport;
- secure residential care (for example, residing in out of home care under a Special Care Package);
- Health care settings (for example, in a secure mental health facility or unit, in disability care, or in a Hospital children's ward); and
- education settings, where restrictive practices may be used.

This is an evolving document.

This is the first draft of the Tasmanian NPM's *expectations on the treatment of children and young people deprived of their liberty*. These expectations will be updated in response to feedback and changes in international and local best practice. The Tasmanian NPM welcomes feedback from all stakeholders on the draft document, particularly people with lived experience.

Summary of expectations

Topic 1: Material conditions

1.1 Living Conditions
- *Children live in a safe and clean environment that is suitable for children.*

1.2 Safety and comfort
- *Children feel and are safe in their bedrooms and communal areas.*

1.3 Food and water
- *Children have a varied, healthy and balanced diet which meets their individual needs.*

1.4 Food safety and cultural consideration
- *Children's food and meals are stored, prepared and served in line with religious, cultural, dietary requirements and food safety and hygiene regulations.*

1.5 Clothing
- *Children have access to clean, suitable clothing.*

1.6 Hygiene
- *Children are encouraged, enabled, and expected to keep themselves, their bedrooms and communal areas clean.*

1.7 Property
- *Children's property held in storage is secure, and they can access their stored property on request.*

Topic 2: Procedural safeguards, voice and participation

2.1 Appropriate authority to detain children
- *Children can only be held in detention under an appropriate authority and should be released at the earliest appropriate opportunity in accordance with legislation.*

2.2 Informal requests
- *Staff and children are encouraged to resolve requests informally.*

2.3 Accessible complaints systems
- *Children understand and have confidence in complaints procedures.*

2.4 Appeals, external complaints mechanisms and advice
- *Children feel safe from repercussions when using complaints procedures and are aware of appeal procedures.*

2.5 Legal rights
- *Children are informed of their legal rights and are supported to understand and exercise those rights.*

2.6 Information about a child's deprivation of liberty
- *Children are informed about and understand the context of time in secure care, their sentence or remand in custody*

2.7 Promotion of children's rights
- *Children are informed about and understand the context of time in secure care, their sentence or remand in custody.*

2.8 Participation in decision making
- *Processes are in place to encourage the participation of children in decisions that affect them, children have access to accessible information, understand their rights and how to raise concerns.*

2.9 Privacy and confidentiality
- *Information regarding individuals must be kept private and confidential, with monitored and documented processes in place for appropriate information sharing between staff and agencies directly involved with the young person's care and management.*

2.10 Accountable record keeping
- *There should be robust and accountable recording and reporting systems for major aspects of the facility's activities.*

Topic 3: Procedural safeguards, voice and participation

3.1 Clinical governance and partnership
- *Children are cared for by services that accurately assess and meet their health, social care and substance use needs and which promote continuity of health and social care on release.*

3.2 Treatment
- *Children receive treatment, sensitive to their needs, from competent staff in environments that promotes dignity and maintain privacy.*

3.3 Health promotion
- *Children are supported and encouraged to optimise their health and well-being.*

3.4 Initial assessment
- *Children's immediate health, substance use and social care needs are identified on reception/admission and responded to promptly and effectively.*

3.5 Access to primary care services
- *Children's individual, ongoing health care needs are addressed through an appropriate range of care services. Continuity of care is maintained on transfer or release (including on remand).*

3.6 Mental health
- *Children with mental health problems are identified promptly and supported by community-equivalent services to optimise their mental well-being during their detention or placement in secure care and on transfer or release.*

3.7 24-hour in patient care
- *Children requiring 24-hour care are supported by a program, facilities and health care staff to meet their individual needs.*

3.8 Substance misuse
- *A coordinated and strategic approach to drugs and alcohol ensures supply and demand reduction and that treatment is integrated, effective and meets children's individual needs.*

3.9 Medical and pharmaceutical interventions
- *Children receive community equivalent, patient-centred medicines optimisation and pharmacy services.*

3.10 Dental services and oral health
- *Children have timely access to dental checks, oral health promotion and any necessary treatment, including orthodontic treatment.*

Topic 4: Contact with the outside world

4.1 Children, families and contact with the outside world
- *Children are supported to establish and maintain contact with families and other sources of support in the community.*

4.2 Visits entitlement
- *Children can maintain access to the outside world through regular and easy access to visits.*

4.3 The visits environment
- *The visits environment is a clean, respectful, and safe environment and meets the needs of children and their visitors. Visitors are made aware in advance of routines and available support services.*

4.4 Access to a range of communication channels
- *Children can maintain contact with the outside world through regular and easy access to mail, telephones and other communications.*

Topic 5: Equity, diversity and non-discrimination

5.1 Equity is upheld, and diverse needs respected
- *Staff and children understand the agency's commitment to equity, diversity, and non-discrimination.*

5.2 Strategic management
- *Managers demonstrate leadership in delivering a coordinated approach to embedding equality considerations, eliminating all forms of discrimination and promoting inclusion and respect for diversity.*

5.3 Fair processes
- *Processes ensure that no child or group is unfairly disadvantaged.*

5.4 Non-discrimination
- *Discriminatory behaviour is challenged robustly and consistently.*

5.5 Children's involvement in non-discrimination
- *Children are given opportunities to play an active role in eliminating discrimination and are regularly consulted to strengthen and support the elimination of discrimination.*

5.6 Treatment of remandees
- *The unsentenced status of remanded children should be respected in the way they are treated while in detention.*

  Remandees must have no less access to services, activities, and amenities as sentenced children, and be able to access additional services required in line with their remand status.

5.7 Foreign nationals, refugee, and asylum-seeking children in custody
- *Children who are foreign nationals, refugees or seeking asylum are treated equitably and according to their individual needs.*

5.8 Needs of specific cultural groups.
- *The specific needs of children from diverse cultural groups are identified and met.*

5.9 Children with disability
- *The specific needs of children are met. Children with disability are identified, treated with respect, and afforded reasonable adjustments to ensure access to all programs and activities.*

5.10 Trans and intersex children
- *Specific needs of children who are trans, intersex or have gender divergent identities are acknowledged and respected.*

5.11 Sexual orientation
- *Specific needs of children of all sexual orientations are met.*

5.12 Faith and religion
- *The specific needs of children of all religions are met.*

5.13 Children in care
- *The specific needs of children who are in the care of the state are managed appropriately so that they receive their full entitlements.*

5.14 Parenting responsibilities

- *Special considerations should be made for children who are parents or have parenting responsibilities.*

5.15 Girls
- *The specific vulnerabilities of girls are recognised, and effective safeguards are applied that do not impede on their rights in comparison to boys.*

5.16 Children in adult settings
- *The specific vulnerabilities of children in adult settings are recognised, and effective safeguards are applied to protect them from abuse.*

Topic 6: Safety, order, discipline, and restrictive practices

6.1 Behaviour management
- *The agency has a behaviour management strategy in place which is understood by all staff and regularly reviewed.*

6.2 Behavioural standards
- *Children understand the standards of expected behaviour and the rules and routines of the establishment. Children are encouraged to behave responsibly.*

6.3 Incentive and reward schemes
- *Children are motivated by an incentives scheme which rewards effort and good behaviour and has fair sanctions for poor behaviour.*

6.4 Bullying and related behaviours
- *Children, staff, and visitors understand that bullying and intimidating behaviour are unacceptable and are aware of the consequences of such behaviour.*

  Any form of intimidating or violent behaviour is consistently challenged and not condoned.

6.5 Disciplinary procedures
- *Formal disciplinary procedures are age-appropriate and aimed at supporting positive behaviour and reparation where appropriate. They are applied fairly and for good reason.*

6.6 Separation/isolation
- *Children are only separated from others or removed from their normal location with the proper authorisation and are located for appropriate reasons. Separation is not used as a punishment.*

6.7 The use of force
- *Force is used only as a last resort, to a minimum degree and for the shortest possible time, and if applied is used legitimately by trained staff.*

The use of force is minimised through preventive strategies and alternative approaches which are monitored through robust governance arrangements.

6.8 Restraint

- *Restraint techniques are only used legitimately and as a last resort when all other alternatives have been explored. Restraint techniques are not used as a punishment or to obtain compliance with instructions.*

Topic 7: Life in detention

7.1 Assessment and case management

- *Each young person must have in place a detailed case management plan executed by an appropriately trained caseworker.*

7.2 Relationships between staff and children

- *Children are treated with care and respect or their human dignity at all times. Relationships between children and staff are warm, compassionate and helpful, with appropriate boundaries maintained.*

7.3 Personal safety

- *Children feel and are safe in their bedrooms and communal areas.*

7.4 Budgeting and money

- *Children are given advice and support on managing their money and in purchasing goods.*

7.5 Personal responsibility

- *Children in custodial settings are encouraged and supported to take responsibility for their rehabilitation recovery and to contribute positively to life in the facility.*

7.6 Significant staff

- *Children have an identified member of staff they can turn to on a day-to-day basis who is aware of and responds to their individual needs.*

7.7 Time out of bedroom

- *Children spend most of their time out of their bedroom, engaged in activities such as education, leisure and cultural pursuits, seven days a week.*

7.8 Library and computer access

- *Children have good access to a well-equipped library which meets relevant Australian and Tasmanian standards and are encouraged to use it frequently, as well as access to appropriate computer resources.*

7.9 Physical fitness

- *Children benefit from physical education and fitness provision that meets their needs.*

7.10 Health and fitness promotion
- *Children understand the importance of healthy living and personal fitness.*

7.11 Creative arts
- *Children can access creative activities which promote learning, well-being and support rehabilitation.*

7.12 Education, skills, and work activities
- *Children are fully engaged in a program of education, learning and skill development to meet their individual needs.*

7.13 Independent research and living skills
- *Children are encouraged to develop their research and independent learning skills, including the development of their digital skills, through supervised use of the internet.*

7.14 Learning and silks outcomes
- *The leadership and management of education, skills and work activities effectively improves outcomes for children.*

7.15 Prosocial education
- *Children feel safe in education and activities and develop behaviours that help them to minimise reoffending.*

Topic 8: Governance and Leadership

8.1 Direction
- *Leaders work collaboratively with staff, stakeholders, and children to set and communicate strategic priorities that will improve outcomes for children in custody.*

8.2 Philosophy and focus
- *Arrangements for children reflect a child- focused philosophy, operated independently of adult services.*

8.3 Transparency
- *Current information about agency policy and operations are readily available to staff, visitors, and any other interested parties as appropriate.*

8.4 Engagement
- *Leaders create a culture in which staff and other stakeholders willingly engage in activities to improve outcomes for children.*

8.5 Governance
- *Governance arrangements facilitate implementation of child safety and wellbeing policies at all levels.*

8.6 Continuous improvement

- *Leaders focus on delivering priorities that support good outcomes for children in custody. They closely monitor progress against these priorities.*

8.7 Sustainability

- *Leaders should adopt and promote principles of sustainability and child-centred design, to be reflected in daily operations.*

Topic 9: Resources, staff skills, and knowledge

9.1 Resources

- *Children achieve desirable outcomes because necessary resources are provided.*

9.2 Recruitment and induction

- *The organisation emphasises its commitment to child safety and wellbeing when advertising for, recruiting and screening staff and volunteers.*

9.3 Supervision and retention

- *Ongoing supervision and people management is focused on child safety and wellbeing.*

9.4 Skills and knowledge

- *Staff and volunteers should be equipped with the knowledge, skills and awareness to keep children and young people safe and well.*

9.5 Training and development

- *All staff must be appropriately trained and receive ongoing development, and reaccreditation where necessary.*

9.6 Workplace Safety

- *Effective emergency management, Workplace Health and Safety and other systems are placed to ensure safety.*

Topic 10: Arrival, travel and induction

10.1 Travel

- *Children travel in safe, secure, decent conditions, are treated with respect and attention is paid to their individual needs. Children should be transported only when it is absolutely necessary.*

10.2 Arrival

- *On arrival children are safe and treated with respect, their individual needs are identified and addressed, and they feel supported on their first night.*

10.3 Induction

- *Induction takes place promptly and children understand the establishment's routines and how to access available services and support.*

Topic 11: Safety in Care

11.1 Protection from harm and neglect

- *Children are provided with a safe and secure environment which protects them from harm and neglect. They receive services that are designed to ensure safe and effective care and support.*

11.2 Child protection

- *Protection concerns are identified and investigated, and action is taken to prevent further harm.*

11.3 Self-harm prevention

- *The establishment provides a safe and secure environment which reduces the risk of self-harm and suicide. Children at risk of self-harm or suicide are identified at an early stage and given the necessary support.*

11.4 Security

- *Children are kept safe through attention to physical and procedural matters, including effective security intelligence and positive relationships between staff and children.*

11.5 Searches

- *Children are subject to searching measures that are appropriately assessed and proportionate to risk.*

Topic 12: Pre-release and reintegration

12.1 Release planning

- *Planning for a child's release or transfer starts on their arrival in the setting. Resettlement underpins the development of all work and activities.*

  Planning is supported by partnerships in the community and informed by assessment of children's risk and need.

  Ongoing planning ensures a seamless transition into the community.

12.2 Public protection

- *Children who may present a risk to the public on their release are managed appropriately.*

12.3 Child transferring from juvenile to adult settings

- *Children who transfer or who are likely to transfer to adult services are managed appropriately.*

12.4 Post release accommodation

- *Appropriate care and accommodation is arranged before children are released.*

12.5 Healthcare on release

- *Children with continuing health, social care and substance misuse needs are prepared and helped to access services in the community before their release.*

12.5 Financial management advice

- *Children are given advice and support on how to manage their money and deal with debt on release.*

Expectations and indicators

Topic 1: Material conditions

(including accommodation, food and water, clothing and bedding, lighting and ventilation, sanitary facilities and personal hygiene)

Expectations	Indicators
1.3 Living conditions: Children live in a safe and clean environment that is suitable for children.	• Bedrooms and communal areas are light, well decorated and suitable for children. • Within their bedroom, children have their own bed, chair, lockable cupboard, and provision for storage of personal belongings. • Children are allowed to personalise their bedroom. • Children have access to drinking water, toilet and washing facilities at all times. • All toilets and washing facilitates are screened. • Residential units are calm and quiet to promote rest and sleep. • Children can operate the lights in their bedroom. • Children have access to intercoms in their bedroom. • Notices are accessible and displayed in ways that can be easily seen. • Children have use of properly equipped areas for association and outdoor areas for daily physical activity. • Children can organise their own activities. • Children have ready access to a private telephone to make calls to nominated family members, friends, lawyers and other advocates and supporters. • Individual units are small, have low numbers of residents and are purpose-built for housing children. • Custodial and secure care settings are designed to be child-friendly and are not overly institutional or imposing in their appearance or operations.

- Secure residential settings look and feel like a family home.
- Where design, redesign, or refurbishment opportunities present, children can have input.
- All bedrooms, communal and activity areas have access to natural light. Fresh air and safe, green, outdoor areas are readily accessible.
- In custodial settings, the design and layout of buildings enable the accommodation of fluctuating numbers of young people, different living spaces to suit higher supervision needs, or to suit shared living quarters and separate housing for remandees.
- There are sufficient multi-purpose and single-purpose activity rooms and spaces to meet the need for education, programs, visits, interviews, recreation and leisure activities.
- Recognising the proportion of Aboriginal children in custody and that the detention centre is built on traditional Aboriginal land, there is visual acknowledgement of youth and Aboriginality in the design, decoration and fittings of the detention centre.
- In custodial settings, procedures exist and regular forward planning occurs to manage occupancy fluctuations and minimise its impact on the health, wellbeing and safety of children.
- In all settings, fixtures and fittings are robust, but not industrial in their appearance, and can handle constant use and substantial wear and tear.
- Regular cleaning, maintenance and replacement schedules are documented and followed.
- Effective processes for identification and remediation of faults, breakdowns and unserviceability are documented and followed.
- Security is maintained at the lowest level required, in a discreet and unobtrusive manner.
- Settings are designed to provide staff with clear lines-of-sight and surveillance without being overly restrictive or oppressive.

1.2 Safety and comfort: Children feel and are safe in their bedrooms and communal areas.	• Bedrooms and communal areas are well ventilated, climate controlled, and temperatures follow relevant health recommendations. Bedroom temperatures can be adjusted to meet a child's health and wellbeing needs. • Setting-appropriate safeguards are documented and followed to ensure all children are kept and feel safe. • Staff are aware of and manage potentially unsafe areas and times when children may need additional supervision. • Children are not required to share accommodation. • Children who choose to share accommodation are subject to regularly reviewed risk assessments. • Communal areas meet the needs of children and are supervised by staff. • Children can raise an alarm in the case of an emergency and staff respond promptly. • Documented processes exist to manage emergencies, staff responses to serious emergencies are reviewed, and children and staff can access appropriate supports following an emergency event. • Children have privacy keys to their bedrooms. • Observation panels in doors remain free from obstruction. • Staff undertake regular, unobtrusive supervision of sleeping areas to ensure children's safety.
1.3 Food and water: Children have a varied, healthy, and balanced diet which meets their individual needs.	• Meals are served at times consistent with those generally observed in the community and can be eaten communally. • Children are provided with three meals a day, have a choice of meals, and can make dietary choices. • Meals meet individual medical requirements. • Children's meals are healthy and reflect the needs of growing children. • Children on transfer or at court do not miss out on meals.

	• Catering arrangements and menus take into account the need to promote healthy eating. • Advice from dieticians or nutritionists is regularly sought to update the menu. • Children have access to drinking water (including at night) and the means of making a hot drink after lights out/lockup. • Children have access to healthy snacks between main meals. • Children are consulted about the menu and can make comments about the food. • Children are given the opportunity to cater for themselves. • Pregnant young women and nursing mothers receive appropriate extra food supplies.
1.4 Food safety and cultural considerations: Children's food and meals are stored, prepared, and served in line with religious, cultural, dietary requirements and food safety and hygiene regulations.	• All areas where food is stored, prepared, or served follow documented policies and procedures designed to meet relevant food, hygiene, and safety regulations (Food Standards Australia and New Zealand guidelines). • All areas where food is stored, prepared, or served are properly equipped and managed. • Religious, cultural, or other special dietary requirements relating to food preparation and storage are observed and communicated to children. • Children have the right to vegetarian or vegan meals. • Children and staff who work with food are trained and wear proper clothing and PPE. • Children can gain relevant qualifications/accreditation. • Staff supervise the serving of food at mealtimes.

1.5 Clothing: Children have access to clean, suitable clothing.	• Children can wear their own clothes. • Children have regular access to laundry facilities to wash and iron their clothing **(at least weekly).** • Children are provided with enough clean underwear and socks to change them daily. • Children are issued with enough warm, weatherproof clothing and footwear to go out in all weather. • Establishment issue clothing is suitable, fits, clean and in good condition.
1.6 Hygiene: Children are encouraged, enabled, and expected to keep themselves, their bedrooms, and communal areas clean.	• Children have free access to basic personal hygiene items. • Children can shower or bath daily, following physical exercise or work, before court appearances and before visits. • Freshly laundered bedding and towels are provided for each new child on arrival and then on at **least a weekly basis**. Replacement bedding in the event of accidents is provided discreetly and sensitively. • A system for the replacement of mattresses is in operation. • Children have access to sufficient cleaning products to keep their bedrooms and communal areas clean.
1.7 Property: Children's property held in storage is secure, and they can access their stored property on request.	• A standard well publicised list details the possessions that children can keep (which should be adequate to meet the needs of children). • Items children are allowed to keep in their possession and in storage considers individual needs. • Children can receive mail and parcels. • Unauthorised articles are recorded, held in secure storage, and returned to the child on release. • Children's property is 'security' marked before it is issued, and its issue recorded. • Children can access their stored property by application and on release.

	• Children are compensated for clothing and possessions lost or damaged in storage. • Razors and nail clippers should be allowed with adequate supervision and taking into account individual risk factors.

Human rights standards:

Human rights standards require that children be housed in accommodation that respects their human dignity and privacy. (CRC 3(3), 20, 27(1), 37; HR 12, 31, 32, 33, 34, 36, 66, 87; AJJA ss. 9.1, 9.2)

Accommodation should be clean, adequately ventilated and lit (by both natural and artificial light) and provide sufficient living space. Children should be provided with adequate bedding and with materials to keep their cells clean, and instructions in how to use them. Children should have daily access to showers. (CRC 27, 37(c); ERJO 53, 63, 65, 66; HR 31–34; CPT 104–105; EPR 18, 19, 21; SMR 12–21). Places of detention must have an alarm system that allows children to contact staff without delay and there must be sufficient unobtrusive supervision by staff during the night to ensure children are kept safe. (ERJO 64; HR 33; EPR 18.2; SMR 12). Children should be allowed to wear their own clothing. Suitable clothing must be provided to those children who do not have their own. (ERJO 66; HR 36; CPT 106; EPR 20; SMR 19–20). In addition, standards recognise that children should be able to keep property in their possession and require that property should be kept safely when not in their possession. (ERJO 62.2; HR 35; EPR 31; SMR 67). Poor living conditions, in and of themselves, can and have been found to violate ICCPR 10 and ECHR 3. A lack of resources does not justify detention conditions that infringe a detainee's human rights. (ERJO 19; EPR 4).

Human rights standards require that children be provided with nutritious food that takes into account their personal needs (such as religion, age, health, and culture) and that they are given the opportunity to cater for themselves. Children should also be able to purchase goods for themselves. (ERJO 68; HR 37, 62; EPR 22, 31.5; SMR 22).

Article 37 (c) of the CRC states that: Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.

Principle 8 of the National Principles for Child Safe Organisations states that: Physical and online environments promote safety and wellbeing while minimising the opportunity for children and young people to be harmed.

Topic 2: Procedural safeguards, voice and participation

(including access and contact with a lawyer, complaints processes, record-keeping)

Expectations	Indicators
2.1 Appropriate authority to detain children: Children can only be held in detention under an appropriate authority and should be released at the earliest appropriate opportunity in accordance with legislation.	• The admission process includes checking all arrivals have an appropriate authority for detention and that the correct person is in detention. • Any detention or secure care documentation required for court is provided in a timely manner. • Involvement from **the Department for Education, Children and Young People Tasmania (Child Safety Service)** is sought at the earliest opportunity for all young people without existing care arrangements in the community to ensure arrangements are made, prior to the young person's release, for appropriate and safe accommodation and support.
2.2 Informal requests: Staff and children are encouraged to resolve requests informally.	• Staff and children are encouraged to resolve requests informally, before making a formal, written application, or a complaint. • Children know how to make informal requests, written applications, and can do so confidentially. • Staff help children to make applications, on request. • Children do not have to make repeated applications for services they access or receive on a regular basis. • Children receive timely responses to their applications which are respectful, easy to understand and address the issues raised. • Children offered an informal resolution to their complaint are not deterred from making a formal complaint. • There are quality assurance arrangements in place to assess the effectiveness of informal requests, applications, and complaints.

2.3 Accessible complaints systems: Children understand and have confidence in complaints procedures.	• Information about complaints, including how to access advocates, is reinforced through notices and posters displayed prominently across the establishment in a range of child friendly formats and languages. • Children can access and submit complaint forms easily, in confidence and without fear of punishment or recrimination. • All complaints are dealt with fairly and promptly. • Children can be heard in person at all stages of the complaint process if they choose. • Children are encouraged to state what they would like the outcome of their complaint to be and, if that outcome is not possible, staff explain why. • Children can ask for help in completing their complaint and in assembling relevant documentation. • Children can ask their legal advisor or family member/carer to make a complaint on their behalf. • Children receive responses to their complaints that are respectful, easy to understand, and address the issues raised. • Children are consulted regularly about the internal complaints system to monitor and maintain confidence in the system. • Complaints against staff are reviewed by trained staff for child protection implications. • Children and visitors who make a complaint are protected from recrimination. • There is a quality assurance system in place to assess and improve the effectiveness of the complaints process.

2.4 Appeals, external complaints mechanisms and advice: Children feel safe from repercussions when using complaints procedures and are aware of appeal procedures.	• Children know how to internally appeal against decisions and are helped to do so. • Appeals are dealt with fairly and responded to promptly. • Children know about and know how to access external complaints mechanisms, including the Ombudsman, Health Complaints Commissioner, and the Anti-Discrimination Commissioner. Information about these is displayed prominently in child friendly formats, which clearly identifies that access is free and confidential. • Children can readily access legal advice and are referred to specialist practitioners. • Children have access to independent advocacy services. Children can receive help to pursue complaints from outside the facility if they need it. **This includes form advocates such as the Child Advocate, and the Commissioner for Children and Young People Tasmania.**
2.5 Legal rights: Children are informed of their legal rights and are supported to understand and exercise those rights.	• Children are informed of their legal rights verbally, in writing, or by video, in ways they understand. • Information about legal rights and how to access legal advisors/advocates, is reinforced through notices and posters displayed prominently across the establishment in a range of child friendly formats and languages. • Parents/carers are informed of children's legal rights. • Staff are proactive in enabling children to pursue their legal rights. • Children can easily and confidentially communicate with their legal advisors/advocates. • Letters and other communications from legal advisors to children remain confidential and are not opened by staff. • Children requiring help with reading or writing legal correspondence are offered help. • Children can receive help in contacting legal advisors or making applications to the courts. • Children who choose to represent themselves in court can access help to do this (for e.g., have access to a

	computer and printer to type court correspondence and documents). • Private and confidential legal visits are supported and accommodated in suitable spaces. • Secure facilities are provided to allow children to keep documents relating to their legal proceedings. Children may request that legal documents are held securely and confidentially on their behalf.
2.6 Information about a child's deprivation of liberty: Children are informed about and understand the context of time in secure care, their sentence or remand in custody.	• Children are provided with accessible verbal and written information about their time in secure care, their sentence or remand in custody. • Children are informed about relevant child protection proceedings and how to access advice in relation to their parental rights and children's welfare, where applicable.
2.7 Promotion of children's rights: Children are informed about and understand the context of time in secure care, their sentence or remand in custody.	• Children are informed of their rights, on arrival and at regular points in accessible child friendly ways. • The organisation has a charter of rights for children which is prominently displayed and regularly reinforced. • Staff are educated about, understand, respect, and uphold children's rights.

2.8 Participation in decision making: Processes are in place to encourage the participation of children in decisions that affect them, children have access to accessible information, understand their rights and how to raise concerns.	• Children are given safe and inclusive opportunities to have their voice heard and inform decision-making. • Children are regularly consulted and given the opportunity to present their views, ideas, any areas of grievance or dissatisfaction directly to managers. • Children are provided feedback explaining the reasons for decisions and how their views were considered. • Consultation methods are co-created by children and staff. • Children can raise issues or concerns for discussion. • Children can challenge decisions and are confident that their views are taken seriously. • Children can challenge information contained in their records. • The selection of children to take part in formal consultation events/mechanisms or to represent others is fair and transparent. • Leaders and managers show and encourage innovation and creativity to solve problems and meet the needs of children. • Children take an active role in influencing decisions about services, routines, and facilities and in managing their own day-to-day life. • There is evidence of change in policy and practice arising from the views and experiences of children.

2.9 Privacy and confidentiality: Information regarding individuals must be kept private and confidential, with monitored and documented processes in place for appropriate information sharing between staff and agencies directly involved with the young person's care and management.	• Information is managed and stored with respect for confidentiality and security. • Protocols and procedures are in place to facilitate appropriate information sharing between agencies directly involved in managing individual children. • Procedures are in place to ensure the protection of children from exposure to the media (especially during court transports and external activities). • Appropriate checks are made on visitors or telephone callers to reasonably ensure they are genuine and appropriate to talk to or visit children or be given any information about specific children. • Documents gained while a child is detained intended for use in the wider community do not indicate the child was in detention or secure care (for example, school certificates, work references, identification, medical referrals), unless directly relevant or required.
2.10 Accountable record keeping: There should be robust and accountable recording and reporting systems for major aspects of the facility's activities.	• Children's records are current, confidential, and accessible to relevant staff. • Documented operational procedures follow clear policy frameworks, reflect relevant legislation, and are regularly reviewed. All staff have easy access to policies and procedures. • Investigations of issues, incidents and allegations are undertaken expediently by appropriately trained persons, and accurately documented. • There is regular internal and external risk-based auditing of all areas of operations. • Facilities have quality assurance systems used to monitor, measure, and improve performance, and external reporting arrangements are in place which are consistently followed.

Human rights standards:

Human rights standards set out that children can only be detained under appropriate authority in accordance with the law. (BR 4.1, 28.1, 28.2; CRC 3(1), 3(2), 37(b), 40(4); HR 17, 20; YJA ss. 109(1) (2), 126).

The ability to make requests or complaints without repercussions and the requirement that these receive a prompt response is clearly set out in human rights standards, as i the ability to make complaints to external bodies and to access confidential legal advic (CRC 3, 12, 13, 37(d) 40(2)(b); YJA ss. 4(d), 127, 128, 129(1)(b); ACCG Charter; ERJ 50.3, 105, 120–124; HR 18, 24, 25, 60, 75–78; CPT 130–131; SMR 56, 57, 61; EPR 2 70; BOP 17, 18, 33; BRPL 1, 5, 6, 8; HR 24-25, 75-78).

The Royal Commission into Institutional Responses to Child Sexual Abuse found that children's inability to be heard and be taken seriously directly heightened the risk of abuse. Article 12 of the CRC states that:

1.States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 42 of the CRC states that children have the right to know their rights and that adults should know about these rights and help children learn about them.

Principle 2 of the National Principles for Child Safe Organisations states that: Children and young people are informed about their rights, participate in decisions affecting them and are taken seriously. Principle 6 of the National Principles for Child Safe Organisations states that: Processes to respond to complaints and concerns are child focused.

Human rights standards set out that information regarding individuals must be treated as confidential and that record keeping practices reflects this. Facilities where children are detained or kept securely should keep accurate and comprehensive records. (HR 21, 23, 19, 40, 87; BR 8.1, 8.2, 30.0 CRC 16; YJA s. 22).

Topic 3: Healthcare

(including physical and mental healthcare, specific groups)

Expectations	Indicators
3.1 Clinical governance and partnership: Children are cared for by services that accurately assess and meet their health, social care and substance use needs and which promote continuity of health and social care on release.	• Effective partnerships are in place between secure mental health/custodial/residential services and health providers to ensure health, social care and substance use services meet the assessed needs of children in a timely way. • Health, substance use, and social care provision meet required regulatory standards. • Health staff are easily recognisable, known to children and available at any time. • Staff are well trained and supported, including regular clinical and managerial supervision. • Every child has a single clinical record developed in line with current record-keeping standards. • Children receive information about the health record system and (if over 14 years) can determine if a condition or treatment is uploaded to their electronic record. • Information is shared (within the bounds of medical confidentiality) to promote continuity of care and child safety.
3.2 Treatment: Children receive treatment, sensitive to their needs, from competent staff in environments that promotes dignity and maintain privacy.	• Children have equal access to health, well-being, and social care services, regardless of location, environment, disability, sentence, or remand status, cultural or language barriers. • Child patients are treated with dignity and respect. • There are sufficient rooms and clinical spaces to provide a full range of health services. • Robust infection prevention and control measures are in place. • Child patients are seen in private, except in exceptional circumstances. • Competent health staff respond promptly to medical emergencies with appropriate emergency equipment.

	• Clinical equipment is appropriately maintained and serviced. • Arrangements are in place to gain and review children's consent, with consideration of their capacity to understand. • Children are helped to exercise their ability to consent, by making reasonable adjustments and allowing them to be supported by a third party. • If competence to provide informed consent is absent, arrangements are made to obtain consent from parents/carers. If this is not possible, policy exists to govern health care decision making that incorporates relevant legal requirements and decisions are documented. • Child patients are kept safe, relevant safeguards exist to prevent abuse, and have access to independent advocacy if needed. • Child patients can make complaints about their treatment in confidence, without recrimination. Responses are timely, easy to understand and address issues raised.
3.3 Health Promotion: Children are supported and encouraged to optimise their health and well-being.	• Health and well-being promotion is embedded as part of facility wide messaging. • Information about available health services and health campaigns is accessible and made available in a range of formats and languages. • Children can easily access age-appropriate health checks, disease prevention and screening programs. • Children can access sexual health services and advice and are provided with barrier protection. • Children can access community-equivalent smoking/vaping cessation support.
3.4 Initial Assessment: Children's immediate health, substance use, and social care needs	• An initial medical and psychological assessment of each child brought into a custodial setting must be conducted **within 48 hours of their admission by health services staff** of their gender. They may have a support person if desired.

are identified on reception/admission and responded to promptly and effectively.	• The need for referrals to appropriate health services such as medical, drug and alcohol or mental health are made during the initial assessment. • The initial health care assessment identifies any special needs of the child and is shared with their caseworker. • Children are examined by a doctor of the same gender. • Every child has access to remedial and preventative medical care and pharmaceutical products and special diets as indicated on their medical record. • Medical care and medicine is only administered when necessary and with the consent of the child or their carer/guardian. In the absence of a parent/guardian, the facility maintains a clearly documented processes for ensuring lawful authorisation for children's medical assessment and treatment, which is followed. • Relevant risk and care planning information is shared between facility and health staff on reception and throughout the child's detention/time in secure care. • With consent, the child's community clinical records are obtained promptly. • Children receive timely secondary health assessments from health and substance misuse professionals.

3.5 Access to primary care services: Children's individual, ongoing health care needs are addressed through an appropriate range of care services. Continuity of care is maintained on transfer or release (including on remand).	• There is an effective and accessible health appointments system in place. • Children can access all necessary primary care services, including out-of-hours GP services. • Children have access to a health professional of their gender and a support person if desired. • Children with long-term conditions and complex health needs receive appropriate coordinated care. • Recorded care plans demonstrate child patient involvement and support continuity of care, including timely joint work with relevant internal and external agencies and services. • Health services staff provide services in bedrooms when required. • Health staff complete a restraint handling plan for all children with a medical condition who may be adversely affected by restraint. Staff are aware of the content of restraint handling plans and use this information during restraint. • Children receive secondary care services within community-equivalent waiting times. • Security measures on hospital escorts are proportionate and based on individual risk assessments. • Children receive relevant pre-release health assessments and interventions and are supported to register with local community health services. • Babies and infants residing with their mothers in custodial settings receive standard paediatric care and health checks as would be available in the community. • Pregnant and nursing mothers receive specialist health care and advice and assistance preparing for a child's birth and with parenting.

3.6 Mental health: Children with mental health problems are identified promptly and supported by community-equivalent services to optimise their mental well-being during their detention or placement in secure care and on transfer or release.	• Children's immediate mental health needs are assessed during their reception health screening and appropriate onward referrals are made. • Staff receive training to enable them to recognise when a child requires referral for mental health assessment and can affect referral pathways. • Referrals are reviewed promptly, and appointments allocated on clinical need and risk. • Competent practitioners deliver a community-equivalent range of evidence-based interventions and support for mental health problems. • Prescribing reviews and related physical health checks occur regularly. • Children are assessed using standardised checks and additional information is obtained from other sources as required. • Children have written care plans which are regularly reviewed with mental health practitioners. Parents and carers are involved if the child requests this. • Liaison and joint work occur with other relevant agencies and health providers. • Children with chronic mental illnesses are supported by specialist child and adolescent mental health services. • Children who require assessment or treatment under the relevant mental health legislation are assessed and transferred promptly. Children understand why they are being transferred and are given relevant information. • Effective discharge planning and liaison with other agencies such as police and community mental health services occurs to ensure continuity of care following release.

3.7 24-hour in patient care: Children requiring 24-hour care are supported by a program, facilities and health care staff to meet their individual needs.	• Admission and discharge are based on agreed clinical criteria. • Children receive a comprehensive assessment of their care needs and, wherever possible, are involved in developing their own care plans. • Children have decent living conditions, therapeutic programs, and activities to encourage recovery. • Appropriate arrangements are made for children to continue their education, wherever possible. • Children's ongoing care needs are met following discharge from the inpatient unit. • Arrangements are made for the early release or transfer to a hospital or hospice of children who are dying or who have life-limiting conditions.
3.8 Substance misuse: A coordinated and strategic approach to drugs and alcohol ensures supply and demand reduction and that treatment is integrated, effective and meets children's individual needs.	• Joint arrangements are in place between custodial or secure care agencies, treatment providers and other relevant stakeholders to deliver a holistic coordinated drug and alcohol strategy. • Sufficient competent staff provide effective, evidence-based psychosocial and clinical services which meet the needs of children. • Psychosocial and clinical substance use treatment services are well integrated with each other, the facility and other health services. • All new arrivals receive prompt assessment of their substance use and specialist clinical support, prescribing and monitoring in line with Tasmanian and Australian standards. • All new arrivals receive relevant harm reduction information. All children receive harm reduction advice prior to release.

3.9 Medical and pharmaceutical interventions: Children receive community equivalent, patient-centred medicines optimisation and pharmacy services.	• Children's medication histories, including allergies, are recorded during the initial reception screening and a full medicines reconciliation is completed **within 72 hours of admission.** • Any disruption in prescribing regimens is minimised and urgent/critical medicines can be accessed promptly. • Children can easily access clinical pharmacy services and advice. • All medicines are handled, transported, and stored legally, safely and securely with effective pharmaceutical stock management and use. • Robust governance processes are in place to ensure safe and effective medicines management, including monitoring of medication incidents and prescribing trends. • Children's medicines are prescribed safely in line with evidence-based practice, reviewed regularly and administered at clinically appropriate times. • Children's adherence to medication is closely monitored and reviewed. • Children are supported to take responsibility for their own medication and to engage effectively in required prescribing reviews. Subject to regular review and risk assessment, child patients can store their medicines securely and self-administer. • Medicines are administered from a secure and respectful environment. • Children going to court or being released or transferred receive adequate supplies of medication to meet their needs.

3.10 Dental services and oral health: Children have timely access to dental checks, oral health promotion and any necessary treatment, including orthodontic treatment.	• Emergency dental treatment is well organised, responsive, and effective. • Children have regular and timely access to dental checks and treatment. • Children have prompt access to required medicines following dental interventions. • Dental care meets contemporary professional standards.

Human rights standards:

Every child has the right to the enjoyment of the highest attainable standard of physical and mental health (CRC 3(3), 24; ICESCR 12). Human rights standards require that children be provided with the same standard of health care as available in the community and that places of where children are deprived of their liberty should safeguard and improve the health of those in their care. (ERJO 28, 69–75; HR 28, 49–52, 55; SMR 24, 25; EPR 39, 40).

It is important that the impact of detention or deprivation of liberty on children is monitored. (ERJO 70; HR 52). Human rights standards emphasise the role of health care staff in evaluating, promoting, protecting, and improving the physical and mental health of children, paying particular attention to those with special health care needs. There should be an interdisciplinary team with full clinical independence. There must be prompt access to medical care in urgent cases and referral to external care when needed. (ERJO 69, 73, 74, 102.1; HR 49, 51, 81, 84; SMR 25–27, 31; EPR 40–42, 46).

Activities and interventions should promote children's physical and mental health and children should be provided with health information. (ERJO 50.1, 71; HR 1, 12, 37,47; ACCG Charter).

Human rights standards require children's health care needs to be assessed on arrival, including identifying all health care needs, the risk of self-harm and any previous ill-treatment. (See ERJO 62.2, 62.5; HR 21, 31, 50; EPR 40; SMR 30). Standards require health needs to be monitored and met throughout detention. (HR 49, 51, 52; EPR 39–43, 46, 87(d); SMR 24, 27, 31–34).

Human rights standards require places of detention to monitor and meet children's mental health needs and to ensure referrals are made to external care when needed. (ERJO 70.2; HR 49, 51, 81, 85; EPR 39–43, 46, 47.2; SMR 24–27, 31–34; CRC 23; BR 26.2
HR 51; DGJJFANZ 5.203 – 5.213; ACCG Charter)

Human rights standards provide that initial health assessments should include an assessment of symptoms of withdrawal resulting from the use of drugs, alcohol, or medication, and note the need for continuity of care for drug dependence. (ERJO 62.2, 62.5, 72; HR 54; SMR 24.2, 30; EPR 42.3).

Human rights standards require children to have access to dental services. (HR 49; SMR 25.2; EPR 41.5).

Article 24 (1) of the CRC states that: States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the

treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

Topic 4: Contact with the outside world

(including visits, correspondence, phones, internet)

Expectations	Indicators
4.1 Children, families and contact with the outside world: Children are supported to establish and maintain contact with families and other sources of support in the community.	• The makeup of children's family, kin, and friend networks, distance from home, expected frequency of visits and/or contact arrangements, and dependents (where applicable) is established on arrival, monitored, and facilitated. • Strategies are in place to help children maintain and enhance their full range of support networks. • Children are helped with any difficulties relating to contact with family or kin. • Children are entitled to make and receive various forms of communication including mail, telephone calls, video links and visits. • The visits system is flexible and visitor-friendly and allows for relaxed communication. • Family and or friends of are only refused access to visit for a valid reason, and any denial of access is explained clearly to the visitor and the child. • Video link communication is made available to families who have difficulty visiting in-person. Opportunities are provided for families facing financial hardship to visit in-person. • Tasmanian Aboriginal children can maintain connection to Country and community. • Significant family members (or a significant other nominated by the child) are informed and involved in the child's management and case planning wherever possible. • Families are routinely involved in processes and programs, including in relation to education, safeguarding, health care and planning for reintegration. • Consular involvement is sought for any foreign nationals, and they receive assistance to maintain contact with family through the provision of overseas

	phone calls or the use of video link. Arrangements should be flexible enough to accommodate international time zones. • Children who do not receive visits are identified and receive individual support and help to build and maintain relationships. • Creative methods for encouraging family contact and opportunities for children to celebrate their successes and milestones with their family and friends are supported. • Measures are in place to prevent contact that is not in the best interests of the child. • Links and support services are available to parents and/or carers of children during custody or secure care and after release. • Children are helped to fulfil any parental responsibilities, including those undergoing separation and/or child protection procedures. • Children and their immediate family or partners are informed sensitively of significant news about each other **within 24-hours** (for example, medical emergency). • Subject to risk assessment, children can visit sick relatives and attend funerals and sorry business. • Children are not deprived of family contact as a punishment.
4.2 Visits entitlement: Children can maintain access to the outside world through regular and easy access to visits.	• Children are informed of and understand their visits entitlements within **24-hours of** arrival. • For children in custody, a visits booking system is in place that is accessible and able to manage the number of visitors. • Children in secure health or residential facilities can receive visits at any time. • Children in custody can receive a visit **at least three times a week.** Visits start and finish at the scheduled time.

	• Visiting times provide for those who wish to visit at weekends and in the evenings. • Visits staff are aware of child protection issues and there is a robust system for vetting visitors. • Children are provided with additional visits and/or phone calls if they have specific welfare needs. • Children who are primary carers are provided with additional contact opportunities and can receive incoming calls from dependents. • Relationship counselling for children and their family members is available before and after visits, and children have access to programs for improving parenting skills and maintaining positive relationships. • Children are supported to maintain contact with family members who may be detained. • Children are not deprived of their entitlement to visits as a punishment.
4.3 The visits environment: The visits environment is a clean, respectful, and safe environment and meets the needs of children and their visitors. Visitors are made aware in advance of routines and available support services.	• All relevant procedures for children and visitors are carried out efficiently before and after visits. • The searching of children, visitors and their property is conducted in accordance with clear procedures. • Visitors understand why they are being searched and how the search will be conducted. • Visitors are given information about how to get to the establishment, the visiting hours, details about what to expect when they arrive and information on making complaints. • Arrangements are made to help visitors to get to and from the establishment if local transport difficulties exist. • Children and visitors can give staff feedback on the visiting arrangements, suggest improvements, and make complaints. • Visiting areas are managed by friendly, helpful staff. • Visitor parking and facilities are easily accessible. • Children and visitors have access to toilet facilities at all times.

	• Visits areas are staffed, furnished, and arranged to be welcoming and to ensure easy contact between children and their families or friends, including outdoor areas. Security arrangements in visits do not unnecessarily encroach on privacy. • Visiting children are safe and can enjoy visits in a child friendly environment that is sensitive to their needs and includes access to toys, and appropriate play equipment. • Visitors can access a range of refreshments during visits.
4.4 Access to a range of communication channels: Children can maintain contact with the outside world through regular and easy access to mail, telephones, and other communications.	• Children in custody can make a free phone call on their first night and **can make at least seven free phone calls to family per week.** • There are no communications restrictions for children in secure health or residential care environments. • No restrictions are placed on the number of letters that can be sent or received. • Outgoing mail is posted within 24-hours and incoming mail is received by children within 24-hours of arrival. • Children's mail is only opened to check for unauthorised enclosures or to carry out legitimate censorship. • Legally privileged correspondence is not opened by staff. • Telephones can be used in private, ideally in children's rooms, and there are sufficient telephones to facilitate daily use. • Calls are charged at rates similar to those in the community. Children without telephone credit are provided with phone calls free of charge. • Unused visits can be exchanged for phone credit. • There is a notice next to all telephones advising children that their calls may be monitored. • Children can easily find the telephone numbers of outside organisations and know which numbers they are permitted to call.

	• Children can communicate with family, friends and community agencies using the internet (including email and voice calls) free of charge.
Access to media and other material:	• Children can access daily news every day if they wish to and can purchase approved magazines. • A wide range of hobby and craft materials is available, and children can purchase approved materials from external sources. • Children can access the internet for news and information on request. • Computer and internet access is appropriately supervised and screened.

Human rights standards:

Human rights standards place strong emphasis on children's ability to maintain and improve relationships with family and friends through visits and other means. Visits should be in as normal an environment as possible, and there are clear standards on searching visitors and monitoring visits as well as authorising children to leave detention for funerals or other humanitarian reasons. Staff should assist and support children to maintain contact with the outside world. (See CRC 3, 5, 8, 9(3), 16, 18; ERJO 53.2, 55, 83–86, 89, 102.1; HR 22, 59–62, 67, 78, 79, 87I; CPT 122–125; ECHR 8; SMR 58.1, 59, 63, 106, 107; EPR 24; BOP 19, 20; RCIADIC 168, 169 170, 171; ACCG Charter).

Article 17 of the CRC sets out that Children have the right to get information that is important to their wellbeing from radio, newspapers, books, computers, and other sources. Adults should make sure that the information children get is not harmful and help them find and understand the information they need.

Article 5 of the CRC states: States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention. Article 8 of the CRC states: States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference. Article 9 (3) of the CRC states: States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it Is contrary to the child's best interests.

Principle 3 of the National Principles for Child Safe Organisations states that: Families and communities are informed and involved in promoting child safety and wellbeing.

Topic 5: Equity, diversity and non-discrimination

(including faith and religion, Aboriginal people, LGBTIQ+ detainees, foreign nationals, children from culturally and diverse backgrounds, people with disabilities or neurodiverse conditions, other groups)

Expectations	Indicators
5.1 Equity is upheld, and diverse needs respected: Staff and children understand the agency's commitment to equity, diversity, and non-discrimination.	• Children feel comfortable, and services are provided in culturally safe and inclusive ways. • The Manager/Director leads by example in promoting equality and diversity. • Policies and activities reflect the diverse needs of the children. • A named person of appropriate seniority has overall responsibility for equality and diversity. • Equity and diversity issues and outcomes are monitored regularly by a committee involving managers, staff, and peer workers. • • Awareness of equity and diversity is promoted through educational and celebratory events. • The setting has clear systems in place known and used by all staff, to identify and take appropriate action to minimise and prevent all forms of discrimination or disadvantage. • Staff are trained and supported to identify and eliminate discrimination. Staff receive appropriate training and have access to professional development opportunities. • Effective and regular monitoring is in place, covering all diverse needs, to ensure equality of treatment and access to services, for example, allocation to activities, health care, complaints, use of force and rewards and sanctions. • Results of equality monitoring are communicated in an easy-to-understand format to staff and children and appropriate action is taken when necessary. • Incident reporting systems are developed to facilitate the reporting of all types of discrimination.

	• Data on discriminatory incidents and allegations is routinely analysed for patterns. • Potential adverse outcomes are investigated thoroughly. Remedial action is promptly taken and evaluated. • Children and their immediate family or partners are informed sensitively of significant news about each other **within 24-hours** (for example, medical emergency). • Subject to risk assessment, children can visit sick relatives and attend funerals and sorry business. • Children are not deprived of family contact as a punishment.
5.2 Strategic Management: Managers demonstrate leadership in delivering a coordinated approach to embedding equality considerations, eliminating all forms of discrimination and promoting inclusion and respect for diversity.	• A local policy is in place outlining how the needs of all groups will be identified and addressed. • The Manager/Director leads by example in promoting equality and diversity. • Staff with specific equality responsibilities are given time and support to fulfil their role and have clear job descriptions and objectives. • There is regular and effective input by external community representatives, providing advice at a strategic level and support to children. • Awareness of equality and diversity is promoted by educational and celebratory events.
5.3 Fair Processes: Processes ensure that no child or group is unfairly disadvantaged.	• The agency has clear systems in place, which are known and used by staff, to identify and take appropriate action to minimise and prevent all forms of discrimination or disadvantage. • Children are informed of their rights in a way that they understand. • Children can contact the Anti-Discrimination Commissioner confidentially and make a complaint.

	• There are effective interventions in place for both the child or adult being discriminated against and the perpetrator of discrimination. • Assessments on arrival establish individual needs, including covering all protected characteristics. Any child who requires a personal care plan is identified quickly and an individualised plan is put in place.
5.4 Non-discrimination: Discriminatory behaviour is challenged robustly and consistently.	• Children have access to information in a format and language they can easily understand, such as DVD, easy read, or Braille. • All forms of discriminatory language and conduct are challenged. • Children and staff know what behaviours and language are acceptable. • Children, staff, and visitors know how to report discrimination, are supported to do so and are safe from repercussions. • Responses to discrimination complaints are timely and are based on a thorough investigation. • Discriminatory allegations and incidents are investigated thoroughly. • There are effective interventions to support children experiencing discrimination and to challenge and educate perpetrators. • Children who have been involved in hate crime or incidents are supported to understand the harm caused and to change their behaviour. • Staff promote and model inclusion in all aspects of their work and show an awareness of equality, anticipating and addressing the needs of children. • Staff are aware of children who may require extra support in the event of an emergency. Personal emergency evacuation plans are used. • Staff are aware of children who need help to complete everyday activities.

	• Staff make reasonable adjustments to ensure that all children can participate in education and activities which meet their needs. • External support groups and networks are promoted, and children are helped to contact them. • Rehabilitation and release planning work takes account of the specific needs of children.
5.5 Children's involvement in non-discrimination: Children are given opportunities to play an active role in eliminating discrimination and are regularly consulted to strengthen and support the elimination of discrimination.	• Children are encouraged to become **equality representatives**, represent the views of their peers, and meet regularly, both with managers, staff, and children. • Equality representatives contribute their views to monitoring. • Through regular consultation meetings and surveys, children can raise issues on any aspect of equality. Consultation methods are co-created by children and staff. • Equality representatives are supervised and supported. • Children have access to staff and outside agencies on a regular basis to answer queries and seek advice about equality and diversity issues.

5.6 Treatment of remandees: The unsentenced status of remanded children should be respected in the way they are treated while in detention. Remandees must have no less access to services, activities, and amenities as sentenced children, and be able to access additional services required in line with their remand status.	• Wherever possible, children on remand are housed in domestic style, normalised accommodation to maintain their status as innocent until proven guilty. • Unless it would cause disadvantage or distress, remanded children are kept separated from sentenced young people. • Remandees are encouraged to access programs that may be beneficial for them. • Remandees have unlimited access to legal advisers and are kept aware of all relevant information regarding their court case. • Remanded children are able to access assistance with accommodation and support for re-entry into the community in the same way as sentenced children and at a level appropriate to their needs. • Efforts are made to maintain functional connections to the community for remandees, including additional visits and phone calls and continuation of study activities where possible. • Remandees' case management system is the same as that of sentenced children.
5.7 Foreign nationals, refugee and asylum-seeking children in custody: Children who are foreign nationals, refugees or seeking asylum are treated equitably and according to their individual needs.	• Children are provided with information about their immigration status and immigration procedures in different languages and formats and helped to understand them. • Regular liaison takes place with immigration authorities and children are informed as early as possible in their sentence whether they are being considered for removal or deportation. • Children at risk of deportation are offered appropriate support when visited by immigration officials. • Staff understand the potential impact of deportation decisions on a child's mental health and provide appropriate support. • Children understand and receive their entitlements and can participate fully in the activities and services of the establishment regardless of their status.

	• Staff are aware of the distinct needs and cultural preferences of foreign national children. • Children have access to accredited, independent immigration advice and support agencies, including confidential translation and interpreting services, specialising in children's issues. • Deportation matters are concluded before the end of the custodial sentence.
5.8 Needs of specific cultural groups: The specific needs of children from diverse cultural groups are identified and met.	• Children's cultural identity and connections are respected and facilitated. • All staff have completed cultural awareness training and have regular access to related professional development opportunities. • Staff are aware of and respond appropriately to race and cultural issues. • Special measures are in place to recruit Aboriginal and Torres Strait Islander staff, along with staff from other cultural groups reflected in the population of children. Tailored support structures are developed and implemented to support staff. • The distinct needs of all Aboriginal and Torres Strait Islander children and children from culturally and linguistically diverse backgrounds are identified and addressed. • Children from cultural and linguistically diverse backgrounds have access to appropriate cultural mentoring from within the community. • Children from Aboriginal and Torres Strait Islander backgrounds are aware of their country, language groups and nation, and have regular access to cultural mentors and elders. • Staff responsible for managing immigration liaison are fully trained. • Accurate records are kept of staff and children who speak languages other than English and children who may find communicating in English challenging.

	Interpreter services can be accessed to support children and their families. • Aboriginal spirituality should be encouraged and strengthened through cultural programs, visits with Elders and other representatives of Aboriginal communities and through observance of customs, rites of passage and tribal traditions.
5.9 Children with disability: The specific needs of children are met. Children with disability are identified, treated with respect, and afforded reasonable adjustments to ensure access to all programs and activities.	• Children with disabilities are identified on arrival, their needs assessed and provided a multidisciplinary care plan which is kept up to date and shared appropriately with all relevant staff. • Children with special educational needs, including those with education, health, and care plans, are given appropriate support. • All staff have access to relevant information about children in their care who have a disability. • Children have access to information in a format and language they can easily understand. • Children can access appropriate specialist support services and equipment to enable them to communicate, give consent, and understand regimes, rules and routines. • Accredited interpreting services (for e.g. Auslan) are used wherever accuracy or confidentiality is critical. • Reasonable adjustments are made to ensure that children with disabilities, including those with learning disabilities/difficulties, have access to the full suite of programs and facilities. • Children who are unable to take part in normal timetabled activities are provided with appropriate alternate education and activities. • Managers make appropriate representations for the transfer of children whose needs cannot be met.
5.10 Trans and intersex children: Specific needs of children who are	• Decisions about the location of a trans or intersex child are taken following a case conference and take account of the child's views.

trans, intersex or have gender divergent identities are acknowledged and respected.	• Children are located in a facility that can meet the needs of the gender with which they identify. • All children have access to the items they use to maintain their gender appearance. • Children are permitted to live permanently in the gender with which they identify. • Children are referred to and addressed using terminology agreed with the child, including in relation to gender, names and pronouns. • Children, including children who wish to begin gender reassignment are able to access appropriate, specialist medical and psychological support, equivalent to what they would receive in the community. • All children are supported in relation to their gender identity and expression through specific internal support groups and schemes, and referral to external support networks.
5.11 Sexual orientation: Specific needs of children of all sexual orientations are met.	• Staff training and development promotes equal respect for people of all sexual orientations and raises awareness of the discrimination faced by gay and bisexual children. • Acceptance of all sexual orientations is promoted. • Action is taken to identify and prevent homophobic language and behaviour and interventions for challenging homophobic/discriminatory bullying are in place. • Children who are gay or bisexual are supported via specific support groups and schemes within the establishment and through referral to external support networks.

5.12 Faith and religion: The specific needs of children of all religions are met.	• Children can fulfil their religious worship and other spiritual practice requirements. • Staff are aware of religious diversity and the way this interacts with cultural and racial identities. • Searches of staff, visitors, children, and their property are conducted in a manner that is sensitive to religion and culture. • Children can learn about different faiths and are free to change or abandon their religion. • Children can celebrate religious and cultural festivals, and these are actively promoted. • Religious services are regularly held or made available to children to fulfil their requirements. • Support from faith leaders can be organised for children who have experienced bereavement or loss. • Children have easy and private access to representatives of their faith. • Children know the timing of religious services; these times are appropriate to different religions. • Activities are arranged so that children are able to attend religious services. • Worship areas are equipped with facilities and resources for all faiths. • Religious representatives demonstrate and promote understanding, acceptance of and respect for different religions. • Children are able to attend faith classes and groups in addition to worship and private discussions. • Children are able to obtain, keep and use artefacts that have religious or cultural significance, provided they do not pose a risk to safety or security. • Monitoring of children's different religions is comprehensive, accurate and is reviewed regularly to shape service provision.
5.13 Children in Care:	• A dedicated lead within the agency has responsibility for developing policies and procedures for children in care,

The specific needs of children who are in the care of the state are managed appropriately so that they receive their full entitlements.	and maintaining links with relevant authorities to ensure that the specific needs of these children are met, including following release. • Procedures ensure that there are systems in place to identify children in out of home care on reception, inform their carers and responsible authority. • Clear procedures are in place which set out how children in care are cared for and supported. • The designated lead challenges failures by authorities to fulfil their statutory obligations for a child in care, by escalating concerns to the **Executive Director, Child Safety Services, Tasmania.**
5.14 Parenting responsibilities: Special considerations should be made for children who are parents or have parenting responsibilities.	• Parents are enabled to fulfil their parental responsibilities and have positive relationships with their children. • Flexible visiting arrangements, home leave, and suitable child friendly visit facilities are available to facilitate the meeting of parental responsibilities. • Specific services are available for pregnant and new mothers, for example food and nutrition, and maternal health services. • Developmentally appropriate relationship, sexual health and parenting skills programs are available to all children.
5.15 Girls: The specific vulnerabilities of girls are recognised, and effective safeguards are applied that do not impede on their rights in comparison to boys.	• Girls are not housed with boys in custodial settings, and where this is not possible boys' and girls' sections are adequately separated. • Male staff do not enter areas where girls are detained unless accompanied by a female staff member. Where male officers play a role in the administration or monitoring of areas where girls are detained, their roles are limited to functions which preserve the dignity and right to privacy of female detainees. • Girls have equivalent access to work, education, sports, and recreational activities as boys.

5.16 Children in adult settings The specific vulnerabilities of children in adult settings are recognised, and effective safeguards are applied to protect them from abuse.	• Children are not placed in adult settings unless absolutely necessary. • Where children are placed in adult facilities there must be separate facilities for children – including distinct, child-centred staff, personnel, policies, and practices – to cater for the developmental needs of children. • Children should have separate sleeping, toilet and washing facilities, and be able to safely walk about and undertake normal activities without encountering adult detainees. • The only exception to the separation of children from adults is where it is not in the child's best interests. For example, the child's best interest may require greater priority for family contact than for separation which may lead to the child being detained with a parent or close to home, even if detention is in a facility shared with adults, or a child may require specialist medical intervention which is only available at an adult facility. • Any child in an adult facility is treated in a way that is appropriate for a person of the child's age.

Human rights standards:

Article 2 of the CRC states that all children have rights, no matter who they are, where they live, what their parents do, what language they speak, what their religion is, their sex or gender, what their culture is, whether they have disability, whether they are rich or poor.

Non-discrimination is a fundamental principle enshrined in human rights treaties and standards. Article 2 further states: States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members. (CRC 2; ICCPR 26; CERD 1, 2; CEDAW 1, 2; ICESCR 2.2; CAT 1; CRPD 5).

Human rights standards relating to places of detention expressly note that standards should be applied impartially and without discrimination and that particular mechanisms should be in place for detained women and girls, and where children are placed with adults. (HR 4, 28; ERJO 11; SMR 2; EPR 13; BOP 5; NMR 81,104,105; BR 4, 42, 58; CR 40).

In addition to the general non-discrimination provisions set out above, there are specific human rights standards relating to some protected characteristics, including the following.

- Children with disabilities: CRC 23; ERJO 107; HR 38; CRPD 2, 3, 5, 9, 14; SMR 5.2, 55.2, 109.2.
- Children from national, ethnic, cultural, religious or linguistic minorities: CRC 30; ERJO 106; HR 6, 38; DRM 2; EPR 38.
- Sexual orientation and gender identity: Yogyakarta Principles; Council of Europe Committee of Ministers, Recommendations on measures to combat discrimination on grounds of sexual orientation or gender identity.
- Foreign nationals: ERJO 104, 105; HR 6.

All children have the right to freedom of thought, conscience, and religion (CRC 14; ICCPR 18; ECHR 9). Human rights standards require that there be no discrimination on the grounds of religion or religious belief and that children belonging to religious minorities must be able to profess and practise their religion without any interference. (ERJO 87; HR 48; EPR 13, 29; SMR 2, 65, 66; BOP 5); CRC 2, 14, 30, 40(2); HR 38, 48; 17, 18; ACCG Charter; AJJA s. 3.11; BR 7.1)

Principle 4 of the National Principles for Child Safe Organisations states that: Equity is upheld, and diverse needs respected in policy and practice.

The Australian Human Rights Commission has identified best practice principles for a culturally safe and inclusive NPM: Road Map to OPCAT Compliance (2022).

Topic 6: Safety, order, discipline, and restrictive practices

(including violence and bullying, searches, disciplinary measures, restraint, use of force, separation, segregation and solitary confinement)

Expectations	Indicators
6.1 Behaviour management: The agency has a behaviour management strategy in place which is understood by all staff and regularly reviewed.	• A coherent behaviour management strategy is in place that focuses on rewarding children for positive behaviour and effort. • Staff model respectful and positive behaviour towards each other and children. • Staff understand the impact of trauma, have received appropriate training, and implement effective strategies to address it. • Behaviour management schemes are underpinned by a focus on positive relationships between staff and children. • Staff engagement with children regarding behaviour is strength-based and focused on future behaviour. • Managers understand the link between behaviour in custody/secure care and the community. • The behaviour management strategy involves all internal departments and external agencies and is inked to other relevant strategies. • The strategy outlines a range of disciplinary procedures and tools, including methods of de-escalation for dealing with fights, assaults, and other violent behaviours. • The strategy outlines the use of conflict resolution, mediation, and other interventions to help children manage and control their behaviour. • Staff have been trained in and understand the behaviour management strategy and how to implement it. • Application of the strategy is appropriately monitored to ensure consistency in implementation.
6.2 Behavioural standards: Children understand the standards of	• Children receive and understand information about standards of expected behaviour in accessible formats and languages.

expected behaviour and the rules and routines of the establishment. Children are encouraged to behave responsibly.	• Children understand the benefits/incentives/rewards of positive behaviour and the consequences of poor behaviour. • Rules and routines are proportionate, promote responsible behaviour and focus on the well-being of children. • Rules and routines are applied openly, fairly, and consistently, without discrimination. • Staff demonstrate a measured and balanced level of tolerance of normal child and adolescent behaviour. • Children are supported to take age-appropriate risks as part of their development of independent living skills. • Staff use their authority appropriately and set clear boundaries which support and encourage good behaviour. • When rules are breached, staff take time to explain how and why to the child. • Children can express views about behavioural standards through consultation arrangements. • Children can challenge decisions about responses to behaviours and are confident that their views are taken seriously.
6.3 Incentive and reward schemes: Children are motivated by an incentives scheme which rewards effort and good behaviour and has fair sanctions for poor behaviour.	• Incentive and rewards schemes in custodial or other secure settings are motivational, age-appropriate, and easily understood by staff and children. • Children are informed of the scheme in a format and language they can understand. • There is sufficient difference between the incentives levels to encourage responsible behaviour. • Children and staff are clear about the criteria for promotion, demotion, loss of or access to privileges. • The implementation of rewards and sanctions is prompt, proportionate and consistent. • Children's positive attitude, actions and effort are acknowledged and rewarded.

	• Every child's behaviour is regularly reviewed, and they are encouraged and enabled to participate in person. • Children are kept up to date with their progress on the scheme, can access reports made about them and have the opportunity to comment. • Children who are likely to be demoted or lose privileges are warned beforehand and are given reasons. • Children can appeal against a decision and are helped to do so. • The rewards scheme does not limit contact with the outside world. • Children can remain on higher levels of the scheme on transfer from or to another establishment. • The regime for children on the lowest level of the scheme provides sufficient opportunity and support for them to demonstrate improvement in their behaviour. • Interventions are in place for children who remain on the lower levels of a scheme for significant periods of time. • The scheme is regularly monitored and reviewed, and regular consultation takes place about the scheme with staff and children. • Parents and carers are routinely informed of children's positive attitude, actions, and effort.

6.4 Bullying and related behaviours: Children, staff and visitors understand that bullying and intimidating behaviour are unacceptable and are aware of the consequences of such behaviour. Any form of intimidating or violent behaviour is consistently challenged and not condoned.	• An evidence-based anti-bullying policy and violence reduction strategy is in place which is regularly reviewed. • The violence reduction strategy and antibullying strategy is explained to children during induction and they know where they can get help to report bullying and victimisation. • Staff are trained to understand all forms of bullying and how to apply anti-bullying procedures. • Children feel safe and free from bullying, violence, and harassment. • Children feel confident to report bullying and it is easy and safe for them to do so without fear of further intimidation. • Staff promote positive and supportive relationships, identify and challenge problematic behaviour and model pro-social behaviour. • Staff and managers can readily (and anonymously) raise concerns about bullying or violent behaviour within the workplace, including use of aggressive and intimidating language. • Children are helped to understand the root-cause of their behaviour and develop alternative non-violent coping skills. • Children who have been identified as displaying bullying or violent behaviour have individual plans that ensure they are supported to address their behaviour. • Staff are aware of all forms of bullying and victimisation, including verbal abuse, theft, threats of violence and assault. • Attention is given to identifying and protecting vulnerable children who may be victimised due to the nature of their offence or personal circumstances. • Opportunities for bullying are minimised through a range of protective measures. • Children who report bullying are protected from further intimidation or victimisation.

	• Staff identify children who self-isolate and provide support to promote positive relationships, well-being, and participation. • Children's families/carers and friends are able to report any concerns they have about bullying. • Incidents and indicators of violence and bullying are recorded, monitored, and regularly reviewed. • Allegations of bullying behaviour are investigated thoroughly, and outcomes recorded Accurate records of all serious incidents are overseen by a senior manager. • Levels of bullying and violence reduce over time.
6.5 Disciplinary procedures: Formal disciplinary procedures are age-appropriate and aimed at supporting positive behaviour and reparation where appropriate. They are applied fairly and for good reason.	• There are clear policies describing disciplinary procedures. Policies are reasonable and fair and encourage staff to use formal disciplinary procedures only when necessary. • Information on the disciplinary process is available to children in a format and language they can understand. • Disciplinary proceedings are conducted in age-appropriate surroundings in a clear and fair manner, where the child is able to meaningfully participate. The child is supported by an independent advocate and/or their legal representative. • Children who lack capacity to obey a rule because of mental illness or disability are not subject to formal proceedings. • Disciplinary findings and punishments are age-appropriate and are made fairly and consistently. They are realistic and aimed at achieving positive behaviour and, where necessary, reparation. They are understood by the child and mitigating circumstances are considered. • Corporal punishment is prohibited. • Punishments may be suspended and include the opportunity for remission. • Collective punishments are not used. • Formal punishment does not include limiting contact with the outside world.

	• All children facing disciplinary procedures are given time and support to prepare their case and are encouraged to seek appropriate advice. • Children are told they can receive support from an advocate and/or legal representative in sufficient time before disciplinary procedures begin, and this is recorded. If requested, proceedings do not begin without an advocate or legal representative present. • Children are encouraged and helped to play an active role in disciplinary hearings. • Findings and punishments are fully explained to the child and are recorded in detail. • Children are made aware of appeals procedures. • Appeals procedures are fair and easy to use, and children are not victimised for challenging findings and punishments. • Effective quality control and assurance measures are in place. • Disciplinary procedures are properly recorded. Data from all disciplinary procedures are monitored on a routine basis.
6.6 Separation/ isolation: Children are only separated from others or removed from their normal location with the proper authorisation and are located for appropriate reasons. Separation is not used as a punishment.	• There is a clear strategy in place for the use of all forms of separation. • Segregation or separation is used only as a last resort, after other alternatives have been considered, and is used for the shortest time possible • Health care staff promptly assess all separated and segregated children and contribute to care planning. • Children at risk of suicide or self-harm are only segregated in clearly documented, exceptional circumstances, and for the shortest possible time. • Where children at risk to themselves or to others are segregated or isolated, observational checks are made at a minimum every fifteen minutes. This is a pretty standard check in period, but there is some debate about it. • Children are not separated as a punishment.

	• The decision to separate children is for justifiable reasons, authorised properly and recorded. • Children are given the reasons for their separation in a format and language they understand. • Children and their parents, carers or outside workers can make representations to a senior manager before they are separated in specialist units or on normal location. • Children whose behaviour requires them to be temporarily separated from others are located in a suitable environment where their individual needs are met. • Children temporarily separated from their normal location have regular and meaningful contact with staff, are able to have meals and continue their education and undertake other activities. • Those who are temporarily removed from mainstream activities can access equivalent activity to their non-segregated peers, including time outdoors. • Where young people are segregated or confined, the place of confinement is of the same standard as the young person's normal accommodation. • Children are never subjected to a regime that amounts to solitary confinement.[1] • Children separated in specialist units or on normal location have a plan which ensures that their time is spent addressing their behaviour where relevant. • Specialist units are decent, clean, and meet the needs of children. • Staff are vigilant in detecting signs of decline in emotional and mental well-being. • Separated children have meaningful conversations with a range of staff on a daily basis. • Separated children have sufficient activities to occupy and stimulate them. • Reviews in relation to separation are held regularly and involve the child and all relevant staff. Parents/carers and

	relevant professionals, including social workers, youth workers and advocates, are engaged where appropriate. • The use of separation and segregation is appropriately authorised, recorded, and monitored by senior staff, and analysed for patterns and trends. • Data is used effectively to identify and minimise risks to the safety of children and staff.
6.7 The use of force: Force is used only as a last resort, to a minimum degree and for the shortest possible time, and if applied is used legitimately by trained staff. The use of force is minimised through preventive strategies and alternative approaches which are monitored through robust governance arrangements.	• All staff are trained in and promote de-escalation techniques. The establishment recognises and disseminates good practice in avoiding the use of restraint. • A restraint-minimisation strategy is in place which links to other relevant strategies. • Staff have up-to-date training in de-escalation and in using the appropriate, approved techniques. • A restraint handling plan is in place for all children with a medical condition who may be adversely affected by restraint. All staff are aware of the information in the plan and use it during restraint. • Children with challenging behaviours, including as a result of past abuse, neglect and trauma, physical disability, learning disability or personality disorder, have care plans which highlight risk factors and set out alternative management protocols which reduce the likelihood of restraint techniques becoming necessary. • Pain infliction is not applied as a form of restraint. • Handcuffs are only used as a last resort, when there is evidence to support their use, and with the proper authority. • Parents/carers and the child protection authorities, where relevant, are notified of incidents of restraint. • Children can learn how to manage and take control of their behaviour and are given the opportunity to talk about their experience as soon as possible after an incident.

	• Children receive an explanation of why force was used and this is recorded and used to inform other plans relating to the care of the child. • Children are offered the opportunity to speak to an advocate or make a complaint about the incident without fear of repercussions. • Child protection referrals and investigations are undertaken where necessary. • Use of personal protection equipment is proportionate to the risks posed and is reviewed regularly by a senior manager and the local authority. The effects on children of being restrained by staff wearing personal protection equipment are understood. • Batons or spit hoods are never used on children. • All use of force incidents are filmed with sound (including body-worn video cameras). Recordings and documentation are promptly retained and reviewed. • **Use of force documentation is completed within 24-hours** and is routinely scrutinised by a senior manager to ensure force is used as a last resort and is lawful. • Use of force data is analysed, including in relation to injuries sustained, complaints about excessive or inappropriate use of force and feedback from children during debriefing processes.

6.8 Restraint: Restraint techniques are only used legitimately and as a last resort when all other alternatives have been explored. Restraint techniques are not used as a punishment or to obtain compliance with instructions.	• Restraint techniques are only used as a last resort and for the shortest time possible, when there is immediate risk to the safety of the child or others, and when all other alternatives have been explored. • The level of restraint used is the minimum necessary. • Any incidents of restraint are properly authorised and accurately recorded. • Restraint, and instruments of restraint, are never used or threatened as a punishment. An appropriately qualified health service professional attends all restraint incidents. • Children subject to unplanned restraint procedures or those outside normal working hours are seen by a qualified health service professional as soon as possible after restraint is removed.

Human rights standards:

The United Nations Standard Minimum Rules for the treatment of prisoners define solitary confinement as confinement 'for 22 hours or more a day without meaningful human contact'.

Article 37 (a) of the CRC states: No child shall be subjected to torture or other cruel, inhuman, or degrading treatment or punishment.

As with any restrictions imposed on people already deprived of their liberty, human rights standards require that segregation or separation (or any practice which isolates children) must only be used when absolutely necessary, for the shortest possible time, and be proportionate to the legitimate objective for which they are imposed.

Because of the harm that can be caused by segregation and separation, specific and additional safeguards also need to be in place. Children, wherever located, should not be subject to solitary confinement. (CRC 3, 37(a); HR 12, 66, 67; ERJO 93, 95.3; SMR 43–46; ECHR 3; ICCPR 7; CAT 1, 2, 16; YJA s.133; ACCGPS 10). (See also CRC CO 79(f) and SRT 44, 86(d)).

Human rights standards only allow for the use of force and restraint when absolutely necessary and as a measure of last resort. If it is absolutely necessary to use force or restraint, this must be the minimum necessary and for the shortest possible time. There must be clear procedures governing the use of force and restraint and staff must be trained to use techniques that minimise the use of force. (CRC 3; HR 63–65, 85; ERJO 90, 91.2; SMR 49; EPR 43; 64.2–66, 68.3; CCLEO 3).

Human rights standards require staff to pay particular attention to protecting vulnerable children and preventing victimisation. In addition, standards require children to have their own rooms unless it is in their best interests to share and they have been consulted about sharing. (CRC 3; ERJO 63.2, 88; CPT 104; SMR 2.2; EPR 18.6).

Topic 7: Life in detention

(including education, work, exercise and other activities, staff/detainee relationships)

Expectations	Indicators
7.1 Assessment and case management: Each young person must have in place a detailed case management plan executed by an appropriately trained caseworker.	• Each young person must have in place a detailed **case management plan and a case manager.** For children in custody, this should be developed within **two weeks of their admission.** For children in other residential settings this should be completed within **24-hours of admission.** • In custodial settings, each child has an individual worker allocated to them who they can go to on a daily basis for advice or help. • Children and appropriate family members are actively involved in the young person's individual case management. • For children in custody or secure mental health care, a through-care approach to case management should be coordinated across the facility as well as between the the facility and the community. • The case management plan must be based on the child's needs and should follow an appropriate and realistic timeline. • There is sufficient flexibility to ensure the full range of a child's needs are addressed, for example, education, therapeutic programs, family contact, and legal advice. • Case management is provided for children who return multiple times for short stays and enables previously started activities to be continued, where appropriate. • The child's caseworker regularly reviews the case management plan for children. For children in custody and in secure residential facilities this should be **no less than once per month**, and more frequently for more complex cases. • Relationships between staff and children are based on mutual respect. Staff and children are fair and courteous in their day-to-day interactions with one another.

	• Staff behave in a fair and consistent way, care for children as individuals and respond to their different needs. • Consultative committees or equivalent **consultation processes are held at least monthly,** and children are able and encouraged to present suggestions or air grievances directly to senior staff. • All staff, including senior managers, lead by example by regularly engaging positively with children. • Staff can easily access information about individual children based on comprehensive and up-to-date information about their needs. • Staff take time to build relationships with children and know their strengths and weaknesses, show genuine interest, and listen to children. • Relationships between staff and children are purposeful and children have opportunities to get to know staff. • Staff wear name badges at all times. • All children have a staff member to turn to if they have a problem. • Staff maintain accurate records of children's progress and identify any significant events affecting them. • Staff understand the impact of life experiences, such as trauma, abuse and mental illness, on behaviour. • Markers visible to children (such as coloured stickers or notes on doors) to indicate behavioural problems or concerns are not used. • Staff know how and feel confident to raise concerns about colleagues' behaviour or interactions with children, without recrimination.

7.2 Relationships between staff and children: Children are treated with care and respect or their human dignity at all times. Relationships between children and staff are warm, compassionate and helpful, with appropriate boundaries maintained.	• Relationships between staff and children are based on mutual respect. Staff and children are fair and courteous in their day-to-day interactions with one another. • Staff behave in a fair and consistent way, care for children as individuals and respond to their different needs. • Consultative committees or equivalent **consultation processes are held at least monthly,** and children are able and encouraged to present suggestions or air grievances directly to senior staff. • All staff, including senior managers, lead by example by regularly engaging positively with children. • Staff can easily access information about individual children based on comprehensive and up-to-date information about their needs. • Staff take time to build relationships with children and know their strengths and weaknesses, show genuine interest, and listen to children. • Relationships between staff and children are purposeful and children have opportunities to get to know staff. • Staff wear name badges at all times. • All children have a staff member to turn to if they have a problem. • Staff maintain accurate records of children's progress and identify any significant events affecting them. • Staff understand the impact of life experiences, such as trauma, abuse, and mental illness, on behaviour. • Markers visible to children (such as coloured stickers or notes on doors) to indicate behavioural problems or concerns are not used. • Staff know how and feel confident to raise concerns about colleagues' behaviour or interactions with children, without recrimination.
7.3 Personal safety:	• Effective safeguards are in place to ensure all children are kept and feel safe, and the design and size of the residential units supports this.

Children feel and are safe in their bedrooms and communal areas.	• Staff are aware of any areas or times which are potentially unsafe and when additional supervision may be needed. • Children are not required to share accommodation. • Children are allowed to share a bedroom only if they have requested it and it is in their best interests. • Communal areas meet the needs of the population and are supervised effectively. • All children can raise an alarm in the case of an emergency. • Children have privacy keys to their bedrooms. • Observation panels in bedroom doors remain free from obstruction. • Staff undertake regular, unobtrusive supervision of sleeping areas to ensure children's safety.
7.4 Budgeting and money: Children are given advice and support on managing their money and in purchasing goods.	• Children in custodial settings understand the system of money management and purchasing of goods. • Children have access to a wide range of products, and the range and cost of items is comparable to that available in the community. • The list of goods available to children is publicised and accessible, in a range of formats and languages that are easy to understand. • Children are able to buy and receive items within **24-hours of arrival.** • Children arriving at reception without private money are offered an advance to use for purchases, with repayment staged over a period of time. • Children can place and receive orders at least **once a week** and receive items promptly. • Children can access accurate and up-to-date records of their finances.
7.5 Personal responsibility:	• Children are helped to take appropriate responsibility for meeting their day-to-day needs.

Children in custodial settings are encouraged and supported to take responsibility for their rehabilitation recovery and to contribute positively to life in the facility.	• Children are encouraged to attend activities regularly and on time. • Staff support and motivate children to engage positively with activities designed to reduce their risk of reoffending and help them to prepare for release. • There is an organised peer support scheme, and formal consultative mechanisms to engage children. Peer workers receive appropriate training, support and supervision.
7.6 Significant staff: Children have an identified member of staff they can turn to on a day-to-day basis who is aware of and responds to their individual needs.	• Children know the name of their identified member of staff and can access them. Children have a say in who their identified member of staff should be. • Staff know the personal circumstances of children in their care and play an active role in supporting them. • Staff are proactive in maintaining **at least weekly individualised contact** to discuss overall progress. Staff maintain regular contact with children's families and encourage effective links with them to keep them up to date with children's progress. • Staff are caring and compassionate and support children to make good choices and manage their emotions. • Staff attend all meetings and reviews relating to the care and management of the children for whom they are responsible and share information appropriately.

7.7 Time out of bedroom: Children spend most of their time out of their bedroom, engaged in activities such as education, leisure, and cultural pursuits, seven days a week.	• In custodial settings, children are out of their bedrooms **for a minimum of 10 hours each day,** including time in the evening. These out of bedroom hours are used to promote attendance at education and programs as well as recreation activities. • Hours out of bedroom are only reduced in exceptional circumstances and authorised by the Manager/Director. • Children are never subjected to a regime that amounts to solitary confinement. • Children have access to a wide range of constructive and age-appropriate activities while out of their bedroom. • Children have access to properly equipped association/communal areas, which are in good order, with seating, tables, games, television, and a quiet area. • Daily routines for children are predictable, including consistent publicised times for association, physical and other activities, and education. • Activities are not cancelled without good reason, and reasons for cancellation are explained to children in advance. • Children are given the opportunity and are encouraged to spend at **least one hour a day engaged in outdoor physical activities.** • Children's bedrooms are unlocked at the published times. • Timetabling arrangements maximise the use of resources and staff time and allow training and education activities to take place with minimal interruptions. • Children are properly supervised by staff when out of their bedroom and feel safe. • Staff monitor and take appropriate action to find out why children do not participate in activities and provide them with support. • Staff engage actively with children during free association time and time outdoors. • Effective use is made of sports and games-trained staff to offer additional recreational activities.

	• Children are encouraged and enabled to socialise with one another and take part in recreational activities that interest them. • Children are encouraged to give their time to benefit others, for example in peer support roles. • Children do not have to choose between access to the open air and other activities.
7.8 Library and computer access: Children have good access to a well-equipped library which meets relevant Australian and Tasmanian standards and are encouraged to use it frequently, as well as access to appropriate computer resources.	• Children can use library facilities on request. • Children use the library resources for reading, social interaction and to support their education programmes. • Library materials are age-appropriate and sufficient to meet the needs of children. • Library materials reflect the diverse needs and abilities of all children and are available in a range of formats and languages. • Children have access to additional learning resources, including IT and the internet. • Children not on normal location, for example in segregation or health care units, can access library resources. • Children can request specific learning materials.
7.9 Physical fitness: Children benefit from physical education and fitness provision that meets their needs.	• All children have good access to timetabled physical education each week (in addition to optional, physical recreation) that includes a range of indoor and outdoor activities. • Children receive an appropriate and timely induction into physical education and fitness activities. • Children engage safely in a range of physical education, fitness, and associated activities, based on assessment of their needs, interests and capabilities. • Physical education, fitness facilities, resources and activities meet the developmental and educational needs of children. • Physical education and fitness staff have appropriate qualifications and expertise.

	• Children can shower after each session and feel safe in doing so. • Physical education and fitness programming is effective at improving and maintaining the physical fitness of children. • There are opportunities to gain meaningful physical fitness, education or sporting qualifications. • Physical education staff liaise with health services, substance misuse services and other departments and agencies involved in the care of children. • The physical education facilities are in good condition and are well supervised. • There is appropriate provision for children who have little or no previous experience of formal physical education. • Children's views on physical education are sought and acted on. • There are opportunities for children to take part in competitions with community-based teams, where appropriate. • Children who refuse to attend physical education are monitored and reasons for refusals sought and acted on. • Young detainees have daily opportunities for physical and recreational activity as well as a regular structured sport and recreation program. • Outside exercise is only cancelled in extreme weather conditions.

7.10 Health and fitness promotion: Children understand the importance of healthy living and personal fitness.	• Healthy living and personal fitness are effectively promoted to children. • Healthy living and personal fitness objectives form an explicit part of case planning. • Children are encouraged to engage in creative activities to promote more formal learning and employability. • Children have access to creative opportunities that improve health and well-being. • Children are encouraged to engage in creative activities to reflect on their lives and social responsibilities and to promote their rehabilitation/reintegration. • Art and cultural experiences are used to enhance the environment at the facility. • Creative activities are used to help children maintain contact with their families and to promote reintegration into the community.
7.11 Creative arts: Children can access creative activities which promote learning, well-being and support rehabilitation.	• Children are encouraged to engage in creative activities to promote more formal learning and employability. • Children have access to creative opportunities that improve health and well-being. • Children are encouraged to engage in creative activities to reflect on their lives and social responsibilities and to promote their rehabilitation/reintegration. • Art and cultural experiences are used to enhance the environment at the facility. • Creative activities are used to help children maintain contact with their families and to promote reintegration into the community.

7.12 Education, skills and work activities: Children are fully engaged in a program of education, learning and skill development to meet their individual needs.	• A detailed education and learning plan is developed in conjunction with the child as part of their case management, following a thorough assessment of their needs and abilities. • Learning plans contain clear goals and are used to record and review the child's progress. • Children can access vocational programs that will develop their potential for when they are released. Work-related activities are aimed at providing training and skilling towards employment in the community, rather than focussing on production. • Children are permitted and encouraged to continue their schooling whilst in custody or secure care. • Children who were studying towards educational or vocational qualifications prior to arriving are enabled to continue with their studies. • Education and training programs are equal to the standard available in the community and enable continuity and recognition of prior learning. • The range of educational and training programs can accommodate the disparate needs of children at the facility. • Sentence status or diagnosis does not prevent access to education and training. • A range of teaching methods and specialities are available and are not limited to the classroom environment. • High quality learning support is available for those who need it to make progress. • Those who do not progress are assessed further and supported accordingly. • Up to date technology and access to media are available as part of the education and training experience. • Children who are unable to attend education with their peers (e.g. due to their behaviour or mood) are provided with the next best alternative, such as attendance at a

different time or educational materials they can complete in their bedroom

- Those who refuse to attend education activities are monitored closely. Case management plans address such difficulties and work toward them undertaking relevant education as soon as possible.
- Children have access to a broad, balanced and relevant curriculum that includes education, pre-vocational training and work-related learning, and the promotion of their personal and social development.
- For children in custody, education is provided five days a week in classroom settings in normal school hours, including break and lunch times.
- Children receive their statutory entitlement of education, skills and work and learning and related skills activities in line with the National and Tasmanian Curriculum.
- Teaching staff have access to the necessary information to understand how broader issues, such as family, relationships, and well-being (including mental health) affect individual children and impact on their learning.
- Children are involved in setting, reviewing, and monitoring their progress towards the achievement of a clear and well-defined curriculum.
- Individual learning goals are underpinned by appropriate personal and social development targets.
- Teaching staff have appropriate qualifications and expertise, and can access specialist support, such as speech and language therapy, dyslexia, and autistic spectrum services.
- Teaching staff have an appropriate understanding of health and mental health issues and their impact on children's attitudes, ability, and readiness to learn.
- Vocational teaching staff are well qualified and have good subject knowledge and experience relevant to their roles, to reflect best industry practice and to meet children's and employer needs.

7.13 Independent research and living skills: Children are encouraged to develop their research and independent learning skills, including the development of their digital skills, through supervised use of the internet.	• The contents of learning plans are coordinated with other relevant plans for children. • Education staff attend relevant training, planning and case management meetings. • All children leave custody/care with arrangements for their education, work, or training. • Links with community-based youth workers and careers advice services enable children to continue to receive appropriate education, training and employment guidance on release. • Children who have special educational needs and/or disabilities are supported to become more independent in their everyday life. • Children are supported to develop independent living skills such as meal preparation, home maintenance, budgeting, and job searching. • Children are prepared for successful life in modern Australia and introduced to the fundamental values of democracy, the rule of law, individual liberty and mutual respect and tolerance of those with different backgrounds, faiths and beliefs.
7.14 Learning and skills outcomes: The leadership and management of education, skills and work activities effectively improves outcomes for children.	• Leaders and managers ensure that there is sufficient provision of appropriate education, skills, and activities to cater for the full range of children's capabilities. • Arrangements are in place to ensure that children are allocated to educational activities promptly, attend them regularly and arrive at sessions on time. • Children attend education and activities regularly and frequently. • Children make good, timely progress towards achieving appropriate qualifications and learning goals and develop the skills they need in order that they can progress effectively to the next stage of their education, employment, or training within or outside the facility. • Education, work, and other activities are designed so that children are kept fully occupied and busy during sessions.

	• Children with additional learning needs progress towards well-defined, individual targets that take account of their needs and abilities. • Children in custody meet the targets in their case plans to support a positive rehabilitation and minimise their chances of reoffending. • When transferred or released, an accurate record of the child's learning needs, progress and achievements is forwarded promptly to the receiving establishment or education, training and employment provider. • Leaders and managers monitor the progression into education, employment, and training of children. • Leaders and managers monitor and analyse children's progress, including the progress of specific or vulnerable groups.
7.15 Prosocial education: Children feel safe in education and activities and develop behaviours that help them to minimise reoffending.	• Children feel safe and secure, and free from physical and verbal abuse during their education, work, and activities. • Children know how to protect themselves from harassment, discrimination, and extremism. • Children participate fully in activities that motivate them and improve their awareness of how to reduce reoffending behaviours where relevant. • Children develop confidence, resilience, and an ability to engage with new, experiences, contexts, ideas, and people. • Children take interest and pride in their work, their ability to sustain concentration, avoid distractions and complete tasks. • Children are able to work in a range of ways, for example independently, in small groups and in whole-class settings. • Children demonstrate respect for the contributions of others. • Children understand how they can improve their physical and emotional health by making choices about what they eat and drink, as well as through physical, educational, and work activities.

	• Children's behaviour in education and activities complies with articulated behavioural guidelines. • Children in custodial settings develop an understanding of how they can avoid reoffending when they are released and develop strategies to reduce reoffending behaviours. • Children develop personal strategies and tools to manage anxieties and behavioural responses.

Human rights standards:

Human rights standards emphasise that staffing and resources should be sufficient to ensure meaningful interventions for children (CRC 39).

Staff should provide positive role models and have adequate training to carry out their roles. (CRC 12; ERJO 18, 19, 88, 127–130, 132; HR 12, 81–87; SMR 5.1, 74.1, 75–77; EPR 5, 8, 71–77, 81, 83, 87.1). The obligation to treat all children deprived of their liberty with humanity and respect for their inherent dignity is also relevant. (SMR 1; EPR 72.1; BOP 1; BPTP 1; ICCPR 10.1).

Human rights standards state that children's lives while detained should approximate as closely as possibly life in the community and that children must be allowed to take part in meaningful activities and socialise, including over weekends. Children must be allowed at least one hour in the open air each day (in addition to other activities and time to socialise). All children should be included and encouraged to participate. (CRC 23 (3), 31; HR 12, 18 (c), 47; ERJO 53.3, 76–81; CPT 107–108; EPR 5, 25, 27; AJJA 4.5; ACCG Charter).

The right of each child to education is recognised in the Convention on the Rights of the Child (CRC 28 and 29).

Article 28 of the CRC commits state parties to recognising the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity. Education should be accessible to every child, free, adapt to the capabilities of the child, and measures in place to encourage regular attendance. Article 29 of the CRC sets out that the education of the children should be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

Children must be provided with education and vocational training that meet their individual needs (assessed on arrival and on an ongoing basis) and aspirations by properly qualified staff. Consideration must be given to ensuring that children are able to carry on with their education and training on release (CRC 13(1), 13(2), 17, 28(1), 29(1); ERJO 50, 62.6, 76–77; 102.1; CPT 107, 109–110; HR 38–40, 42–46, 62, 81, 84–85; EPR 28, 106; CRPD 27; BR 26.6; ACCG Charter).

Children should not be subject to bullying, harassment or discrimination (BR 26.2; CRC 2; HR 87(a), 87(d)).

Human rights standards require interventions to promote the social and personal development of children and to meet children's individual needs. Activities and interventions should foster health, self-respect, a sense of responsibility and help children to develop attitudes and skills which may assist them to address their offending. (CRC 3, 37 (a); ERJO 50, 51, 62.6, 76, 77, 79, 100–102; HR 12, 27, 79–80; EPR 25, 103, 107); AJJA s. 3.7, 3.9, 8, 9.3; HR 66, 67, 68, 69, 70, 71; YJA s. 132(b)-(f); YJA s.127; ACCG Charter).

Staff should provide positive role models for children and be trained to motivate and guide them and develop positive relationships with them. Disciplinary procedures should be a last resort. Children who are subject to disciplinary procedures must be informed of the allegations against them in a way they understand and have sufficient time and assistance, including from a legal representative, to prepare their case. Any punishment imposed should be proportionate. Children's contact with the outside world should never be limited as a punishment and children must not be subject to unofficial or collective punishments. (CRC 12; ERJO 18, 88, 94, 95.1–95.3, 95.6, 129; HR 24, 25, 66–71, 83, 87(a); CPT 112; SMR 36–43; EPR 30.1, 56–60.3, 60.6–63; BOP 30).

Topic 8: Governance and Leadership

Expectations	Indicators
8.1 Direction: Leaders work collaboratively with staff, stakeholders, and children to set and communicate strategic priorities that will improve outcomes for children in custody.	• Leaders and staff understand and regularly evaluate the establishment's strengths and weaknesses. Where weaknesses are identified, plans are developed and implemented to improve outcomes. • Leaders have a developed understanding of the experiences of children and staff in the establishment. • Leaders communicate a shared and ambitious vision for the establishment. • Realistic, aspirational plans are in place to improve outcomes for children. • Staff understand and share the aims and priorities of the establishment. • Leaders develop successful working relationships with key partners and stakeholders to deliver the establishment's or program's aims. • Staff know how and feel confident to raise concerns about colleagues' behaviour or interactions with children, without recrimination.
8.2 Philosophy and focus: Arrangements for children reflect a child- focused philosophy, operated independently of adult services.	• There is a clearly articulated and understood operating philosophy which accords with legislative requirements relating to youth detention, secure child mental health services, or residential disability or out of home care services. • There is a clear focus on developmental needs, links to family support, through-care from and to the community as well as the specific needs of individual children. • Child services and facilities are located separately from adult facilities. • Procedures avoid taking a 'blanket approach' and cater to the individual needs of children.

8.3 Transparency: Current information about agency policy and operations are readily available to staff, visitors and any other interested parties as appropriate.	• Rules, policies and procedures are readily available to all staff (including external and visiting staff) in accessible locations and formats. • Staff specific and departmental policies (e.g. staff code of conduct and whistle blowing) are readily available and easily accessible to staff. • There is adequate information available in the foyer, visits area, and on relevant websites regarding visits policy, visiting hours, how to book visits, make queries or lodge complaints. Staff should be available to answer queries in person before, during and after visits and at other times via telephone or written contact. • There are effective complaint systems for visitors, staff and any others having contact with the detention centre. Complaints are actioned promptly, with progress and outcomes recorded for future reference. • Confidential telephone help lines are available to all children. These are private, unrecorded, available free of charge and well- advertised in the facility.
8.4 Engagement: Leaders create a culture in which staff and other stakeholders willingly engage in activities to improve outcomes for children.	• Leaders at every level are visible and approachable. • Leaders take time to listen to staff and children and follow up issues raised. • Effective communication is used to promote understanding of current priorities, information sharing, collaboration, and multidisciplinary working. • Leaders set, model, and enforce standards of staff behaviour and care for children that support rehabilitation/wellbeing. • Leaders actively promote the well-being of staff. • Staff feel motivated and supported in their work. • Leaders show and encourage innovation and creativity to solve problems and meet the needs of children. • Effective practice is recognised and shared. • The organisational culture encourages staff to reflect on and learn from their mistakes.

8.5 Governance: Governance arrangements facilitate implementation of child safety and wellbeing policies at all levels.	• The organisation makes a public commitment to child safety. • A child safe culture is championed and modelled at all levels of the organisation. Regular top-down and bottom-up evaluations are conducted to identify if cultural expectations are being met and obtain staff feedback. • A Code of Conduct provides guidelines for staff and volunteers on expected behavioural standards and responsibilities. • Risk management strategies focus on preventing, identifying, and mitigating risks to children and young people. • Staff and volunteers understand their obligations on information sharing and recordkeeping. • The organisation can demonstrate they have current governance and policy documents, such as a current strategic plan, child safety and wellbeing policy, practice guidance, information sharing protocols, staff and volunteer codes of conduct and risk management strategies. • The organisational leadership models, and regularly reinforces, attitudes and behaviours that value children and young people and a commitment to child safety, child wellbeing and cultural safety. This commitment is clear in duty statements, performance agreements and staff and volunteer review processes. • Staff, volunteers, children and young people have a sound knowledge of children's rights, including their rights to feel safe and be heard, and the accountabilities that accompany these rights. • Leaders promote sharing good practice and learnings about child safety and wellbeing, and opportunities are provided for this knowledge exchange to occur.

8.6 Continuous improvement: Leaders focus on delivering priorities that support good outcomes for children in custody. They closely monitor progress against these priorities.	• Data is used effectively to understand the impact and fairness of policies, and to track progress against improvement plans. • Feedback from children, staff and other stakeholders is used to generate ideas, create plans, and measure progress. • Decisions are made and plans are amended in response to new information. • Leaders welcome and encourage external scrutiny. • Inspection recommendations, audit findings, serious incident reports and best practice ideas are used to generate improvement. • Leaders use quality assurance processes to drive continuous improvement. • Collaboration with policy teams and colleagues in other establishments or partner organisations supports improvement.
8.7 Sustainability: Leaders should adopt and promote principles of sustainability and child-centred design, to be reflected in daily operations.	• A sustainability strategic plan is developed. Targets to reduce use of utilities, waste and increase self-sufficiency are monitored and regularly renewed. • Building design and outfitting incorporates contemporary sustainability goals and child-centred design principles. • Children are encouraged to become involved in sustainability and design projects within the facility, residence or in the community.

Human rights standards:

Human rights standards emphasise that establishments should be managed within a context which recognises the obligation to treat all children with humanity and which facilitates healthy growth and development of children and the reintegration of children into the wider community (HR 30, 31, 32, 85; CRC 3, 20, 27(1), 27(2)).

Article 29 of the CRC sets out the key aims of children's education as the holistic development of the full potential of the child (29 (1) (a)), including development of respect for human rights (29 (1) (b)), an enhanced sense of identity and affiliation (29 (1) (c)), and his or her socialization and interaction with others (29 (1) (d)) and with the environment (29 (1) (e)).

Policies and procedures should be in place to support these aims, and these should be understood by all staff and regularly reviewed. For custodial settings they recognise the important role of staff in rehabilitation, the need for a clear sense of purpose and the importance of leadership in how that purpose is best achieved. Establishments must be adequately staffed to ensure a safe environment and staff should receive ongoing training, including to undertake specialist roles and work with particular groups of children. Arrangements should be in place to ensure good communication and coordination both within and outside of the establishment and the involvement of voluntary organisations should be encouraged. (EPR 6, 8, 72–87, 89–91, 93; SMR 1, 3, 74–80, 83; HR 81–87).

Principle 1 of the National Principles for Child Safe Organisations states that: Child safety and wellbeing is embedded in organisational leadership, governance and culture. Principle 9 of the National Principles for Child Safe Organisations states that: Implementation of the national child safe principles is regularly reviewed and improved. Principle 10 of the National Principles for Child Safe Organisations states that: Policies and procedures document how the organisation is safe for children and young people.

Topic 9: Resources, staff skills, and knowledge

Expectations	Indicators
9.1 Resources: Children achieve desirable outcomes because necessary resources are provided.	• Staffing levels are meet contemporary best practice to deliver the aims of the establishment. • Staff have the knowledge, skills, and attitudes necessary to meet the needs of children. • Staff and buildings are well utilised. • Resource constraints are readily identified, and measures taken to resolve them. • ICT systems support effective working practices. • The staffing model includes professionals and specialists preferably with experience working with children, adolescents, and young adults. • The staffing model is regularly reviewed and modified to ensure it meets operational demands and any changes in legislation, policy or procedures and remains suitably diverse. • Staffing models are not replicated from adult prisons or related facilities without rigorous review and modification to suit the needs of children. For example, more custodial and/or program staff will be needed to maintain a higher staff to young person ratio, and shift structures need to support staff/child interaction. • A workforce diversity and inclusion strategic plan has been developed with clear targets, and its implementation is tracked.

9.2 Recruitment and induction: The organisation emphasises its commitment to child safety and wellbeing when advertising for, recruiting and screening staff and volunteers.	• Recruitment, including advertising, referee checks and staff and volunteer pre-employment screening, emphasise child safety and wellbeing. • Relevant staff and volunteers have current working with children checks and sign up to a code of conduct that emphasises commitment to child safety and well-being. • All staff and volunteers receive an appropriate induction and are aware of their responsibilities to children and young people, including record keeping, information sharing and reporting obligations. • Appropriate screening should be conducted of staff from external agencies delivering services within the detention centre (or during external activities for young people). • Duty statements and KPIs demonstrate that roles require commitment to valuing, safeguarding and respecting children, understanding children's developmental needs, and skills in culturally safe practices. • New 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 and probation should only be signed off when new staff meet all requirements for permanency and are deemed suitable for ongoing work with children at the facility.
9.3 Supervision and retention: Ongoing supervision and people management is focused on child safety and wellbeing.	• Staff are provided with appropriate supervision and management. • Ongoing staff support, supervision and performance management processes involve child safety elements. • Senior management has the experience and skills necessary to improve outcomes for children. • Line managers support their staff, challenge where necessary and provide suitable professional development opportunities. • The organisation maintains suitable record keeping systems and protocols for staff and volunteers. • Staff and volunteers understand the child safety policy and procedures of the organisation and meet their record

	keeping, information sharing and reporting responsibilities. • The organisation has a range of tools and processes to monitor and mitigate risk. • Robust retention strategies are in place. • Regular performance appraisal is undertaken for all staff. • There are procedures for identifying unsuitable staff and methods for resolving issues or removing/redeploying unsuitable staff. • Use of leave and overtime is monitored as part of the regular review of staff morale.
9.4 Skills and knowledge: Staff and volunteers should be equipped with the knowledge, skills and awareness to keep children and young people safe and well.	• Staff have knowledge and understanding of children's physical, neurological, social and emotional development and the needs of children as they grow. • The organisation provides a supportive and safe environment for staff and volunteers who disclose harm or risk to children and young people. • Staff and volunteers respond effectively when issues of child safety and wellbeing or cultural safety arise.
9.5 Training and development: All staff must be appropriately trained and receive ongoing development, and reaccreditation where necessary.	• Staff and volunteers receive training and information to recognise indicators of child harm including harm caused by other children and young people. • Staff and volunteers receive training and information to respond effectively to issues of child safety and wellbeing and support colleagues who disclose harm. • Staff and volunteers receive training and information on how to build culturally safe environments for children and young people. • The organisation provides regular opportunities to educate and train staff on child safety and wellbeing policies and procedures and evidence-based practice. • All staff receive regular training to maintain and upgrade their skills (and qualifications where relevant) and be able to access professional development activities.

	• The regular performance appraisal process includes updating staff needs and professional interests. • All staff undertake training concerning human rights, Aboriginal issues and cultural awareness, child and adolescent development (including gender-specific information), emergency management, drug and alcohol awareness, disability awareness and other relevant areas. • Staff and volunteers receive specific training on the rights of children and young people, including in relation to records being created about children and young people and their use. • Staff are trained and aware of their responsibilities toward children who are deprived on their liberty. • There is a formal training plan to coordinate the training of staff. Accurate and up-to-date records are kept of all staff training. • Staff with direct detainee contact/supervision receive training in 'soft skills' (such as communication and de-escalation) as well as use of force and other security-focused procedural training.
9.6 Workplace Safety: Effective emergency management, Workplace Health and Safety and other systems are placed to ensure safety.	• The facility provides a safe working environment for all staff (including visiting or external staff). • An incident response capability is in place that is commensurate with assessed risk. • Systems and equipment are secured safely, tested regularly, and maintained or upgraded to ensure serviceability and effectiveness. This may include large-scale systems such as room call systems, locks and keys, radios, cameras, ventilation/heating systems, as well as small-scale items such as unit-based first aid kits, fire extinguishers and restraint equipment. • Emergency management plans are up-to-date, regularly reviewed, with all staff appropriately trained. Regular drills involving young people as well as staff are conducted. • Physical and procedural security assists with the management, monitoring and responding to incidents.

	• Staff are trained in workplace health and safety and specific training for the use of emergency equipment is provided. • The use of any emergency response equipment is accurately recorded in a register. • Hygiene and sanitation meet the requirements of all relevant legislation. • Emergency responses to incidents are documented, recorded and reported in accordance with agreed protocols.

Human rights standards:

Establishments must be adequately staffed to ensure a safe environment and staff should receive ongoing training, including to undertake specialist roles and work with particular groups of children (AJJA ss. 8.2, 8.3; UKHEALTH cl. 3.3, 11.1, 11.2; HR 32)

Arrangements should be in place to ensure good communication and coordination both within and outside of the agency and the involvement of voluntary organisations should be encouraged. (CRC 3 (3); EPR 6, 8, 72–87, 89–91, 93; SMR 1, 3, 74–80, 83; HR 81–87; AJJA 8.1, 8.2, 8.3, 8.4, 8.5 8.7, 8.9; RCIADIC 122, 155, 210, 237, 238, 177; BR 22.2

Article 3.3 of the CRC sets out that children should feel confident about the standards established in an organisation, particularly in the areas of safety, health, number, and suitability of staff, as well as supervision (see also AJJA 8.1, 8.2; HR 12; ACCG Charter).

Principle 7 of the National Principles for Child Safe Organisations states that: Staff and volunteers are equipped with the knowledge, skills, and awareness to keep children and young people safe through ongoing education and training.

Topic 10: Arrival, travel and induction

Expectations	Indicators
10.1 Travel: Children travel in safe, secure, decent conditions, are treated with respect and attention is paid to their individual needs. Children should be transported only when it is absolutely necessary.	• Alternatives to transport should be used whenever possible, for example, the use of video links for court appearances and the provision of in-house medical and dental services. • Prior to travel, all young people should be assessed to ascertain the potential negative impact of such travel and ways to minimise this impact. • Any special needs identified must be met to minimise the impact of travel, including for young people with disabilities, who are injured or who are pregnant. • When travelling from Court, children are collected soon after their case has been dealt with. • Unless it is not in their best interest, children are able to spend time with their parents or carers before their journey to custody or a secure facility. • Children do not travel with adult prisoners or patients. • Children are held in secure vehicles for the shortest possible time. • Children are given information they understand about the facility to which they are being transferred. Children can make a telephone call to their family, next of kin and legal advisor. • Escort vehicles are clean and meet the needs of children. Vehicles have adequate storage for property and with suitable emergency supplies and hygiene packs for young women. • Escorting staff are aware of the individual needs of the children in their care and provide a written and verbal briefing to receiving staff. • Any issues regarding the safety of children under escort are quickly resolved. • Restraint techniques are only used as a last resort and for the shortest possible time, when there is an immediate risk to the safety of the child or others, and

	when all other alternatives have been explored. Where restraint is used, this is documented and reported. • Children are given adequate toilet breaks and refreshments during travel or transfer (as a guide, every 2 to 2.5 hours). • There should be a capacity to broadcast essential information to vehicle passengers. • Vehicles must be able to be tracked in real time. • A cool store for staff and passenger food and drinks is provided. • Where other facilities are used for overnight stays, they provide an adequate level of accommodation and services. • High security escorts, while ensuring security and safety, have regard to the welfare and dignity of young people. • In custodial settings, children arrive in sufficient time to allow reception and first night procedures to be conducted and to spend time in the facility before lock up/lights out.
10.2 Arrival: On arrival children are safe and treated with respect, their individual needs are identified and addressed, and they feel supported on their first night.	• The needs of newly arrived children are promptly assessed to ensure they are safe and supported. Initial assessments are based on all relevant information, with attention to the individual needs and characteristics of each child and their safety. • Children's immediate needs (including contact with families, reassurance about safety, accommodation on release, education, language, and health care) are identified on arrival and met. • Appropriate action is taken to identify children or other dependants who may be at risk because of their carer's imprisonment, and to ensure their safety where necessary. • Reception and first night accommodation provide a safe, welcoming, and supportive environment. • Children are offered drinks and hot food on their arrival. • Alternatives to strip searches are prioritised.

	• Children are only strip-searched where absolutely necessary, in response to well evidenced individual security concerns, and with proper authorisation. • Interviews are private, take account of all available information and identify vulnerability and risk. Reception staff provide an effective briefing to unit staff. • Children are reunited with their property on arrival and are moved quickly to designated first night accommodation. • Children know how to and can access help and support from staff, family, and peer supporters. • Children can make a free telephone call and additional help is provided to those who do not have external support from family and friends. • Children receive basic equipment and supplies, including phone credit. They understand how long this is expected to last, its cost and any applicable system for repayment. • Peer supporters are used effectively in reception and during the first night. • Regular welfare checks are carried out on new arrivals. • Information on admission, place, transfer, and release is provided without delay to the parents and guardians or closest relative of the child concerned, unless this is not in the best interests of the child.
10.3 Induction: Induction takes place promptly and children understand the establishment's routines and how to access available services and support.	• Each child undergoes a thorough assessment **within two hours of admission**, to ensure that their risks and needs are identified, and strategies developed to ensure their safety. This includes examination by a medical professional to identify any conditions that require attention. • Assessment instruments are appropriate to determine the needs and risks of children. • Until assessed, children are treated as being high risk and are subject to closer and more frequent checking than standard. • All children receive a structured, comprehensive, and multidisciplinary induction which leaves them with a clear

	understanding of the detention centre and how to access any information or service they need to deal with problems. • **Induction begins within 24-hours of arrival at the establishment** and is delivered in a range of formats and languages to ensure children understand it and can access information later. • Staff reinforce the information given in reception and at induction and are available to answer questions on a continuing basis. • An individual interview takes place during induction to assess how the child is feeling. • Children are informed about: • procedures to protect them from bullying, peer pressure and abuse. • peer support programs to support young people. • the system for earning for canteen purchases. • the rewards and sanctions systems. • general behavioural expectations. • procedures to protect them from bullying, peer pressure, and/or any form of abuse or neglect. • services available at the facility. • Children are made aware of who they can speak to if they have concerns about their care and custody in detention, including the **Ombudsman, Health Complaints Commissioner, Commissioner for Children and Young People, and Child Advocate.** Children also receive general information about visits by the **Custodial Inspector** and the **Tasmanian National Preventive Mechanism**. • Children are assured that their private information will be treated confidentially. • Admission discussions take place in a clean, secure, non-threatening and confidential environment. • Children are always asked if it is their first time in custody and treated accordingly.

	• Staff deal with sensitive information in an appropriate manner and ensure that the needs of children are communicated to all relevant parties. • Children are held in reception for as short a time as possible and are not left for long periods with nothing to do. • Children meet their case manager/key worker/named personal officer in person during induction. • Prior to being locked down on their first night, children are given the opportunity to shower and have a hot meal. • Children are given a pack containing essential basic toiletry items. • All new arrivals are offered the chance to speak to a member of the chaplaincy, a psychologist or peer supporter on their first night or the following morning. • Staff spend time with young people on their first morning to assess how they are coping. • Following induction children are aware of how to get information and help, deal with problems and complain about treatment. Checks are made to ensure they have understood. • Children understand that their personal mail and telephone calls may be monitored. • Children are purposefully occupied during induction and have access to at least 10 hours out of their bedroom each day. • Children who face long or indeterminate sentences are identified on arrival and given support. The elements and implications of a long or indeterminate sentence are explained to them and, where appropriate, their families. • Children are supported to arrange their first visit with family, friends, or advocates.

Human rights standards:

Human rights standards set out a number of requirements which are applicable to arrival and early days in detention or secure care. These include ensuring children are transported safely and in conditions that do not subject them to hardship or

indignity, requiring they be provided with information about their place of detention in a language and format they understand, identifying their health care and other needs, ensuring their safety, and allowing them to contact family. (CRC 3, 19, 37(a), 37(c); ERJO 62; HR 21–27; CPT 115, 122, 130; SMR 7, 54, 55, 58, 67, 68, 73; EPR 15, 16, 30, 31, 32; BOP 16, 24, 31); HR 24, 25, 26, 75, 76, 77, 78; YJA s.128; *Commissioner for Children and Young People Act 2016* (Tas) s.10).

Topic 11: Safety in Care

Expectations	Indicators
11.1 Protection from harm and neglect: Children are provided with a safe and secure environment which protects them from harm and neglect. They receive services that are designed to ensure safe and effective care and support.	• There is a designated safeguarding lead within the agency and a child safety policy. • Staff are subject to recruitment and screening procedures in accordance with policy and legislation, including working with children checks. • Children feel safe and are protected from harm. • Children have a member of staff they can turn to if they have a problem. Staff have the time to build positive relationships with children and to effectively respond to children's concerns. • Multidisciplinary planning provides effective care and support for children, in consultation with the child, to identify and implement strategies for reducing risk. • The arrangements for external scrutiny of safeguarding performance are publicly available. • There are mechanisms for notifying relevant authorities of significant child safety events, including: - children arriving without documentation or incomplete/inaccurate documentation; - the outcome of disciplinary investigations into allegations of staff misconduct; - complaints; - inadequate or incomplete reintegration arrangements; - injuries to children, including incidents of self-harm; - child protection referrals and concerns; - assaults, violent incidents, escapes or attempted escapes, fires or other serious events; - use of segregation, force and restraint. • Outcomes of child protection referrals are clearly recorded, including the support given to children who are the subject of any referrals or enquiries. • Injuries and incidents of violence, including restraint, bullying and self-harm, are closely monitored. There is

	good data collection and regular analysis to help identify patterns and trends and to implement preventive measures. • Children are consulted regularly and safety is given a high profile at consultation forums. There is evidence of action and outcomes where children have raised concerns about safety. • Staff share and have access to up-to-date information about the children in their care. • Staff model caring, respectful and non-violent behaviour. • Staff take appropriate action to protect children from harm. • Children are protected and helped to keep themselves safe from abuse, including bullying, radicalisation and discrimination. • Children's families, carers, friends, legal representatives and external agencies can easily provide information to the establishment about children who are vulnerable and may need additional support.
11.2 Child protection: Protection concerns are identified and investigated, and action is taken to prevent further harm.	• Staff understand and follow procedures for responding to concerns about the safety of a child. Any child protection concerns are shared with **the Child Safety Service within the Department for Education, Children and Young People** without delay, and a record of that referral and outcome is retained. Staff immediately take appropriate action to protect children from harm. • Children who allege abuse or mistreatment are offered the assistance of an independent advocate. • Guidance is in place to escalate concerns if staff are dissatisfied with the response from the **Child Safety Service.** • Investigations into allegations or suspicions of harm are shared with the appropriate agencies and are handled fairly, quickly and in accordance with statutory guidance. Children are supported and protected, and support is given to the person making the allegation.

	• Children or parents who allege harm are given a written response which sets out the action that has been, or will be, taken. • Visitors and families know how to raise concerns directly if they think a child is being, or has been, maltreated. • Children can raise concerns in confidence with a range of people and services outside the agency. • Alleged criminal acts are referred to the Police.
11.3 Self-harm prevention: The establishment provides a safe and secure environment which reduces the risk of self-harm and suicide. Children at risk of self-harm or suicide are identified at an early stage and given the necessary support.	• All staff are aware of and alert to vulnerability issues, are appropriately trained and have access to proper equipment and support. • Care planning and management, with input from the child, identifies and addresses risks related to self-harm and suicide. A consistent senior manager oversees care and planning to ensure continuity of care for each child. Where appropriate, family, friends are informed of care planning and invited to contribute to the child's care. • Personal factors or significant events which may trigger self-harm are identified and included in the child's care plan. • Personal possessions are only removed in well documented, exceptional circumstances to reduce risks to the child. • Children are supported to express any thoughts of suicide and/or self-harm and are given the opportunity and assistance to contribute to reviews of their care, identifying their own support needs. • All incidents of self-harm or attempts to self-harm are referred to the designated safeguarding lead and parents/carers are informed. • All staff, including night staff, are appropriately trained in suicide prevention and understand what to do in an emergency. Refresher training takes place regularly. • Children are never monitored remotely as an alternative to engagement with and constant observation by staff.

	• Constant observation occurs in a way that affords privacy and decency for the child, according to strict timelines and procedures. • When it is in the child's best interests, parents and carers are given additional opportunities to visit children who are subject to constant observation. • All information about children at risk of self-harm or suicide and nearing release is communicated to relevant people who can offer support in the community. • Serious incidents are thoroughly and properly investigated to establish what lessons can be learnt to improve the care and protection given to children. • Investigation into deaths by suicide lead to action plans for system and practice improvements. • Incidents of self-harm reduce over time.
11.4 Security: Children are kept safe through attention to physical and procedural matters, including effective security intelligence and positive relationships between staff and children.	• Security is proportionate to risk and the impact of security measures on children's well-being and development is considered. The security measures applied are the least restrictive necessary. • The elements of 'dynamic security' are in place to maintain security and good order, including: - positive and professional relationships between staff and children; - constructive activity to stimulate and educate children; - established, accessible and effective procedures for resolving complaints, grievances and conflicts. • Physical and procedural security is of the highest order, proportionate to risk. Surveillance equipment is regularly checked and maintained, and this process is documented. CCTV and other recording equipment coverage is respectful of children's privacy. • Children's access to education, activities and health services are not impeded by an unnecessarily restrictive approach to security.

	• Effective intelligence and security measures are in place to safeguard children from trafficking/manufacturing of illicit items and substances. • Children found to be using illicit substances receive support from substance use services. • Staff know about whistle-blowing procedures and feel confident to use them. • Where inappropriate or abusive practice is found, staff are held to account. • Intelligence processes are in place that are effective in assessing, reporting on, and sharing potential security risks. • Procedures are in place for staff to ensure that any restricted articles or equipment accessed through programs or classes are removed when not in use and children are closely monitored during these classes/programs. • Articles that may be considered a potential security threat are recorded in a logbook and accounted for at the end of each shift. • All bedrooms are fitted with serviceable call buttons for direct access to staff at all times. These are regularly checked and maintained, and this is documented. • Mechanical restraints are not used for routine requirements of children. • Physical security and fire assessments are regularly undertaken and documented. • The carrying of weapons by staff is prohibited.

11.5 Searches: Children are subject to searching measures that are appropriately assessed and proportionate to risk.	• Searches are undertaken to reduce risks to safety and security from contraband, weapons, alcohol, and other drugs. Searches are conducted safely and only when reasonable and necessary and must be proportionate to the circumstances. Searches should not be carried out if it is determined that doing so would result in psychological harm to a child. • Effective search procedures and recording are in place to check the entry and exit of all vehicles, contractors' tools and any other items that pose a potential security risk. • Search procedures for visitors are clearly displayed and explained and are conducted in the least obtrusive way possible. • Clear information on prohibited and restricted items is displayed to visitors. • Searches of staff, visitors, children, and their property are conducted in a culturally sensitive manner. • Children must not be routinely strip-searched and never using force. • Strip searches are only used as a last resort and are based on sound intelligence. Prior to this, other available means of searching are used. The search is conducted as quickly as possible, the young person is allowed to remain partly clothed, and permitted to dress as soon as it is complete. • Staff are appropriately trained to conduct unclothed searches in a discrete and sensitive manner. • Staff conducting the search are the same sex as the child. Where the child identifies as transgender, they can nominate the gender of the staff conducting the search. Strip-searching is carried out sensitively, and in private. • Operating procedures are in place for refusal to comply with an strip-search or pat search. • Cavity searches are never to be conducted. • Reasons for strip searches are fully documented and are authorised and monitored by senior managers. • Children understand why they are being searched and the process for doing so, and offered assistance from an

	independent advocate to record any questions or concerns they have about why they were searched, or how it was carried out. • Searches of rooms are conducted when there is reasonable suspicion that contraband is present. • Children are informed that their rooms or personal property are being searched and rooms/property are left in the condition in which they were found. • Required outcomes from security information reports resulting in targeted searches are routinely documented. • Search policies are regularly reviewed to assess their effectiveness and any scope for improvement. • Additional measures such as use of overalls or increased supervision of visits is promoted as an alternative to searches. • Alternative technologies to physical searches (such as body scanning) are regularly reviewed and considered for use. • An up-to-date register is kept of all searches. It includes details of any force used, intrusiveness of the search, reasons for the search, who conducted the search and the outcome, and is readily available for inspection by oversight bodies.

Human rights standards:

Human rights standards require children who are detained be held safely. Any child who is detained must be protected from exploitation and abuse and be provided with care and protection to ensure their well-being. Staff must receive sufficient training on how to safeguard children. (CRC 3, 19, 33–37(a), 39; ERJO 52, 127, 129; HR 82, 85–87; CPT 121; SMR 1, 76; EPR 52.2, 81).

In addition, human rights standards require prompt and impartial investigation where there are reasonable grounds to believe an act of torture or ill-treatment has occurred in detention, or when an allegation of torture or ill-treatment is made by a detained individual. See HR 84, 85, 87; SMR 1, 34, 57, 71, 76; EPR 1, 8, 42, 55, 81; BOP 6, 33; CAT 2, 10, 12, 13, 16; ECHR 3; ICCPR 7, 10.1.

Human rights standards require children's right to life to be protected and promoted, and children to be treated with respect for their dignity and human rights. Standards require children to be provided with sufficient mental health care and staff to pay special attention to the prevention of self-harm, including recognising risk. Staff should have sufficient training, and communicate and cooperate effectively, to provide care. (CRC 3, 6; ECHR 2; ICCPR 6, 10; HR 1, 12, 49, 51, 52, 56, 81, 84, 85; ERJO 1, 8, 51, 70, 71, 129; SMR 1, 2, 30, 31, 33; EPR 1, 18.10, 25.4, 39, 42.3, 43.1, 47.2, 52.2, 52.4, 87.1).

Children who are detained should be held with no more security restrictions than necessary to ensure safe custody and in conditions which resemble life in the community as closely as possible. The approach to safety should build on positive relationships between staff and children. (ERJO 53.2, 53.3, 88; SMR 36; EPR 18.10, 24.2, 51–52. AJJA 3.9, 9.3; CRC 3(3); HR 66, 67, 68, 69, 70, 71; YJA s. 132(b)-(f)).

In addition, human rights standards require clearly defined procedures and justifications for conducting searches, and that they are conducted in a manner which respects human dignity and privacy, as well as the principles of proportionality, legality and necessity. (CRC 16; ECHR 8; ERJO 89.1, 89.3, 89.4; EPR 54.1–54.5, 54.8–54.10; SMR 50; BOP 1, AJJA 9.3; HR 64; YJA s.131, 135(3); AJJA 1.1, 1.2, 1.3, 9.1; ACCGPS No. 9).

Principle 8 of the National Principles for Child Safe Organisations states that: Physical and online environments promote safety and wellbeing while minimising the opportunity for children and young people to be harmed.

Topic 12: Pre-release and reintergration

Expectations	Indicators
12.1 Release planning: Planning for a child's release or transfer starts on their arrival in the setting. Resettlement underpins the development of all work and activities. Planning is supported by partnerships in the community and informed by assessment of children's risk and need. Ongoing planning ensures a seamless transition into the community.	• A comprehensive release and reintegration strategy is developed, informed by, and developed in consultation with children. Implementation of the strategy is tracked and updated regularly to include contemporary analysis and reassessment of strategic priorities. • The analysis of reintegration needs takes into account multiple information sources, is weighted to prioritise children's individual needs, and considers the needs of cohorts of children at risk of further and persistent disadvantage (such as those in the care of the State). • Each child's case worker coordinates work relating to the release of a child. • All children should have a discharge interview and plan to ensure they are aware of any relevant requirements they may have following release, together with appropriate services and contacts in the community. • All staff are involved in and support reintegration plans and actions and are clear about their responsibilities in supporting the pre-release and reintegration process. • Reintegration services are coordinated and draw on external statutory and voluntary agencies, as well as internal resources. • A step-down process leading up to a child's release should be in place, including external activities, day release, or similar options and connection with external community agencies. • Preferably, all children should have some community experiences, external to the detention centre, prior to release. • Children should leave detention with their immediate needs met, including education arrangements, accommodation, transitional support structures and contacts in place. • Preparation for young people with serious and enduring mental health problems should ensure that they continue to be managed appropriately on release.

	• Suitable clothes and bags are available on release. • Outcomes for children following their release from the establishment are monitored and feed into the ongoing development and improvement of the establishment's pre-release and reintegration strategy.
12.2 Public protection: Children who may present a risk to the public on their release are managed appropriately.	• Children who may present a risk to the public on release are identified immediately on arrival. • Children are assessed appropriately, and decisions are explained clearly to them. • Individual cases are reviewed regularly and monitored to consider any changes in circumstances. • Restrictions imposed are fair and proportionate, clearly communicated to the child and last for the shortest time possible. • Children are informed of the arrangements for managing the risk of harm they pose to others and the implications for them personally. • The best interests and safety of the child in the community are considered when a child's access to his/her children is being assessed. • Multi-agency structures for protecting and safeguarding the public are used effectively for release planning.
12.3 Child transferring from juvenile to adult settings: Children who transfer or who are likely to transfer to adult services are managed appropriately.	• Children who are likely to transition to an adult setting are identified at the point of entry into the establishment, so that transition planning can begin at arrival. • Planning takes account of future transfer to adult services where appropriate, and plans are in place to ensure outstanding interventions are implemented. • Decisions to transfer young adults to adult services or to retain them in youth-based services are recorded. • Staff have the skills to prepare children for transfer to adult services and children are thoroughly prepared for transfer to adult services. • Notification of transfer, and all essential advance information, is sent to the relevant adult service in

	sufficient time to ensure continuity of delivery of interventions. • All intervention providers (including health and education, training, and employment providers) are informed of transfers to adult establishments in advance and are involved appropriately in case transfer meetings. • Parents/carers are involved, where appropriate, in discussions about transfer and in case transfer meetings where it is likely to aid the child's progress and engagement.
12.4 Post release accommodation: Appropriate care and accommodation is arranged before children are released.	• Children have suitable, sustainable, and safe accommodation arranged no less than **14 days prior to their release.** Where a child is held on remand, planning for accommodation on release commences on admission and is ongoing. • Children are assessed jointly by facility staff and the key post release oversight agency to determine accommodation needs. • Children are made aware of and have full access to specialist services that provide help and advice in finding accommodation after release. • Relevant staff demonstrate the level of knowledge required to effectively address the range of accommodation issues facing children. • Relevant staff work closely with local housing agencies and providers.

12.5 Healthcare on release: Children with continuing health, social care and substance misuse needs are prepared and helped to access services in the community before their release.	• Children receive relevant pre-release assessments and interventions and are helped to register with community health services. • Effective coordinated discharge planning ensures agreed packages of care are continued on transfer and on release, including for care leavers. • Children receive individual health promotion advice prior to release. • Children receive drug, alcohol, and tobacco harm reduction advice prior to release. • Children going to court or being released or transferred receive adequate supplies of medication or a community prescription to meet their needs.
12.5 Financial management advice: Children are given advice and support on how to manage their money and deal with debt on release.	• Children are encouraged and helped to apply for a Medicare card and relevant identity documents.

Human rights standards:

Human rights standards emphasise the importance of preparing for a child's release from the beginning of their stay, which requires individualised plans, regular reviews and the involvement of outside services and agencies and parents and carers. (BR 24.1, 29.1;HR 12,27; ACCG Charter).

Plans should take into account children's views, meet children's individual needs and be aimed at allowing children to make the best use of their time and to develop skills and competencies to help them on release. There should be effective communication between staff and those outside the establishment. (CRC 3, 12; ERJO 14, 50, 51, 62.6, 73, 77, 79, 100–102; HR 12, 27, 79–80; CPT 109; EPR 87.1, 103, 104.2, 107).

On release, children must have adequate clothing, safe and suitable accommodation to go to and the means to reach their destination safely and maintain themselves in the period immediately following release. Staff and agencies involved in preparing children for release should work closely together to help children re-establish themselves in the community. (ERJO 100–102; HR 79–80, 110; EPR 33.7, 33.8, 107).

Attachment 1: International human rights instruments

Treaties

CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading
CERD	International Convention on the Elimination of All Forms of Racial Discrimination https://www.ohchr.org/sites/default/files/cerd.pdf
CRC	Convention on the Rights of the Child https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/crc.pdf
CRPD	Convention on the Rights of Persons with Disabilities https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities
DRIP	Declaration on the Rights of Indigenous Peoples https://www.ohchr.org/en/indigenous-peoples/un-declaration-rights-indigenous-peoples#:~:text=The%20Declaration%20addresses%20both%20individual,all%20matters%20that%20concern%20them
ICCPR	International Covenant on Civil and Political Rights https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights
ICESCR	International Covenant on Economic, Social and Cultural Rights https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights

OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-against-torture-and-other-cruel

Standards and guidance

BR	United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/beijingrules.pdf
BOP	Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment https://www.ohchr.org/en/instruments-mechanisms/instruments/body-principles-protection-all-persons-under-any-form-detention#:~:text=No%20person%20under%20any%20form,or%20degrading%20treatment%20or%20punishment
BPRL	Basic Principles on the Role of Lawyers https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers
BPTP	Basic Principles for the Treatment of Prisoners https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-treatment-prisoners#:~:text=All%20prisoners%20shall%20be%20treated,property%2C%20birth%20or%20other%20status.
BPUF	Basic Principles on the Use of Force and Firearms by Law Enforcement Officials https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-use-force-and-firearms-law-enforcement#:~:text=Law%20enforcement%20officials%20shall%20not,a%20danger%20and%20resisting%20their
CCLEO	Code of Conduct for Law Enforcement Officials https://www.ohchr.org/en/instruments-mechanisms/instruments/code-conduct-law-enforcement-officials

CRC CO	United Nations Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic report of Australia 2019* https://www.ohchr.org/en/documents/concluding-observations/committee-rights-child-concluding-observations-combined-fifth-and
CRCGC12	Committee on the Rights of the Child, General Comment on the Right of the Child to be heard https://www.refworld.org/docid/4ae562c52.html
CRCGC24	Committee on the Rights of the Child, General Comment 24 on children's rights in the child justice system https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-24-2019-childrens-rights-child
DPT	Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment https://digitallibrary.un.org/record/189613?ln=en
DRM	Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-rights-persons-belonging-national-or-ethnic
GG	World Organisation Against Torture: Global Guide for Prevention and Protection of Children Against Torture. https://gdpakistan.org/wp-content/uploads/2021/11/OMCT_Global-Guide-Children.pdf
HR	United Nations Rules for the Protection of Juveniles Deprived of their Liberty ('Havana Rules') https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-rights-persons-belonging-national-or-ethnic
RG	United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-guidelines-prevention-juvenile-delinquency-riyadh

SMR	Standard Minimum Rules for the Treatment of Prisoners https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf
SRT	United Nations Human Rights Council, *Reports of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, https://www.ohchr.org/en/special-procedures/sr-torture
VG	Guidelines for Action on Children in the Criminal Justice System (Vienna Guidelines) https://www.ohchr.org/en/instruments-mechanisms/instruments/guidelines-action-children-criminal-justice-system

European human rights instruments

Treaties

ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms https://www.echr.coe.int/european-convention-on-human-rights

European Standards and guidance

CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Juveniles deprived of their liberty under criminal legislation*, CPT/Inf(2015)1-part rev1, 2015. https://rm.coe.int/16806ccb96
EPR	Recommendation Rec (2006)2 of the Committee of Ministers to member states on the European Prison Rules https://rm.coe.int/09000016809ee581
ERJO	Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures https://www.coe.int/en/web/prison/conventions-recommendations

UKYJB	UK Youth Justice Board Healthcare Standards for Children and Young People in Secure Settings https://www.rcpch.ac.uk/sites/default/files/2023-04/rcpch_healthcare_standards_for_children_and_young_people_in_secure_settings_2023.pdf

Australian and New Zealand standards and guidance

ACCG Charter	Australian Children's Commissioners and Guardians, A model charter of rights for children and young people detained in youth justice facilities. https://hrc.act.gov.au/wp-content/uploads/2014/09/ACCG-Model-Charter-of-Rights-for-Children-in-Youth-Justice-Facilities.pdf
ACCGHRS	Human rights standards in youth detention facilities in Australia: the use of restraint, disciplinary regimes and other specified practices. https://www.childcomm.tas.gov.au/wp-content/uploads/2016/10/report-accg-human-rights-the-use-of-restraint-disciplinary-regimes-and-other-specified-practices.pdf
ACCGPS	Australian Children's Commissioners and Guardians, Position Statement on conditions and treatment in youth justice detention (November 2017) https://humanrights.gov.au/sites/default/files/document/publication/ACCG_YouthJusticePositionStatement_24Nov2017.pdf
AHRC	Australian Hunan Right Commission, Roadmap to OPCAT Compliance (2022) https://humanrights.gov.au/sites/default/files/opcat_road_map_0.pdf
AJJA standard	Australasian Juvenile Justice Administrators, Juvenile Justice Standards, (2009). https://www.ics.act.gov.au/__data/assets/pdf_file/0003/1342767/AJJA-Standards-2009.pdf
DGJJFANZ	Design Guidelines Juvenile Justice Facilities in Australia and New Zealand (1996) http://www.ayja.org.au/wp-content/uploads/2018/08/Design-Guidelines-Juvenile-Justice-Facilities-in-Australia-and-New-Zealand-1996-Part-1-pp1-96.pdf

NPCSO	National Principles for Child Safe Organisations https://childsafe.humanrights.gov.au/sites/default/files/2019-02/National_Principles_for_Child_Safe_Organisations2019.pdf
RCIADIC	Royal Commission into Aboriginal Deaths in Custody: Regional Report of Inquiry into Underlying Issues in Western Australia (1990) https://catalogue.nla.gov.au/Record/1127953

Tasmanian laws

Children, Young Persons and their Families Act (1997) Tasmania
https://www.legislation.tas.gov.au/view/html/inforce/current/act-1997-028

Child and Youth Safe Organisations Act 2023
https://www.legislation.tas.gov.au/view/html/inforce/current/act-2023-006

Commissioner for Children and Young People Act (2016) Tasmania
https://www.legislation.tas.gov.au/view/html/inforce/current/act-2016-002

Court Security Act 2017
https://www.legislation.tas.gov.au/view/html/inforce/current/act-2017-034

Criminal Law (Detention and Interrogation) Act 1995
https://www.legislation.tas.gov.au/view/html/inforce/current/act-1995-072

Disability Services Act 2011
https://www.legislation.tas.gov.au/view/html/inforce/current/act-2011-027

Corrections Act (1997) Tasmania
https://www.legislation.tas.gov.au/view/html/inforce/current/act-1997-051

Mental Health Act (2013) Tasmania
https://www.legislation.tas.gov.au/view/html/inforce/current/act-2013-002

Ombudsman Act (1978) Tasmania https://www.legislation.tas.gov.au/view/html/inforce/current/act-1978-082

OPCAT Implementation Act (2021) Tasmania
https://www.legislation.tas.gov.au/view/html/asmade/act-2021-026

Terrorism (Preventative Detention) Act 2005
https://www.legislation.tas.gov.au/view/html/inforce/current/act-2005-071

Youth Justice Act (1997) Tasmania
https://www.legislation.tas.gov.au/view/html/inforce/current/act-1997-081

Tasmanian standards and guidance

Child and Youth Safe Organisations Framework Tasmania
https://www.justice.tas.gov.au/carcru/child-and-youth-safe-organisations-framework

Child and Youth Safe Standards
https://www.legislation.tas.gov.au/view/html/inforce/2023-07-01/act-2023-006#JS1@EN

Inspection standards for youth custodial centres in Tasmania
https://www.custodialinspector.tas.gov.au/__data/assets/pdf_file/0006/546279/FINAL-Inspection-Standards-for-Youth-Custodial-Centres-in-Tasmania-July-2019.pdf

Office of the Chief Psychiatrist Tasmania: Standing Orders and Clinical Guidelines
https://www.health.tas.gov.au/about/office-chief-psychiatrist/information-health-professionals-office-chief-psychiatrist/standing-orders-and-clinical-guidelines

Tasmanian Out-of-Home Care Standards
https://publicdocumentcentre.education.tas.gov.au/library/Shared%20Documents/Att-4-Tasmanian-Out-of-Home-Care-Standards.pdf

Charter of Rights for children in out of home care
https://publicdocumentcentre.education.tas.gov.au/library/Shared%20Documents/Poster-Charter-of-Rights-Digital-Communties.pdf

Tasmanian NPM National Preventive Mechanism

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Appendix 5: Draft Expectations on the treatment of people deprived of their liberty in police and court custody

Tasmanian NPM National Preventive Mechanism

Expectations on the treatment of people deprived of their liberty in POLICE AND COURT CUSTODY

Version 1 – October 2023

Tasmanian NPM
National Preventive Mechanism

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Introduction

POLICE AND COURT CUSTODY

Deprivation of liberty settings covered by these expectations	**Police cells, court cells, watch houses, and related transport.**
Expert engaged	**Scott Tilyard APM GAICD**
Date	**October 2023**

About the Tasmanian NPM's expectations on the treatment of people deprived of their liberty in police and court custody.

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.

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 or not 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.

What is the purpose of these expectations?

This document sets out how the Tasmanian NPM expects people to be treated when they are in the custody of police or the courts, or when they are being transported to/from a related custody setting.

In this document, a person deprived of their liberty is referred to as a 'detainee'. This reflects terminology commonly used by the *UN Subcommittee on the Prevention of Torture*, and which is contained within the *OPCAT Implementation Act 2021* (Tas).

Specific expectations have been developed for police and court settings due to their unique character. A detainee's time in police and court custody is often short in duration, lasting until they are released, or a court orders that they be held in remand or are sentenced.

However, during this time in police or court custody a detainee can experience a heightened risk of torture and other ill-treatment. Less often, circumstances can also arise where a detainee is held for a longer period of time, such as being in a rural or remote location and bad weather is preventing their transfer.

The expectations are aimed at creating organisational cultures and practice that foster the wellbeing of people deprived of their liberty by Tasmania police, and when attending Tasmania's courts. This will help to keep them safe and reduce the likelihood of harm.

The expectations were drawn up after extensive consultation and are based on and referenced against international and domestic human rights standards, as well as existing Police operational policies and related materials. A complete list of the materials considered and referred to in the document is provided at **Attachment 1**.

Where a person in police or court custody is a child or young person, the Tasmanian NPM will also have regard to its *expectations on the treatment of children and young people deprived of their liberty*.

This is an evolving document.

This is the first draft of the Tasmanian NPM's *expectations for the treatment of people deprived of their liberty in police and court custody*. These expectations will be updated in response to feedback and changes in international and local best practice. The Tasmanian NPM welcomes feedback from all stakeholders on the draft document, particularly people with lived experience.

Summary of expectations

Topic 1: Material conditions

1.1 Detainee's physical environment is safe, of an appropriate standard, and well maintained.

1.2 Detainee's security, dignity, and privacy are provided for and promoted.

1.3 Detainees are provided with food and drink.

1.4 Detainee's welfare and care needs are met.

Topic 2: Procedural safeguards, voice and participation

2.0 Detainee's custody is authorised, and the reason understood

2.1 Detainee's rights in custody are explained and understood

2.2 Detainee's personal property is securely stored and returned on release

2.3 Detainees are safely and effectively transferred between police and TPS.

2.4 Risks that detainees pose to themselves, and others are assessed, managed, and reviewed.

2.5 Detainees are held in custody no longer than necessary.

2.6 Children are held for the minimum time possible and not overnight.

2.7 Aboriginal and Torres Strait Islander detainees are protected by additional safeguards.

2.8 Detainees to appear in court do so promptly in person or by video link.

2.9 The need for detainees to remain in custody is reviewed

2.10 Detainees know how to make complaints and can do so while in custody or immediately upon release.

Topic 3: Procedural safeguards, voice and participation

3.1 Detainees requiring medical attention are assessed and treated by competent health professionals in a timely and confidential manner.

3.2 Detainees with mental health needs are identified, assessed, and referred to appropriate services.

3.3 Detainees receive required medications while in custody.

3.4 The health and wellbeing of children and vulnerable adults are prioritised.

Topic 4: Contact with the outside world

4.1 Detainees can access a telephone with privacy.

4.2 Detainees, particularly children and vulnerable adults, can have visits from family and/or support services.

4.3 Foreign nationals can communicate with their consulate, embassy, or high commission.

Topic 5: Equity, diversity and non-discrimination

5.1 Detainees from all backgrounds and with diverse needs are respected and treated with dignity.

5.2 Staff recognise, and meet, the individual and diverse needs of detainees.

5.3 Aboriginal and Torres Strait Islander detainees are afforded their cultural rights and protected from harm.

Topic 6: Safety, order, discipline, and restrictive practices

6.1 Use of force on a detainee is lawful, necessary, proportionate, and a last resort.

6.2 There is robust accountability associated with use of force.

6.3 Staff are appropriately trained in the use of force, including restraint techniques.

6.4 Searching of detainees is justified, appropriate to risk, and performed in a dignified manner.

6.5 Detainees are segregated according to gender, age, and vulnerability.

6.6 Accused persons are segregated from convicted prisoners.

6.7 Detainees feel safe and free from bullying and other intimidatory behaviour.

6.8 Detainees are released and transferred safely.

Topic 7: Life in detention

7.1 Detainees feel that they are treated with respect and dignity.

7.2 Custodial officers maintain high level integrity and professionalism.

Topic 8: People with Disability

8.1 Detainees with disability are protected from harm and neglect.

8.1 Detainees with disability are safe and enjoy full access and participation in custody services.

Topic 9: Leadership, accountability and collaboration

9.1 Senior management promotes safe and respectful custody.

9.2 Custody forms part of corporate performance management and reporting.

9.3 The Service collaborates with partner agencies and organisations to enhance custody arrangements.

9.4 Children and vulnerable adults are diverted away from custody.

9.5 Custody arrangements are open to external scrutiny.

Topic 10: Travel

10.1 Detainees are transported in a safe and dignified manner that adequately provides for the needs of children and vulnerable adults.

Expectations and indicators

Topic 1: Material conditions

(including accommodation, food and water, clothing and bedding, lighting and ventilation, sanitary facilities and personal hygiene)

Expectations	Indicators
1.1 Detainee's physical environment is safe, of an appropriate standard, and well maintained.	• Cells and shared areas are clean, well ventilated, naturally lit, and of a suitable temperature. Cells are free of ligature points. • The condition of cells is checked daily, and more frequently if necessary. Adjoining corridors, security doors, and communal areas are also checked. These checks are recorded. • Biological hazards are responded to in a timely and effective manner. Safety protocols are implemented to reduce risk until the hazard is removed. • Cells are deep cleaned on a regular basis. • Cell size and design are appropriate for the number of occupants. • Detainees required to sleep overnight occupy separate cells. If this cannot be managed, such as due to temporary overcrowding, the occupants of each cell should be managed by whether it is suitable for them to associate with one another, and additional supervision is to be scheduled and recorded to minimise risk of harm. • There is a system that allows detainees to communicate with staff from their cell. The system is checked regularly to ensure it is operational. Staff demonstrate how to use the system to detainees. • Regular audits are conducted of equipment contained in the facility. The audit includes the key register. Urgent action is taken if items that could be a potential safety risk are found to be missing or damaged. • Custody facility is equipped with fire alarm and suppression systems which are tested regularly.

1.2 Detainee's security, dignity, and privacy are provided for and promoted.	• CCTV provides coverage to protect detainees, staff and visitors while respecting privacy and dignity. Good quality audio recording operates in charging and other processing areas. • CCTV system is maintained and regularly checked to ensure it is operational. Footage is stored in accordance with legal and policy requirements. Access to footage is appropriately authorised and recorded. • Staff understand safety procedures and can safely evacuate detainees in the event of a fire or other emergency. Emergencies procedures are regularly exercised, and the results recorded. Areas identified for improvement are acted upon in a timely manner. • Staff are trained in emergency response, including fire, smoke, and chemical spills and leaks. Staff have access to, and are trained in the use of, emergency equipment. There is a process to ensure that equipment is audited and maintained in a state of readiness. • Workplace health and safety incidents are managed in accordance with agency policy requirements including involvement of WorkSafe Tasmania for reportable matters. • In court cell settings, the detainee's route from the detention area to the court room does not pass through public areas. • Detainees are presented to court in appropriate attire. Replacement clothing is provided where detainee's clothing is soiled, otherwise unsuitable, or removed for forensic examination or other purposes.
1.3 Detainees are provided with food and drink.	• Unless detained for short periods, detainees are provided with nutritious food and drink at normal mealtimes. Food meets a detainee's medical and religious needs. Clean drinking water is always available. • Detainees at court or on transfer do not miss meals. • All areas where food is stored, prepared, and served and related policies/processes are designed to meet Food Standards Australia and New Zealand guidelines.

1.4 Detainee's welfare and care needs are met.	• Detainees must have access to a toilet, basin and toilet paper that can be used with respect for privacy. • If necessary, replacement clothing, including underwear, can be supplied. There is a process to allow family and friends to deliver alternate or replacement clothing. • Except for short periods of detention, there are distraction activities offered, such as reading material. Available activities should be mindful of the varying ages and language requirements of detainees. • Where a detainee is required to sleep overnight in a cell, their bedding includes a clean mattress, pillow, and blanket. Additional pillows and blankets are available on request. Cell temperature is within the indoor temperature range recommended by the Australian Government or World Health Organisation for healthy living. • There are facilities available for detainees to wash their face and hands. • Period products are routinely provided to detainees who menstruate, without them having to ask. • If time and circumstances permit, detainees can have visitors, including from support services. Special consideration is given to visits for children and vulnerable adults.

Human rights standards:

Human rights standards require that detainees be housed in accommodation that respects their human dignity and privacy. (BR 5; CCLEO 2; CRC 3, 37, 40; HR 33, 34, 37; ICCPR 10; SMR 12, 13, 14, 15, 16, 17, 18, 19, 21, 22)

Topic 2: Procedural safeguards

(including access and contact with a lawyer, complaints processes, record-keeping)

Expectations	Indicators
2.1 Detainee's custody is authorised, and the reason understood.	• Custody Officers are satisfied of the grounds for detention. The relevant charge and/or grounds for detention are recorded in the presence of the detainee unless not possible in the circumstances. • Alternatives to custody are considered, especially for children and vulnerable adults. • Custody Officers explain to detainees the grounds and reason/s they are being held in custody. If police bail is refused the reasons are recorded and explained to the detainee. • There is an electronic system for recording custody information including detainee's details and grounds for detention. Confidentiality of information contained within the system is maintained. Special attention is afforded to confidentiality associated with detained children. • The special needs of children and vulnerable adults are considered by Custody Officers in making detention decisions. Staff understand that detainees may have multiple needs, and every effort is made to accommodate those needs. Staff are aware that children have differing levels of maturity, and staff therefore are tolerant and understanding in their approach. • Bail conditions that restrict the actions and movement of charged people should only be imposed where necessary and proportionate to risk. Restrictions should not be unduly onerous. • Detainees under immigration legislation are transferred to a more suitable facility as soon as possible.
2.2 Detainee's rights in custody are explained and understood.	• Detainee's rights and entitlements are clearly explained by Custody Officers in an area of the custody facility that is subject to audio recording. Custody Officers satisfy themselves by proactive inquiry that these are understood by detainees. In addition, there are posters

	displayed and fact sheets available that explain these rights. • Rights or entitlements that a detainee wishes to exercise are acted upon promptly. • If a Custody Officer refuses or delays any right or entitlement to a detainee, the reason is explained and recorded. There is a process for reviewing refusals and delays and, if no longer valid, the right/entitlement is provided without undue delay. • Detainees have prompt access to a lawyer at the earliest opportunity after being arrested. Where applicable, they are assisted to contact the legal representative of their choice. • Legal representatives, including Legal Aid, adequately inform detainees of their rights, of the legal process itself, and of the consequences of their decisions. • Detainees can contact a family member or friend, at the earliest opportunity after being detained. • There is a record of the detainee's custody that can be supplied to the detainee or their authorised representative. This includes circumstances where the detainee is unconditionally released or discharged from custody. • Detainees are not interviewed while impaired by alcohol, drugs, or other substances, or if medically unfit, unless in exceptional circumstances full details of which must be recorded. • Detainees are informed on release or transfer how their personal forensic samples, including images, will be managed.

2.3 Detainee's personal property is securely stored and returned on release.	• There is an accurate record of personal items, including money, taken from the possession of detainees on admission to custody. Property is itemised in an area subject to CCTV monitoring, and in the presence of the detainee unless not possible in the circumstances. • Detainee's property is individually secured in a room subject to CCTV monitoring. • Detainee's property is returned at the time of release. There is a process for managing complaints associated with returned property.

2.4 Detainees are safely and effectively transferred between police and TPS.	• There is clear policy and procedures governing the transferring of detainees between Tasmania Police and the Tasmania Prison Service (TPS). These include clear lines of accountability and responsibility for the custody, care and wellbeing of detainees at all stages. • The transfer of custody process includes information relevant to the care and wellbeing of the detainee while in custody and any related risks, and for consideration on release. • Police and TPS staff are conversant with custody transfer arrangements and comply with relevant protocols. Issues associated with custody responsibilities are resolved quickly and, if appropriate, reported to senior management. • Custody arrangements between police and TPS are regularly reviewed at a senior level to ensure they remain contemporary and effective.
2.5 Risks that detainees pose to themselves, and others are assessed, managed, and reviewed.	• Custody Officers are trained to assess risks posed by detainees, using an appropriate risk assessment process, and promptly and effectively respond to any identified risks. • Custody Officers explain the purpose of risk assessments to detainees. Sensitive information can be disclosed without being overheard by other detainees. • Custody Officers have access to, and use, all relevant known information to inform risk assessments. Professional judgement forms part of the risk assessment process. • Custody Officers actively seek relevant information from arresting or transferring officers as part of the risk assessment process. • Staff are trained to identify risk factors and vulnerabilities that may pose risks to the detainee or others and take appropriate remedial action. • Custody Officers are aware of the risks posed to detainees by alcohol, drugs, or other substances, and of the need to closely monitor and frequently rouse them.

	• Staff are aware that the impact of detention varies between detainees, with children and vulnerable adults being most susceptible to harm. Staff are considerate in dealing with detainees, especially those in custody for the first time. • Staff are alert to the risk of self-harm and closely monitor and support detainees who indicate a desire to harm themselves. Custody Officers ensure that all staff working within the custody suite are aware if a detainee is a self-harm risk. • The frequency of observations is managed in accordance with the level of assessed risk, which is regularly reviewed. All observations are recorded, and any concerns immediately reported to the responsible Custody Officer. • Concerns raised by detainees are listened to and, where appropriate, acted upon whether relating to their own welfare or the risk posed by others. This includes where it is intended that detainees will share a cell or communal area. • Any item of clothing required to be removed from a detainee should be replaced unless unsafe. • Staff respond promptly to calls for assistance from detainees. • All staff working in custody facilities have ready access to anti-ligature knives. • Custody Officers and other custodial staff participate in handovers of custody duties. Handovers are conducted in private and recorded.
2.6 Detainees are held in custody no longer than necessary.	• Release or transfer from custody should occur as soon as possible once detention is no longer required. • Custody Officers assess risks associated with vulnerable detainees to minimise time in custody or transfer to more suitable facilities.
2.7 Children are held for the minimum	• Children are not held in custody unless there is no viable alternative, and their detention is authorised by a police officer of, or above, the rank of Inspector. The name of

time possible and not overnight.	the authorising officer and reasons any child is detained are recorded. • Arrested children are not detained in police cells overnight unless required by judicial warrant to appear in court. • Senior management conducts reviews of children detained in custody overnight with a view to avoiding recurrences. These reviews involve other relevant agencies and support services. • Alternatives to detaining a child in a cell are considered especially if the detention is only for a brief period. • Children held in custody are released, taken to court, or transferred to a suitable facility as soon as possible. • Children refused bail by a court are transferred to a youth detention facility unless not practical in the circumstances. • The parents or responsible adult of a detained child are informed of the grounds at the earliest opportunity. • Children are bailed or otherwise released in the presence of a parent or responsible adult as soon as possible. If this is not possible, or there are concerns for the child's safety or wellbeing, a senior officer authorises release and Child and Family Services is contacted. • Child and Family Services is readily contactable and respond promptly to safety and wellbeing concerns relating to children in custody. Guidance is in place to escalate concerns if staff are dissatisfied with the response from Child and Family Services. • Custody Officers consider the specific needs of children when conducting risk assessments. • Children are not placed in cells with adult detainees and are held in a separate part of the custodial facility away from adult detainees. • Unless detention is for a brief period, arrangements are made for a female officer to speak with girls under 18 years.

	• Detainees who are gender diverse can speak with an officer of the gender of their choice. • Age-appropriate activities are available for children who spend prolonged periods in custody.
2.8 Aboriginal and Torres Strait Islander detainees are protected by additional safeguards.	• Custody Officers and other custodial staff know that Aboriginal and Torres Strait Islander detainees are at higher risk of harm while in custody. Additional measures are implemented to ensure their safety and wellbeing both while in custody and on release. • All custodial staff complete cultural awareness training and have ongoing access to related professional development and community engagement opportunities. • There is a process to engage an aboriginal legal service at the earliest opportunity following the arrest of a person who identifies as Aboriginal or Torres Strait Islander, or both. • The person's details and reasons for custody are provided to the Aboriginal Legal Service. The detainee can speak directly to the legal service in private. If the detainee does not wish for their details to be supplied to the service, the Custody Officer provides de-identified information only. • Custody Officers consider advice from the Aboriginal Legal Service in making decisions associated with the detainee's custody. Legal service advice is considered regardless of whether the detained person requests their support.

2.9 Detainees to appear in court do so promptly in person or by video link.	• People detained for court are advised at an early stage of when they are scheduled to appear. • Detainees can retain their legal documentation while in custody. Writing materials are provided unless unsafe. • Courts prioritise cases of people in custody. • There is an escalation process if detainees are not physically and mentally well enough to attend court. • Detainees are not held in court cells overnight.

2.10 The need for detainees to remain in custody is reviewed.	• There is a process for senior officers to conduct reviews if the original grounds for detention change or other circumstances support the earlier release or transfer of a detainee. The outcome of reviews is recorded. • Where possible, reviews should be conducted face to face, especially for children and vulnerable adults. • Detainees are advised of review outcomes and, if applicable, the reason for their continued detention.
2.11 Detainees know how to make complaints and can do so while in custody or immediately upon release.	• Detainees are advised that they can complain and are provided with information about the complaints process in a format they can understand. There are notices and posters prominently displayed outlining the complaint process. Detainees are asked whether they want to complain prior to leaving custody or on transfer • Staff contact a parent, guardian, or responsible adult to support a child who desires to complain. The child is assisted in the complaint process including gathering relevant material. • There is a system for recording and managing complaints. • The complaints process is promoted and there is no discrimination or repercussions for detainees who complain. • Complaints are taken prior to, or immediately upon, release from custody unless not appropriate in the circumstances or the detainee requests the complaint be taken at another time. • There is a process to follow up complaints if a detainee requests to make their complaint at another time. • Complaints are recorded in a confidential manner and managed in accordance with a process developed with the Tasmanian Integrity Commission to meet contemporary guidance. • Detainees are informed of the outcome of their complaint and what alternative mechanisms are available if dissatisfied. • Complaints made by people in custody are recorded and analysed to improve custodial policies and procedures.

	Recommendations arising from these reviews are used to improve custodial arrangements. • Staff who raise concerns about the treatment of detainees are supported and their concerns investigated.

Human rights standards:

Human rights standards set out that detainees can only be detained under appropriate authority in accordance with the law. (BeiR 7, 8, 10, 13, 15; BOP 12, 13, 17, 18, 33; BR 2, 25; CCLEO 3, 6; CEDAW 2, 15; CERD 2, 5, 6; CRC 3, 37, 40; HR 20, 21, 22; ICCPR 9, 10, 14; ICESCR 12; ICPPED 17; OPCAT 21; SMR 6, 7, 11, 41, 53, 56, 57; UDHR 9; UNCAT 13; UNDIP 22

Topic 3: Healthcare

(including physical and mental healthcare, specific groups)

Expectations	Indicators
3.1 Detainees requiring medical attention are assessed and treated by competent health professionals in a timely and confidential manner.	• There is clear policy and guidelines on accessing clinical care for detainees who are injured, unwell, or who request medical attention, which is followed. Healthcare is available 24 hours a day and is provided by competent health professionals in a timely and confidential manner. • Detainees consent to medical interventions and have the right to refuse treatment. Detainees with a cognitive disability can access advocacy services to assist with supported decision-making. Where necessary, a detainee's guardian is involved. Where patients lack capacity to decide, and a guardian is not appointed or available, 'best-interests' decisions are made by health professionals in accordance with legal requirements. • Except for very minor injuries where only first aid is required, Custody Officers promptly arrange for any detainee who appears physically injured or unwell to be examined by a health professional and act on any advice given. • Medical treatment is sought for any form of head injury no matter how minor. • Detainees who are not proficient in English, or who have hearing or visual impairment, have access to interpreter services to assist them in understanding the nature of care provided. • Relevant information regarding risk, health, and social care needs is shared between involved agencies to ensure that detainees receive continuity of care while in custody and on transfer or release. This includes details of prescribed medications. • Detainees contact with health professionals is recorded in custody records but not patient clinical information. • The custody record contains details of any medical treatment or advice, including any prescribed

	medications. Custody transfer processes include this information. • Information, including details of prescribed medications, necessary for the welfare of the detainee is shared with relevant custodial staff. • Detainees know how to complain about the health services they receive while in custody and these complaints form part of reviews to continuously improve clinical care arrangements. • There is a suitable area, with appropriate infection prevention controls, for health professionals to examine detainees within the custodial facility. • Clinical examinations are conducted in private unless an individual risk assessment suggests this is unsafe or inappropriate. A detainee may be seen by a health professional of the same gender in non-emergency situations. • First aid and emergency resuscitation and response equipment are properly maintained and easily accessible. All staff know where equipment is located and are trained and regularly exercised in its use. • Detainees are informed that medical confidentiality is not guaranteed before volunteering information to health professionals. • Where relevant, treating health professionals contribute to assessments of whether a detainee is fit for interview. • Personal healthcare information is transferred confidentially with the detainee and marked 'medical-in-confidence'. • There is collaboration with health service providers at a senior level to regularly review and improve the provision of healthcare to detainees. These reviews include examination of response times.
3.2 Detainees with mental health needs are identified, assessed, and	• Custody Officers are trained to identify behaviours indicative of mental health issues and, where appropriate, arrange for engagement with mental health services.

referred to appropriate services.	• There is a clear pathway to engage mental health services should they be required. This pathway operates 24 hours per day. • Detainees requiring urgent mental health intervention are diverted from police custody into treatment at the earliest opportunity. • There are partnerships with other agencies and support services to ensure the transfer of detainees requiring immediate mental health intervention. • Patient care and prescribed medications for detainees with mental ill health are continued on transfer or release from custody.
3.3 Detainees receive required medications while in custody.	• There is a system for recording medications prescribed for detainees. The admissions process includes asking detainees whether they are prescribed medications. • Medications are secured individually for detainees and administered as prescribed by health professionals. • If necessary, arrangements are made to collect required medications from the detainee's residence or other nominated location. • Detainees being released or transferred are provided with adequate supplies of medication so that their care is not interrupted.

Human rights standards: (CCLEO 6; CEDAW 2, 12; CRC 3, 37, 40; HR 49, 53, 55; PME 1; SMR 24, 27, 61; UNCAT 10, 11, 12, 16; UNDIP 24).

Topic 4: Contact with the outside world

(including visits, correspondence, phones, internet)

Expectations	Indicators
4.1 Detainees can access a telephone with privacy.	• Detainees are given access to a telephone unless unsafe. If a phone is unable to be provided, calls can be made by staff on behalf of detainees. • Arrangements can be made for detainees to have a private conversation by telephone, particularly with their legal representative. Consideration is given to ensuring that detainees do not breach family violence or restraint orders when making telephone calls. • People detained for court can inform family members or friends of their pending court appearance. • Staff monitoring detainee's private telephone calls maintain line of sight but remain out of hearing.
4.2 Detainees, particularly children and vulnerable adults, can have visits from family and/or support services.	• Visits to detainees by family members and/or support services can be facilitated for periods of prolonged detention, for example overnight. There is no limit to the number of visits but the period in detention may have a bearing on what can be facilitated. • Legal professionals can visit detainees in police custody and court cells. • Visits for children and vulnerable adults are prioritised given their increased vulnerability and needs. • Visitors are made to feel welcome and briefed on visiting protocols. They are protected from abuse, bullying, and intimidation. • Visitors' complaints concerning the custody of detainees are recorded and investigated. Visitors who complain are informed of the outcome.
4.3 Foreign nationals can communicate with their consulate, embassy, or high commission.	• Foreign nationals can communicate in private with their consulate office, embassy, or high commission as soon as possible after being taken into custody.

Human rights standards: (BR 26; CRC 3, 37; HR 56; ICPPED 17; ICRM 16; SMR 58, 62; UNCAT 6).

Topic 5: Equity, diversity and non-discrimination

(including faith and religion, Aboriginal people, LGBTQIA+ detainees, foreign nationals, children from culturally and diverse backgrounds, people with disabilities or neurodiverse conditions, other groups)

Expectations	Indicators
5.1 Detainees from all backgrounds and with diverse needs are respected and treated with dignity.	• The Custody Officer leads by example in promoting equality, diversity, and the respectful treatment of detainees. • Staff have completed accredited equity and diversity training and are familiar, and act in accordance, with relevant provisions of the Anti-Discrimination Act 1998, particularly Part 4 (Discrimination and Prohibited Conduct). • Staff know, and use, systems to identify and take appropriate action to minimise and prevent all forms of discrimination or inequality. • Staff treat detainees with respect and dignity during all stages of the custody process. • Discriminatory allegations and incidents are investigated thoroughly, and data is routinely analysed for patterns.
5.2 Staff recognise, and meet, the individual and diverse needs of detainees.	• Reasonable adjustments are made for detainees with disabilities, including those with conditions that are not visibly apparent. • Searches of detainees are cognisant of their sex and gender identity, and religious and cultural beliefs. • Female officers are available to assist in meeting the care and welfare needs of children and adults who identify as female. • Male staff do not enter cells holding female detainees unless accompanied by a female staff member. • Efforts are made to assist detainees who request religious observance material. • Detainees with parental or other caring responsibilities are assisted to make arrangements for those to be met.

	• Detainees in need of interpreting or translating services, including sign language and low or no vision services, are assisted to access accredited service providers. Signage in multiple languages advising of the availability of interpreting and translating services is displayed at custody admission points. • Staff training and development promotes acceptance and equal respect for people of all sexual orientations and gender identity, including those transitioning.
5.3 Aboriginal and Torres Strait Islander detainees are afforded their cultural rights and protected from harm.	• Staff consider Aboriginal and Torres Strait Islander detainee's cultural identity and connections when making custody decisions. • Custody staff are cognisant that Aboriginal and Torres Strait Islander detainees are at higher risk in custody and ensure, through proactive engagement, that their safety and welfare needs are met. • Aboriginal and Torres Strait Islander detainees are protected from racism, unfair treatment, harassment, bullying and abuse while in custody.

Human rights standards: (BOP 14; BR 20; CCLEO 2; CERD 2, 5, 6; DEDRB 2, 4; ICCPR 10; ICRM 17; SMR 1, 42, 50; UDHR 2, 7; UNDIP 2).

Topic 6: Safety, order, discipline, and restrictive practices

(including violence and bullying, searches, disciplinary measures, restraint, use of force, separation, segregation and solitary confinement)

Expectations	Indicators
6.1 Use of force on a detainee is lawful, necessary, proportionate, and a last resort.	• There are policies and procedures that clearly govern use of force. These are understood and complied with by custodial staff. • Use of force is a last resort to be avoided where possible, especially in respect to children, pregnant women, the elderly, and other vulnerable adults. • If force is required, it is the minimum possible to achieve the desired objective and lasts no longer than necessary. • Officers using force consider the age and vulnerabilities of the detainee and respond accordingly. • Use of restraints is proportionate to risk and lasts no longer than necessary. Detainees who are restrained are closely monitored while restraints are in place. • Restraints are only used on children in exceptional circumstances involving violence, or risk thereof, likely to result in substantial injury to the detainee or others, or of self-harm. If required, only age-appropriate and approved restraint techniques are used, and then only for the shortest possible time. All forms of use of force, including use of restraints, involving children are recorded, reviewed, and reported to senior management. Parents or guardians are informed if force, including restraints, is used on a child. • Spit hoods, spit guards, and similar equipment are not used on detainees. • Alternative risk management options are considered before deciding to use force to remove a detainee's clothing. • There is a process to seek medical and/or mental health care in circumstances where de-escalation is not possible.

6.2 There is robust accountability associated with use of force.	• Any use of force (including use of restraints) is recorded in the custody system and reviewed in accordance with legal and policy requirements. • 'Use of force' reporting is completed as soon as possible after an incident. The report is submitted prior to the responsible officer concluding duty. If the responsible officer is unable to complete the report, another officer is assigned to complete the report prior to concluding shift. • All custody-related use of force incidents are routinely and regularly reviewed. Outcomes of these reviews are used to improve custodial arrangements and to identify trends and issues. • The monitoring of use of force in detention forms part of corporate performance reporting and organisational continuous improvement processes. Recommendations arising from monitoring processes are considered and implemented in a timely manner.
6.3 Staff are appropriately trained in the use of force, including restraint techniques.	• All staff are trained in use of force including de-escalation and restraint techniques. Refresher training occurs on a regular basis, and at least annually. • Use of force training includes awareness of risks associated with various forms of restraint and how these can be avoided or mitigated. This includes risks associated with restraint techniques on people with a disability. • Use of force training includes special techniques for the control and restraint of children, the elderly, and pregnant women. • All staff are appropriately equipped to respond to incidents requiring force.

6.4 Searching of detainees is justified, appropriate to risk, and performed in a dignified manner.	• Searches are conducted in accordance with legal and policy requirements. The level of searching is proportionate to the circumstances and is conducted in the least intrusive manner necessary and reasonable to achieve the purpose. To the extent possible, the dignity of the detainee is respected during searching processes. • On admission, custody officers inquire as to which gender a detainee identifies. Searches are conducted by officers of the same gender or officers of the gender requested by the detainee. • Gender diverse detainees can request to be searched by a male or female officer and such requests are facilitated. If this is not possible because of urgency or risk the reasons are recorded. • Strip searches are conducted only where necessary. Body cavity searches are conducted only by court order and performed by qualified health professionals at medical facilities. • Children are not subjected to unclothed searches unless authorised by the Custody Officer who records the reason. Any use of reportable force during the search of a child is reported to the person in charge of the custodial facility as soon as practicable after the search but in any case, within 7 days. • There is written information available for detained children or their representative on how searches are authorised and conducted, and any relevant instructions relating to the custodial facility. This includes how, and to whom, to complain if a child believes that the search was not lawfully authorised or conducted. This information is also available on the Service's website. • Detainees with a disability can sit down as required during the search process. • Assistance from health professionals is obtained if a search involves removal of any artificial limb or aid where these impede a search and there is suspicion or intelligence of contraband or unauthorised concealment. Any artificial limb or aid is respectfully inspected and promptly reassembled after the search.

	• A search register is maintained that records relevant information in relation to the search of a child, including the degree of intrusiveness and details of any reportable force. • Scanning equipment is available to reduce the need for strip, body cavity, and other intimate searches. • Search policies are regularly reviewed to assess their effectiveness and any scope for improvement.
6.5 Detainees are segregated according to gender, age, and vulnerability.	• Female detainees, including those who identify as female, are segregated from male detainees. • Children are segregated from adult detainees and checked more frequently. • Vulnerable adults assessed as being at risk of harm are separated from other detainees. • Detainees who need to be accommodated in part of the facility separate from other detainees are informed of the reason and monitored more frequently.
6.6 Accused persons are segregated from convicted prisoners.	• Detainees on remand are segregated from those under sentence.
6.7 Detainees feel safe and free from bullying and other intimidating behaviour.	• Custody officers do not tolerate bullying or intimidating behaviour by, or against, staff or detainees and take immediate action if unacceptable behaviour is reported or witnessed. Bullying and other forms of intimidating behaviour are consistently challenged. • Staff are trained to identify all forms of bullying and how to apply anti-bullying procedures. • Staff remain vigilant for bullying and other forms of intimidating behaviour towards children and vulnerable adults and take immediate action if such behaviour is reported or observed. • Detainees do not feel bullied or intimidated by staff or other detainees. Staff respond in a timely and effective manner to allay any concerns raised.

	• Custodial staff identify and protect detainees who may be victimised due to the nature of their offence or personal circumstances.
6.8 Detainees are released and transferred safely.	• There are clear processes to communicate information regarding detainee risk, health, vulnerability, and wellbeing to other agencies and support services as appropriate. • Detainees, and particularly children and vulnerable adults, without the means to return home are provided with transport or otherwise assisted to travel safely to their residence or desired destination.

Human rights standards: (BPUFLEO 15; BR 19,20, 21; CCLEO 3, 6; CRC 3, 37, 40; HR 63, 64; ICCPR 10; ICRM 17; SMR 49, 51, 52, 60, 76, 82).

Topic 7: Life in detention

(including education, work, exercise and other activities, staff/detainee relationships)

Expectations	Indicators
7.1 Detainees feel that they are treated with respect and dignity.	• Custody Officers and other staff engage with detainees in a respectful and courteous manner. Custody Officers assume responsibility for, and promote, the dignified treatment of detainees in their care. • Staff recognise that detention is stressful, particularly for children and vulnerable adults, and take this into account when interacting with detainees. • Detainees can disclose confidential and personal information in private and can speak with a staff member of the gender with which they identify if they so desire.
7.2 Custodial officers maintain high level integrity and professionalism.	• Custodial staff model and promote exemplary behaviour. Inappropriate and substandard conduct is not tolerated and is addressed in a timely and effective manner by management. • Detainee's complaints against Custody Officers and other members performing custodial duties are monitored and reviewed by senior management to ensure that relevant officers remain suited to custodial duties. • Custodial staff always wear name badges and rank insignia.

Human rights standards: (CCLEO 2; ICCPR 10)

Topic 8: People with Disability

Expectations	Indicators
8.1 Detainees with disability are protected from harm and neglect.	• Custody Officers recognise that detainees with a disability may be of higher risk of harm and neglect while in custody. • Custody Officers ask on admission whether detainees have a disability that may expose them to additional risk. Timely action is taken to remediate any issues raised. • Detainees with a disability can access disability advocacy support. • Staff have access to relevant information about adults and children in their care who have a disability. This information is shared, where relevant, on transfer or release. • Custody Officers proactively consider whether additional safeguards should be implemented to protect detainees with a disability and closely monitor their safety and wellbeing while in custody. • Detainees who are hearing or visually impaired are provided with access to support services to assist them in understanding the custody process including, if applicable, relevant documentation. • Complaints by, or on behalf of, detainees with a disability are investigated and decided in a timely manner. The nature and type of complaints are regularly reviewed to identify common issues or themes, including the frequency of complaints by persons with a disability as a proportion of all detainees. • Detainees with a cognitive or psychosocial disability can access services for supported decision-making. Custody staff are trained to assist detainees to access these services.
8.2 Detainees with disability are safe and enjoy full access and participation in custody services.	• Detainees with disability, especially those with mobility issues, can safely access and use admission suites, processing areas, cells, communal areas, and other parts of the custody facility used for detention purposes. • Detainees with disability have full accessibility and equal participation in all custody-related services and activities.

Human rights standards: (CRPD 5, 6, 7, 15).

Topic 9: Leadership, Accountability and Collaboration

Expectations	Indicators
9.1 Senior management promotes safe and respectful custody.	• Custody management forms part of the Service's risk management framework and is closely monitored by senior management. • Safe and respectful custody is promoted through corporate policy, education and training, and is demonstrated in practice by officers involved in custodial duties. Timely and effective remedial action is taken when poor or discriminatory practice is identified. • Custodial facilities are appropriately resourced. This includes the provision of adequate staffing to effectively operate rosters.
9.2 Custody forms part of corporate performance management and reporting.	• The Service's corporate performance reporting framework includes key custody-related indicators and, where relevant, organisational performance targets. This data and information are analysed and used to improve custody management.
9.3 The Service collaborates with partner agencies and organisations to enhance custody arrangements.	• There is regular senior-level liaison and collaboration with key partner agencies and service providers to improve custody arrangements. This includes exploring opportunities to reduce the incidence and impact of custody. • The Service includes education and information regarding the prohibition against torture and other forms of cruel and inhumane treatment in the training of officers and other staff who are involved in arrest, detention, or imprisonment. • The Service conducts systemic reviews of custody policy and procedures to ensure that arrangements remain contemporary and appropriate.
9.4 Children and vulnerable adults are diverted away from custody.	• Service policies and processes are designed to divert children and vulnerable adults away from custody wherever possible. Incidents where diversion should have occurred but did not are identified and reviewed by a senior officer.

	• Custody Officers place additional emphasis on the safety of children and vulnerable adults in their care.
9.5 Custody arrangements are open to external scrutiny.	• The Service welcomes scrutiny of its custodial facilities and management arrangements at the strategic, operational, and tactical levels. Consideration is given to recommendations aimed at improving the treatment and conditions of detainees and how these might be implemented. Scrutiny may include reviews of how individual detainees are treated. • Authorised external reviewers can enter custodial facilities at any time, with or without notice, and have access to individual detainees with privacy. • The NPM and other authorised external reviewers can access all custody-related information and data including that pertaining to the number and treatment of detainees, and conditions of detention.

Human rights standards: (CEDAW 2, 15; CERD 2, 5, 6; CCLEO 2, 3, 6; CRC 3; ICCPR 10; OPCAT 19, 20, 21, 22; SMRTP; UDHR 5; UNCAT 10, 11, 12, 13, 16).

Topic 10: Transport

Expectations	Indicators
10.1 Detainees are transported in a safe and dignified manner that adequately provides for the needs of children and vulnerable adults.	• Vehicles used to transport detainees are selected based on assessed risk and individual needs. This includes consideration of safest and most appropriate form of transport for detainees with a disability. If necessary, suitable and safe non-standard vehicles are available to use. • Escorting officers are briefed on any matters that may affect the security of the escort, or the safety and well-being of detainees being escorted. • Escort vehicles can be tracked at all times. Escorting officers maintain radio contact with control rooms during all stages of transport. • Children and vulnerable adults are not transported in police divisional vans unless there is no alternative. Pregnant women and parents with children or babies are not transported in divisional vans. • Vehicles are safe, clean, comfortable, fitted with seatbelts, and do not have ligature points. • Vehicles are well ventilated, at an appropriate temperature for climatic conditions, and carry basic comfort items for longer journeys, eg water, sickness bags etc. First aid kit is carried. • Vehicles are driven in a safe manner and in compliance with Road Rules. Additional policy requirements governing how vehicles are to be driven while transporting people in custody are followed. • Where possible, women and girls are transported in vehicles with female escorts. • Women, children, and men are transported in separate vehicles. • Escorting officers ensure that seatbelts for detainees are properly fitted prior to and during transport. • Escorting officers can observe detainees during all stages of transport, and officers and detainees are able to communicate at all times. Escorting officers stop

	enroute to check the safety and wellbeing of detainees if concerns are identified. • Escorting officers can quickly and safely evacuate transport vehicles if necessary. Staff are trained and equipped to respond in-transit to emergencies involving detainees with a disability. • Comfort stops and rest breaks are provided for detainees being transported over long distances (long haul) with special consideration given to vulnerable people and those with individual needs. As a guide, toilet breaks and refreshments should be provided every 2 to 2.5 hours. • Detainees are advised of their destination and their disembarkation is not unduly delayed on arrival. • Escorting officers ensure that detainees are not subjected to violence, threats, or intimidation from other detainees during transport. • To the extent possible, the privacy and dignity of detainees is maintained, including on arrival or departure from courts. • Arresting/escorting officers ensure that information relevant to the risk assessment process is communicated to Custody Officers or others into whose custody detainees are transferred.

Human rights standards: (CCLEP 2; CRC 3; ICCPR 10; SMRTP)

Attachment 1: Abbreviations and references

International human rights instruments and related fields

BPUFLEO	Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990. https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-use-force-and-firearms-law-enforcement
BOP	Body of Principles for the protection of all persons under any form of detention or imprisonment, 1988. https://www.ohchr.org/en/instruments-mechanisms/instruments/body-principles-protection-all-persons-under-any-form-detention
CCLEO	Code of Conduct for Law Enforcement Officials, 1979. https://www.ohchr.org/en/instruments-mechanisms/instruments/code-conduct-law-enforcement-officials
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women, 1979. https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination https://www.ohchr.org/sites/default/files/cerd.pdf
CRC	Convention on the Rights of the Child https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/crc.pdf
CRPD	Convention on the Rights of Persons with Disabilities https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities

Refugee Convention	Convention Relating to the Status of Refugees, 1951. https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-relating-status-refugees
DEDRB	Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 1981. https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-all-forms-intolerance-and-discrimination
ICCPR	International Covenant on Civil and Political Rights https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights
ICRM	International convention on the Rights of Migrants and their families, 1990. https://www.unhcr.org/media/3-2-5-international-convention-protection-rights-all-migrant-workers-and-members-their
ICCPR	International Covenant on Civil and Political Rights, 1966. https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights
ICESCR	International Covenant on Economic, Social and Cultural Rights https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights

OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-against-torture-and-other-cruel
	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. https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-medical-ethics-relevant-role-health-personnel
UNDIP	United Nations Declaration on the Rights of Indigenous Peoples, 2007. https://www.ohchr.org/en/indigenous-peoples/un-declaration-rights-indigenous-peoples
BeiR	United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/beijingrules.pdf
BR	United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules), 2010. https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-rules-treatment-women-prisoners-and-non-custodial
HR	United Nations Rules for the Protection of Juveniles Deprived of their Liberty (‘Havana Rules’) https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-rights-persons-belonging-national-or-ethnic
SMR	Standard Minimum Rules for the Treatment of Prisoners https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf
UDHR	Universal Declaration of Human Rights, 1948. https://www.un.org/en/about-us/universal-declaration-of-human-rights

Attachment 2: Policy materials (Including legislation, policies, operating manuals, guidance)			
Abbreviation	**Full Title**	**Type**	**Link**
ADA	Anti-Discrimination Act 1998	Legislation	https://www.legislation.tas.gov.au/view/html/inforce/current/act-1998-046
BA	Bail Act 1994	Legislation	https://www.legislation.tas.gov.au/view/html/inforce/current/act-1994-009
CA	Corrections Act 1997	Legislation	https://www.legislation.tas.gov.au/view/html/inforce/current/act-1997-051
CLDIA	Criminal Law (Detention and Interrogation) Act 1995	Legislation	https://www.legislation.tas.gov.au/view/html/inforce/current/act-1995-072
PSA	Police Service Act 2003	Legislation	https://www.legislation.tas.gov.au/view/html/inforce/current/act-2003-075
YJA	Youth Justice Act 1997	Legislation	https://www.legislation.tas.gov.au/view/html/inforce/current/act-1997-081
TPM	Tasmania Police Manual	Operating manual	https://www.police.tas.gov.au/uploads/TPM-RTI-18-December-2018.pdf
TPSOMSCF	Tasmania Prison Service, Operating Manual, Statewide Court Facilities, February 2023	Operating manual	No available link.

TPSOMSRP	Tasmania Prison Service, Operating Manual, Statewide Reception Prisons, February 2023	Operating manual	No available link.
TPSDSO 1.20	Tasmania Prison Service, Director's Standing Order 1.20 - External Escorts, Medical Appointments and Hospital Admissions	Operating manual	No available link.

Tasmanian NPM National Preventive Mechanism

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Appendix 6: Draft Expectations on the treatment of people deprived of their liberty under mental health law

Tasmanian NPM National Preventive Mechanism

Expectations on the treatment of people deprived of their liberty under MENTAL HEALTH LAW

Version 1 – October 2023

Tasmanian NPM
National Preventive Mechanism

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Introduction

MENTAL HEALTH

Detention settings covered by these Expectations	**Forensic and other closed mental health settings, mental health care in hospitals and related settings, specialised mental health service providers, residential mental health care.**
Expert engaged	**Sarah Cooke OBE, Louise Finer**
Date	**October 2023**

About the Tasmanian NPM's expectations on the treatment of people deprived of their liberty under mental health law.

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.

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 or not 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.

This is an evolving document.

This is the first draft of the Tasmanian NPM's *expectations on the treatment of people deprived of their liberty under mental health law*. These expectations will be updated in response to feedback and changes in international and local best practice. The Tasmanian NPM welcomes feedback from all stakeholders on the draft document, particularly people with lived experience.

Summary of expectations

Topic 1: Material conditions

1.1 Patients are safe in a clean and well-maintained environment. Safety and comfort

1.2 Patients can move freely around a range of areas within the facility.

1.3 The living environment is comfortable.

1.4 Patients with varied needs are appropriately catered for.

1.5 Patients have privacy and comfort in their bedrooms.

1.6 Children are held separately from adults.

Topic 2: Procedural safeguards

2.1 Patients are given all information relevant to their involuntary status in a clear and accessible way.

2.2 Patients receive effective communication regarding their rights and status as involuntary patients.

2.3 Patients can access an effective complaints mechanism.

2.4 Patients can freely access their legal representative and advocate.

Topic 3: Healthcare

3.1 Physical and mental health needs of patients are assessed and addressed appropriately by suitably qualified professionals.

3.2 Patients can access a range of treatments to support holistic, person-centred care.

3.3 Patients make their own choices regarding their care, support and treatment wherever possible.

3.4 The right to privacy and medical confidentiality of each patient is respected.

Topic 4: Contact with the outside world

4.1 Patients can communicate freely and with privacy respected. Any restrictions on contact are individually justified, proportionate and fully explained.

4.2 The fullest visiting arrangements possible are facilitated. Visits are as comfortable and easy as possible for the patient and visitors. Any

restrictions on visits are individually justified, proportionate and fully explained.

4.3 Confidential contact with legal representatives and others is facilitated.

4.4 Patients are held in facilities that are as close as reasonably possible to their home or support networks.

4.5 Patients are able to request leave which is granted wherever possible.

Topic 5: Equity and non-discrimination

5.1 Patients' individual needs are identified, understood and met.

5.2 Patients from Aboriginal and Torres Strait Islander backgrounds are able to exercise their cultural rights and are protected from harm.

5.3 Patients live in an environment where tolerance and understanding are actively promoted, and where discriminatory conduct, bullying, harassment are not tolerated and any instances are challenged.

5.4 Patients are treated fairly and swift action is taken to address any evidence of discriminatory processes or treatment.

5.5 Patient confidentiality is safeguarded.

Topic 6: Safety, order, discipline, and restrictive practices

6.1 All searches are undertaken with proper legal authority, are proportionate to an identified risk and carried out with due regard to and respect for a person's dignity and privacy.

6.2 All efforts are made to eliminate the use of restraint. Restraint is only used as a matter of last resort, for the shortest time possible and causes the minimum interference possible with a persons' autonomy, dignity and privacy.

6.3 All efforts are made to eliminate the use of seclusion. When used, it is only as a last resort, for the shortest time possible and causes the minimum interference possible with a person's autonomy, dignity and privacy. Solitary confinement is never used.

6.4 Patients are held in the least restrictive level of security possible and moved promptly where their level of risk changes. Decision-making is fair and transparent. Conditions in the facility ensure security without unnecessarily restricting liberty.

6.5 All mental health facilities provide a safe and therapeutic culture which prioritises the assessment and minimisation of the risk of deliberate self-harm and suicide.

Topic 7: Life in detention

7.1 Staff engage with all those within their care with dignity and respect.

7.2 There is access to meaningful activities.

7.3 Adequate amounts of nutritious food which promotes health and wellbeing are available.

7.4 There is access to appropriate clothing and laundry facilities.

7.5 There is timely access to personal possessions and property.

7.6 Patients can freely practice their religion and take part in customs in accordance with their cultural belief or background.

Topic 8: Governance and culture

8.1 Leaders are committed to and take responsibility for providing safe, high quality, person centred, trauma informed care.

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

8.3 Leaders demonstrate, operationalise and promote a human rights based approach to providing care and treatment.

8.4 People with lived experience are involved in governance and decision making processes. Relevant to mental health detention.

Expectations and indicators

Topic 1: Material conditions

Overarching expectation: The environment in the facility is safe, welcoming, comfortable and conducive to recovery; it ensures the dignity, wellbeing and privacy of all patients.

Expectations	Indicators
1.1 Patients are safe in a clean and well-maintained environment.	• All areas are in a good state of repair, decorated and regularly cleaned. • Sleeping, washing and communal areas are organised in a way that ensures the safety of patients of different genders, using appropriate measures (such as cohorting) to address risks or vulnerabilities and ensure physical, sexual and psychological safety. • Washing and toilet facilities are sufficient for the number of patients. They are in good working order, clean and hygienic and ensure privacy. • All areas are safe for patients and staff, including from fire risk, with a view to eliminating the risk of self-harm.
1.2 Patients can move freely around a range of areas within the facility.	• There are areas for leisure and communal time as well as quiet time. • Patients can access different areas on a regular basis and where necessary are facilitated to do so. • Outdoor areas include seating and shelter, access to the natural environment and can be used for exercise and social interaction. • Facilities for faith and worship provide for all patients. • Signage is clear, in appropriate formats, and reflects patients' linguistic diversity.
1.3 The living environment is comfortable.	• Occupancy levels are appropriate, facilities are not crowded. • Living areas all have natural light. • Living areas are an appropriate temperature, with heating and ventilation where needed.

1.4 Patients with varied needs are appropriately catered for.	• Patients can physically access all areas they have a right to be in. • The sensory environment and its design features minimise stress and tension, and take into account patients' acoustic sensitivities. • There are areas that provide a sanctuary from stress, where people can experience their feelings, seek or avoid sensory input as needed, and relieve discomforts in privacy.
1.5 Patients have privacy and comfort in their bedrooms.	• The privacy of patients is respected (eg closing blinds or curtains, ability to lock their room door) with due regard to concerns for safety. • Rooms are as quiet as possible at nighttime. • Rooms are of adequate size, having regard to a patient's physical accessibility needs and therapeutic care requirements. • Patients can personalise rooms including with their own possessions, with due regard to safety. • Rooms include an adequately sized place to securely store belongings. • Rooms have natural light and patients can control artificial lighting including blinds or curtains. • Rooms are kept at an appropriate temperature with heating and ventilation as needed. • Hygienic, clean and private sanitary and washing facilities in good working order are available to all patients.
1.6 Children are held separately from adults.	• Children are held in age-appropriate facilities that can meet their needs. • Children are kept separate from adults, and any deviation from this rule is individually justified on the basis of the child's best interests.

Explanatory note

The physical environment in places of deprivation of liberty is crucial to patients' recovery and wellbeing. Their experience of safety, privacy and comfort within this environment must be at the heart of the design, maintenance and use of the facilities.

The expectations above should apply regardless of the type of facility although there are likely to be different ways of achieving these outcomes in different types of settings.

Specific standards and sources

International

- Convention on the Rights of Persons with Disabilities (CRPD) Article 14 paragraph 2
- Convention on the Rights of the Child, Article 37
- CRPD Guidelines on Article 14, paras.17-18
- UN Principles for the protection of persons with mental illness (Principle 13.2)
- UN Special Rapporteur on Torture report on protecting persons with disabilities from torture, and solitary confinement (2008), paras 52-54
- World Health Organisations (WHO) QualityRights Toolkit, Theme 1

National

- *Mental Health Act 2013* (Tas) Schedule 1.
- National Standards for Mental Health Services 2010, Key Principles

Topic 2: Procedural safeguards

Overarching Expectation: All processes and safeguards relating to the status and treatment of involuntary patients in mental health facilities are fair and transparent in their nature and application.

Expectations	Indicators
2.1 Patients are given all information relevant to their involuntary status in a clear and accessible way.	• Clear and comprehensive medical and legal records are maintained for all patients. • Patients are informed about their status as involuntary patients in a clear and timely way appropriate to their circumstances. • Patients are told the factual and legal basis for the decision to subject them to involuntary placement or involuntary treatment, the length of time it will continue and the criteria for the potential extension or termination of such a decision. This information is also given to a patient's legal representative if they have one. • Patients receive clear, accurate, accessible and timely information about their rights, and their right to make a complaint or seek a review including: • their right to have access to legal advice/representation; • available complaint mechanisms and the circumstances in which a complaint can be made; • their right to apply to the Mental Health Tribunal; and • their right to contact Mental Health Official Visitors. • Patients are reminded of their rights on a regular basis and at crucial milestones of their care and treatment such as when there is a change in treatment or if their detention is renewed for a further period. • Staff regularly check that information has been understood and is adapted and/or delivered differently if necessary, for example with the assistance of a peer support worker.
2.2 Patients receive effective	• Patients' communication needs are assessed bearing in mind any hearing or visual impairments, any

communication regarding their rights and status as involuntary patients.	learning disability, any neuro diversity issues, difficulties in reading or writing, and whether they are being communicated with in their first language. • All steps are taken to overcome barriers to effective communication including avoiding technical terms or jargon as much as possible. • Patients are communicated with in a way that is appropriate to their sex, religion or belief, cultural background, dialect and age. • Children and young people have information explained in a way they can understand and in a format appropriate to their age. • Interpreters are selected who are appropriate to the needs of the individual patient. • Patients are given information orally and in writing, including in accessible formats where appropriate and in a language they understand. Peer support workers are used, when appropriate, to aid in the communication and understanding of information.

2.3 Patients can access an effective complaints mechanism.	• Feedback from patients is actively sought, considered and used to inform and improve service planning and delivery. • Efforts are made, through trauma-informed and culturally sensitive approaches, to build trust in complaints processes to ensure all patients, especially those from Aboriginal and Torres Strait Island backgrounds, are able and motivated to report misconduct or other concerns. • Patients are able, and supported where necessary, to make complaints to independent oversight bodies and receive responses which are timely, effective and transparent. • Patients are able, and supported where necessary, to request a visit from the Mental Health Official Visitors. • Those who raise concerns, make complaints or give feedback can do so without fear of negative consequences.
2.4 Patients can freely access their legal representative and advocate.	• Patients are able to have access to their legal representative at any reasonable time and by any reasonable means. • Patients are aware of and are able to access advocacy services in a timely way. Patients are encouraged and supported to access advocacy services. • Aboriginal and Torres Strait Islander patients are supported in accessing legal advice from representative organisations

Explanatory note

Effective procedural safeguards must be at the heart of efforts to ensure the rights to liberty and the prohibition of torture in any type of detention setting. In the mental health context, they are of particular importance in avoiding unlawful and arbitrary detention. Examining the existence and effectiveness of procedural safeguards is therefore necessarily central to the approach of detention monitoring bodies. Fair and transparent due process is crucial in relation to the specific procedures and practices that deal with the rights of

involuntary patients in mental health facilities and are integral to the Expectations above.

Specific standards and sources

International

- International Covenant on Civil and Political Rights (ICCPR) Article 9.
- UN Human Rights Committee General Comment 35 on Article 9 (16/12/2014).
- UN Principles for the protection of persons with mental illness: Principle 1.6, Principle 12, Principle 18, Principle 21.
- Council of Europe, Committee of Ministers, Recommendation no REC (2004)10 concerning the protection of the human rights and dignity of persons with mental disorder: Article 6, Article 20, Article 22.
- WHO QualityRights Toolkit, Theme 3.
- UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), Approach of the SPT to prevention (30/12/2010), para.5(c) (g)

National

- Tasmania's Mental Health Act 2013 s 62(a), 62(d), 62(f), 108(a), 108(d), 108(p) 108(q).
- National Standards for Mental Health Services 2010 Standard 1 (rights and responsibilities), Standard 6 (consumers).
- Australian Charter of Healthcare Rights: sections on information & giving feedback.

Topic 3: Healthcare

Overarching Expectation: People in mental health facilities enjoy the highest attainable standard of physical and mental health.

Expectations	Indicators
3.1 Physical and mental health needs of patients are assessed and addressed appropriately by suitably qualified professionals.	• Patients with a mental disorder receive physical healthcare that is equivalent to that received by people without a mental disorder. • Patients are offered a comprehensive health assessment, covering physical and psychological needs, on admission to a mental health facility and this should be repeated regularly thereafter. • Patients, and where appropriate their families and/or carers, are fully involved in all health assessments and informed of their outcome. • Any physical or mental health conditions revealed at assessment receive timely medical attention and all care and treatment promotes continuity of care. • Treatment needs of patients are met by staff who are qualified and competent. • Care, support and treatment are given in accordance with up-to-date national guidance and current best practice from professional bodies.
3.2 Patients can access a range of treatments to support holistic, person-centred care.	• Patients are offered a range of treatment options and approaches as appropriate including trauma-informed care, psychological therapy, occupational therapy and other therapeutic interventions to promote recovery. • Each patient has a recovery plan which reflects their choices and preferences and includes social, medical, employment and education goals and objectives for recovery. • Where a health intervention is required that cannot be provided in the mental health facility, patients are referred to appropriate health services in a timely manner.
3.3 Patients make their own choices	• Patients, and their families and/or carers where appropriate, are provided the fullest opportunity to

regarding their care, support and treatment wherever possible.	participate actively in all discussions and decisions about their care, support and treatment. • Involuntary patients have their choices, opinions and feelings respected in all aspects of their care, support and treatment wherever possible and to the fullest extent possible. Voluntary patients are only ever treated with their consent. • Treatment decisions taken contradictory to the views of involuntary patients are minimised and, when they are taken, the reasons for doing so are clearly explained and documented.
3.4 The right to privacy and medical confidentiality of each patient is respected.	• Information about a patient's health is kept confidential. • Patients are entitled to know any information collected about their health, but if they wish not to be informed this should be respected.

Explanatory note

The right to the enjoyment of the highest attainable standard of physical and mental health is a fundamental human right referred to in several human rights instruments. It is dealt with most comprehensively in the International Covenant on Economic Social and Cultural Rights (ICESCR) Article 12. It is closely related to other human rights, including respect for human dignity, non-discrimination, equality, the prohibition of torture and ill treatment and the right to respect for private life, which are integral components of the right to health. The Committee on Economic, Social and Cultural Rights has set out that the right to health contains the following essential elements in relation to healthcare facilities, goods and services (i) availability in sufficient quantity to meet the needs of the population (ii) accessibility without discrimination (ii) acceptability - they are respectful of medical ethics and culturally appropriate as well as being design to respect confidentiality and improve health (iv) Good quality - scientifically and medically appropriate.

Specific standards and sources

International

- ICESCR Article 12: The right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

- Committee on Economic, Social and Culture Rights, General Comment 14 (2000)
- Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard on physical and mental health, 28/03/2017 (Thematic Report on Mental Health).
- UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment – Principle 24
- CRPD Article 3, Article 12, Article 22, Article 25.
- UN Principles for the protection of persons with mental illness: Principle 1.1, Principle 8.1, Principle 9, Principle 11, Principle 19.
- Council of Europe: Convention on human rights and biomedicine: Article 3, Article 6, Article 7, Article 10.
- Council of Europe, Committee of Ministers, Recommendation No REC (2004)10 concerning the protection of the human rights and dignity of persons with mental disorder – Article 10, Article 11, Article 13, Article 17 – 21, Article 22.
- WHO QualityRights Toolkit, Theme 2.

National

- Tasmania's Mental Health Act 2013 s 62(a), 62(b), 62(g), 108(a), 108(b), 108(f)
- Schedule 1 – Service delivery principles
- Tasmania's Chief Civil Psychiatrist and Chief Forensic Psychiatrist Clinical Guideline 2: decision making capacity.
- National Standards for Mental Health Services 2010. Key principles, Standard 1 (rights and responsibilities), Standard 3 (consumer and carer participation), Standard 6 (consumers).
- Australian Charter of Healthcare Rights: sections on access, safety, respect & privacy.
- Australian Safety and Quality Framework for Health Care (Australian Commission on Safety and Quality in Health Care) Principle 1: Consumer Centred.

Topic 4: Contact with the outside world

Overarching Expectation: Patients are encouraged and able to maintain contact with family, friends and others through a range of measures they freely choose. Any restrictions to this right are strictly limited and individually justified.

Expectations	Indicators
4.1 Patients can communicate freely and with privacy respected. Any restrictions on contact are individually justified, proportionate and fully explained.	• Proactive efforts are made to assist patients in maintaining contact with friends, families, advocates and wider support groups/networks. • Patients have access to phones, correspondence, electronic devices and the internet unless a current individual risk assessment has indicated some restrictions are necessary. They are able to do so in privacy and in the language of their choice. • There are no blanket restrictions, and any individual restrictions are justified, proportionate, documented and subject to review. • There is a published policy on any restrictions which is made available to all patients in appropriate formats. • Patients are aware of the reasons for any restrictions on the use of devices in certain areas to ensure wider wellbeing (eg to ensure there are quiet areas). • Restrictions on the use of devices with cameras or video/sound recording are justified on the basis of the privacy of other patients and staff, are reasonable and fully explained. • Managers regularly monitor restrictions imposed to assess their proportionality and justification.
4.2 The fullest visiting arrangements possible are facilitated. Visits are as comfortable and easy as possible for the patient and visitors. Any restrictions on visits are individually	• Visitors are made to feel welcome. • Visits take place in an environment that is private, accessible, safe and comfortable. • Patients choose whom they want and do not want to see. • Visits take place at any reasonable time and regularity and take into account any travel or logistical challenges faced by visitors.

justified, proportionate and fully explained.	• All possible efforts are made to encourage and facilitate regular contact between children and their families and others close to them.
4.3 Confidential contact with legal representatives and others is facilitated.	• Patients understand their rights to confidential ("privileged") visits and correspondence and with whom these rights apply. • 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.
4.4 Patients are held in facilities that are as close as reasonably possible to their home or support networks.	• Placement decisions take into account the patient's family or friendship ties.
4.5 Patients are able to request leave which is granted wherever possible.	• Leave away from the facility is actively and regularly considered. Leave is offered and facilitated to the fullest extent possible. • The benefits to a patient's recovery and health are fully taken into account in considering requests for leave. • The patient's wishes, alongside those of family, friends and other carers, are fully taken into account in considering requests for leave. • Requests to attend significant events such as weddings or funerals, are facilitated by staff wherever possible. • Leave requests are assessed promptly and decisions are clearly explained. • All efforts are made to mitigate and prevent security or safety risks.

Explanatory note

Maintaining contact with family and friends is a key element in a patient's care, treatment and recovery and should be facilitated through visits, communication and leave. The right to maintain contact with families is a key element of the rights of children in detention. Restrictions may be justified and proportionate in some circumstances, based on security, clinical grounds, privacy and/or safeguarding concerns, but should be justifiable on an individual basis through transparent processes that protect against arbitrariness. Patients should also be able to refuse contact or visits. The right to confidential communications and visits with legal representatives and designated authorities is an essential aspect of the rights of patients in detention.

Specific standards and sources

International

- CRPD Article 22, ICCPR Article 17 (right to privacy)
- CRC Article 37
- WHO QualityRights (Theme 1, Standard 1.5)
- UN Principles for the protection of persons with mental illness (Principle 13.1)
- European Court of Human Rights, Solcan v. Romania; Herczegfalvy v. Austria.

National

- Tasmania Mental Health Act Division 4-6, sections 97-108

Topic 5: Equity and non-discrimination

Overarching Expectation: The diversity of the patient group is welcomed and informs their treatment. The distinct needs of patients are fully met, including their experiences of trauma. Organisational policies, culture, processes and practice ensure patients are not subject to discrimination, bullying or harassment.

Expectations	Indicators
5.1 Patients' individual needs are identified, understood and met.	• Proactive efforts are made to identify and address patients' individual needs at the outset of detention and as they evolve over time. • Care plans specify clear actions required to address these needs. • Planning and commissioning of services are based on understanding of the diverse backgrounds of patients. • Patients are offered and able to access support from outside including from community groups or external agencies and advocates.
5.2 Patients from Aboriginal and Torres Strait Islander backgrounds are able to exercise their cultural rights and are protected from harm	• Respect for Aboriginal and Torres Strait Islander patients' cultural identity and connections are at the heart of all decisions made about their treatment and care. Their treatment and care takes into account their individual and collective experience of trauma. • Aboriginal and Torres Strait Islander patients are protected from racism, unfair treatment, harassment, bullying and abuse.
5.3 Patients live in an environment where tolerance and understanding are actively promoted, and where discriminatory conduct, bullying, harassment are not tolerated and any	• Proactive efforts are made (eg through activities, visual displays, celebrations) to recognise and celebrate the diversity of patients. • All forms of discriminatory language and conduct, (including stereotyping and unconscious bias), bullying, harassment are challenged by staff. • Patients feel able to raise concerns about discrimination through complaints processes. • Complaints about discrimination are thoroughly investigated and responses take into account the

instances are challenged.	context and individual experiences of the patient. Patients are able to make a complaint externally (such as to Equal Opportunity Tasmania).
5.4 Patients are treated fairly and swift action is taken to address any evidence of discriminatory processes or treatment.	• Rules and processes are understood by patients and applied fairly by staff. • There is routine internal monitoring to identify any disproportionality or unfairness, for example in the application of restrictive measures or in access to activities, visits or other areas. • Where disproportionality or unfairness is identified or suspected, swift action is taken to address this.
5.5 Patient confidentiality is safeguarded.	• Aspects of a patient's identity (eg transgender status, sexuality, criminal record) that may lead to bullying or discrimination are kept confidential.

Explanatory note

The core human rights principles of equality and non-discrimination must be applied to the treatment and care of individuals who are deprived of liberty on mental health grounds. This includes the multiple or intersecting grounds on which individuals may be subject to discrimination in addition to their disability. This is known by the Committee on the Rights of Persons with Disabilities as inclusive equality.

The grounds on which patients may be subject to indirect and/or direct discrimination include faith or religion, spirituality, sexuality, gender identity, nationality, Aboriginal and Torres Strait Islander background, age, or other grounds which include the 'attributes' in Tasmanian anti-discrimination legislation (noted below).

Achieving equality and eliminating discrimination requires a range of positive measures relating to the care and treatment of individuals but also requires monitoring. In particular, the disproportionately high levels of ill health and severe psychological distress experienced by people with Aboriginal and Torres Strait Islander backgrounds mean they are likely to be overrepresented in mental health detention facilities. As a result they are more likely to experience the inadequate provision or ill treatment that occurs within detention facilities.

The NPM should take a proactive approach to understanding the specific experiences and needs of Aboriginal and Torres Strait Islander patients.

Specific standards and sources

International

- Convention against Torture, Article 2
- CRPD, Article 3
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 5(1) and (2)
- CRPD General Comment 6, including paragraphs 19 and 20).
- UN High Commissioner for Human Rights, Annual Report on Mental Health and Human Rights (2017) paras 15-16
- WHO QualityRights, Theme 2, Standard 2.1

National

- Tasmania's Anti-Discrimination Act 1998
- Tasmania's Mental Health Act 2013 Schedule 1(d)
- National Standards for Mental Health Services 2010 Standard 4

Topic 6: Safety, order and restrictive practices

Overarching Expectation: Patients are safe and live with a minimum level of security and restrictions. Understanding of any vulnerabilities, trauma and their diverse backgrounds informs all aspects of safety and security.

Expectations	Indicators
6.1 All searches are undertaken with proper legal authority, are proportionate to an identified risk and carried out with due regard to and respect for a person's dignity and privacy..	• Searches of people and their property are carried out in a way that minimises to the greatest extent possible the intrusion into a person's privacy, maintains their dignity and respects issues of gender, culture and faith. • Mental health facilities maintain an up-to-date policy on searching which is consistent with creating and maintaining a therapeutic environment in which care and treatment may take place and ensures the safety of patients, staff and the public as well as the security of the building. • Patients, staff and visitors are informed there is a policy on searching and are provided with its details in readily available and accessible formats. • Staff seek the consent of the person to be searched before conducting a search, and that person is kept informed as to what is happening and why. • Searches without a person's consent only take place if they are strictly necessary and if there is no clinical objection to doing so. • Records of all searches are documented and audited. Any patient items taken are appropriately logged and stored securely. Patient items are transferred with that patient if they move facilities. • Support is available for those who are affected by the process of searching.
6.2 All efforts are made to eliminate the use of restraint. Restraint is only used as a matter of last resort, for the shortest time	• Facilities are making efforts to reduce the use of restraint and aim towards its elimination. • Restraint is never used to punish or with the intention of inflicting pain, suffering or humiliation.

possible and causes the minimum interference possible with a persons' autonomy, dignity and privacy.	• Restraint is only used where there is a real possibility of harm to the person or staff, the public or others if no action is taken. • Restraint is only ever used as a last resort and alternatives to restraint are in place and widely used. Forms of restraint that can cause harm such as restricting circulation or breathing are not used. • The nature of the techniques used to restrict are proportionate to the risk of harm and its seriousness. • Any restriction is the least restrictive option and causes the minimum interference to a person's autonomy, privacy and dignity. • Any restriction is imposed for no longer than absolutely necessary. • All incidences of restraint are formally and transparently documented and audited including a record of the reasons for the use of restraint, its authorisation, how it was implemented and the patient's response. • There is a debrief, which includes discussion and provision of support, after each episode of restraint which involves the patient. • Staff receive training in relation to alternatives to restraint including de-escalation techniques as well as in the use of safe restraint techniques. • Preventative strategies aimed at minimising the use of restraint are in place in relation to those patients who are assessed as being likely to present with behavioural disturbances and which meets the unique of each patient. • Policies concerning use of restraint are kept under ongoing review to ensure consistency with best practice and human rights standards. • No form of restraint is ever used to manage patients as a substitute for adequate staffing or facility design.

6.3 Seclusion All efforts are made to eliminate the use of seclusion. When used, it is only as a last resort, for the shortest time possible and causes the minimum interference possible with a person's autonomy, dignity and privacy. Solitary confinement is never used.	• Facilities are making efforts to reduce the use of seclusion and aim towards its elimination. Alternatives to the use of seclusion are in place and widely used. • Seclusion is never used to punish or as a threat or with the intention of inflicting suffering or humiliation. It is never used to manage self-harming behaviour. • Informal seclusion is never used. • Seclusion is only used when absolutely necessary and all less restrictive ways of managing patient behaviour have been thoroughly considered and explored • Seclusion causes the minimum interference to a person's autonomy, privacy and dignity, for example seclusion settings provide adequate toileting facilities. • Seclusion is not imposed for any longer than absolutely necessary. • All efforts are made to mitigate the potential harm of seclusion. • Patients in seclusion have access to appropriate sensory stimuli. • All incidences of seclusion are formally and transparently documented and audited and include a record of the reasons for its use, the efforts made to avoid it, its authorisation and any reviews, and how the patient's needs were met during the period of seclusion. • Every incidence of seclusion has an exit strategy and target end point that is known and understood by the patient. • Where patients request or seek to be isolated, efforts are made to identify the reasons for this and address the root causes. • There is a debrief involving the patient at the end of any period of seclusion, which includes discussion and provision of support and ways to avoid isolation in future. • Staff receive training in relation to alternatives to seclusion.

	• Policies regarding the use of seclusion are kept under ongoing review to ensure consistency with human rights standards and best practice. • Seclusion is never used because of inadequate staffing or facility design.
6.4 Security and safety in the facility: Patients are held in the least restrictive level of security possible and moved promptly where their level of risk changes. Decision-making is fair and transparent. Conditions in the facility ensure security without unnecessarily restricting liberty.	• Conditions of enhanced security are used only in exceptional and individually justified circumstances, where all other options have been exhausted. • Decisions made to impose enhanced security, or increase or decrease security levels, are clearly recorded; patients understand what steps they must take to come out of enhanced security and are encouraged to do so. • Decisions around security levels are made fairly. • Delays in moving between security levels are monitored and raised with appropriate authorities. • Patients are aware of specific steps they need to achieve to come out of enhanced security. • Voluntary patients can leave the mental health facility without restriction when they wish to do so.
6.5 Suicide prevention: All mental health facilities provide a safe and therapeutic culture which prioritises the assessment and minimisation of the risk of deliberate self-harm and suicide.	• The environment minimises to the fullest extent possible the risk of self-harm and suicide. • Patients are assessed regarding their risk of self-harm and suicide at appropriately regular intervals bearing in mind particular times and events which may escalate these risks. • Staff regularly check on patients according to their assessed risk of self-harm and suicide, particularly in more private areas of a facility, while being mindful to minimise intrusion into a patient's privacy as much as possible. • The use of tear-proof clothing is never a first-line response to risks of self-harm or suicide and should never be used as a substitute for enhanced levels of observation and support. Its use is proportionate to the assessed risk and documented evidence shows it is used only as long as absolutely necessary. Where

	used it should fit the patient so as to preserve their dignity. It should never be used in seclusion.

Explanatory note

It is the responsibility of mental health detention facilities to keep all patients safe, including those who are at risk of behavioural disturbances. If all the measures set out in these expectations are met this will contribute to a safe environment. It is also crucial that the therapeutic purpose of detention informs all aspects of safety and order. These issues are integral to some of the most fundamental human rights standards including the protection against torture and ill treatment, the right to life, the right to equality and non-discrimination, the right to privacy and protection of physical and mental integrity.

Restrictive measures including restraint and seclusion can cause harm. International human rights standards set a clear direction towards their reduction and eventual elimination, requiring demonstrable steps to be taken towards this aim. Where unavoidable as a last resort, any restrictions or security measures should be kept to a minimum, individually justified and subject to clear and accountable processes. The expectations and indicators on restraint apply across all forms of restraint including chemical, mechanical and physical methods and apply to all of those involved in restraint.

Specific standards and sources

International

- IPPR Art 6, 7, 10,17, 26
- CPRD Art 3, 5, 12, 15, 16, 17
- UN 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 Re 37/194: Principle 5
- WHO QualityRights Tool Kit: Theme 4
- ECHR Research report, Rights of persons in relation to involuntary placement and treatment in mental healthcare facilities, para .32, with reference to M.S. v. Croatia (no.2) and Aggerholm v. Denmark.
- UN Special Rapporteur on Torture, report on solitary confinement (2011)
- Mandela Rules
- Approach of the SPT to persons institutionalised and treated medically without informed consent (paras 9, 10).

National

- Tasmania's Mental Health Act Part 3 Division 5 (force, seclusion, restraint – involuntary patients), Part 3 Division 7 (patient rights – involuntary patients), Part 5 Division 3 (force, seclusion, restraint – forensic patients) Part 5 Division 6 (Further rights – forensic patients); Service delivery principles 1(a), 1(b), 1(c), 1(f), 1(g) 1(j) 1(m).
- Office of the Chief Psychiatrist (Tasmania), Standing Orders and Clinical Guidelines 9 (seclusion), 10 (chemical restraint), 10A (mechanical and physical restraint) National Standards for Mental Health Services 2010, Key Principles, Standard 2 (Safety).
- Australian Charter of Healthcare Rights: Headings on safety, respect & privacy.
- Australian Safety and Quality Framework for Health Care (Australian Commission on Safety and Quality in Health Care) Principle 3: organised for safety.

Topic 7: Life in detention

Overarching Expectation: An environment that promotes dignity, respect, autonomy, well-being and recovery.

Expectations	Indicators
7.1 Staff engage with all those within their care with dignity and respect.	• Patients are treated appropriately and respectfully by staff who support the creation of a therapeutic and recovery focussed environment. • Staff listen to and act on patient views to the fullest extent possible. • There is an effective procedure by which patients can raise complaints about staff behaviour.
7.2 There is access to meaningful activities.	• . A range of regularly scheduled activities are available that are relevant and age appropriate. • Activities are available with a view to supporting patients in their recovery. • Space is provided that is specifically designated for leisure activities. • Outdoor space is available to be used for recreation and social interaction, and activities are scheduled to facilitate this. • Rules and schedules for accessing different areas and activities are understood and adhered to. • Patients can access activities in the community, information is provided about such activities and are patients facilitated to attend these.
7.3 Adequate amounts of nutritious food which promotes health and wellbeing are available.	• Safe drinking water and nutritious food of sufficient quality and quantity is available to all patients. • There are varied choices regarding food and drinks. • Patients have choice and input about what, when and where they can eat. • Patients can access dietary advice that takes into account their individual health needs. Patients have access to food options that satisfy any recommendations included in that advice.

	• Patients have independent access to food outside of mealtimes. • Food is available that meets the religious, cultural and personal preference of patients.
7.4 There is access to appropriate clothing and laundry facilities.	• Patients are able to wear their own clothes. • If patients are unable to wear their own clothing they are provided with good quality clothing that meets their needs and preferences and is suitable for the climate. • There are adequate laundry facilities and practices.
7.5 There is timely access to personal possessions and property.	• Patients can access their own possessions in a timely way. • There are adequate and dignified arrangements for the storage (and transfer where necessary) of patients' personal possessions.
7.6 Patients can freely practice their religion and take part in customs in accordance with their cultural belief or background.	• Patients have access to people who can provide cultural and/or spiritual support. • Patients are provided with appropriate materials, opportunities and private space to engage in religious and/or cultural practices to the fullest extent possible.

Explanatory note

The way patients experience life in detention engages several fundamental human rights standards. This includes the prohibition on torture and ill treatment, which is closely bound up with the respect for human dignity. It also includes the protection of privacy and physical and mental integrity, which are associated with individual autonomy including the freedom to make one's own choices. These are human rights which the state must refrain from breaching (known as negative obligations) but which the state must actively protect by taking positive measures (known as positive obligations). Detention monitoring bodies need to adopt a range of different methods to capture these issues fully, including speaking to patients in private, speaking to families/carers, observing staff/patient relations and looking at documentary sources of evidence.

In mental health facilities all patients must be treated with humanity, dignity and respect which reflects and meets different individual needs and abilities and promotes wellbeing and recovery. This gives a strong indication that blanket approaches to interaction, care and treatment should be avoided. Patients should be able to live their lives as they choose to the greatest extent possible and have their basic needs met in a way that is humane and protects their dignity. For example, there should be a recognition that food is an important aspect of personal identity and dignity and this should be reflected in practice around food provision and choice.

Specific standards and sources

International

- ICCPR – Art 7, Art 10(1), Art 11.
- Human Rights Committee, General Comment on Art 10 of ICCPR, 10/04/1992.
- ICSECR – Art 11.
- CRPD – Art 3, Art 5, Art 12, Art 15, Art 16, Art 17, Art 19, Art 22, Art 26, Art 28, Art 30.
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment – Principle 1, Principle 6.
- UN Principles for the protection of persons with mental illness: Principle 1, Principle 8, Principle 9, Principle 11, Principle 13.
- Council of Europe, Committee of Ministers, Recommendation no REC (2004)10 concerning the protection of the human rights and dignity of persons with mental disorder: Article Art 3, 4, 7, 8, 9.
- WHO QualityRights Toolkit, Theme 1, 3, 4 & 5.

National

- Tasmania's Mental Health Act 2013 s 62(a), (62(b), 62(h), 62(j), 62(k). Service Delivery Principles 1(a), 1(b), 1(d), 1(j), 1(m)
- National Standards for Mental Health Services 2010. Key principles, 1 (rights and responsibilities), Standard 3 (Consumer and carer participation), Standard 4 (Diversity responsiveness), Standard 6 (Consumers).
- Australian Charter of Healthcare Rights: Headings on respect, partnership & privacy.

- Australian Safety and Quality Framework for Health Care (Australian Commission on Safety and Quality in Health Care) Principle 1: Consumer Centred.

Topic 8: Leadership and culture

Overarching Expectation: The leadership and culture in places of mental health detention promotes and protects the rights of patients.

Expectations	Indicators
8.1 Leaders are committed to and take responsibility for providing safe, high quality, person centred, trauma informed care.	• There are appropriate levels of staffing and other resources to provide care and treatment which is safe, high quality, person centred and trauma informed. • Staff receive regular training to ensure cultural competence and the ability to provide care and treatment which is safe, high quality, person centred and trauma informed. • Leaders are in touch with what happens on a day-to-day basis in the unit, including issues raised through complaints and the challenges faced by staff. • There is a commitment to quality improvement which is based on understanding of patient experience, the strengths and weaknesses of the relevant facility and where outcomes need to improve. • External scrutiny is welcomed and encouraged by those in leadership positions. Recommendations made by external bodies inform changes to practice and service improvement. • Leaders ensure effective, accurate reporting in relation to all safety (including sexual safety) incidents and provide rigorous management scrutiny and oversight of the same. • There are robust disciplinary procedures to deal with staff underperformance and allegations of abuse. • Whistleblowing procedures are known, understood and trusted by staff.
8.2 Leaders are committed to and promote policies, practices, strategies and behaviours which respect diversity and create an inclusive	• Leaders and staff model non-discriminatory attitudes and behaviours. They address any evidence of discriminatory attitudes or behaviours through appropriate procedures. • Fair and non-discriminatory processes are deployed at all levels within a facility including when meeting the

and organisational culture.	needs of people with an Aboriginal or Torres Strait Islander background • Leaders proactively seek engagement with patients with an Aboriginal or Torres Strait Islander background, their families and their communities with the aim of building trust and to inform service delivery and co-design.
8.3 Leaders demonstrate, operationalise and promote a human rights based approach to providing care and treatment.	• There is a demonstrable commitment from leaders to treating all patients with dignity and respect. • Staff understand and share the aim of delivering a human rights based approach to care and treatment. • Staff receive training and information regarding relevant human rights standards, including the prohibition against torture and other forms of cruel and inhuman and degrading treatment and the rights of persons with disabilities. Such training emphasises how human rights fundamentally underpin the provision of safe, high quality, person centred, trauma informed care and treatment.
8.4 People with lived experience are involved in governance and decision making processes. Relevant to mental health detention.	• Appropriate efforts are made to secure lived experience representation at all levels of organisational governance.

Explanatory note

Leadership and organisational culture must underpin efforts to meet all of the expectations in this document. The expectations in this section focus on specific areas where the approach of leaders and the organisational culture are crucial to the prevention of torture and ill treatment. The term “leader” refers to anyone with leadership or management responsibility in the facility and wider system.

Specific standards and sources

International

- WHO Quality Rights, all themes.
- UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), Approach of the SPT to prevention (30/12/2010) paragraph 5.

National

- Tasmania's Mental Health Act 2013, Schedule 1 (Mental health service delivery principles) and sections on the rights of patients (in particular s62 and s108).
- National Standards for Mental Health Services 2010 Standard 1 (rights and responsibilities), Standard 6 (consumers).

Tasmanian NPM National Preventive Mechanism

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Appendix 7: Draft Expectations on the treatment of people deprived of their liberty in adult custodial centres

Tasmanian NPM National Preventive Mechanism

Expectations on the treatment of people deprived of their liberty in ADULT CUSTODIAL CENTRES

Version 1 - October 2023

Tasmanian NPM
National Preventive Mechanism

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Introduction

ADULT CUSTODIAL CENTRES

Deprivation of liberty settings covered by these expectations	**All adult custodial centres including prisons, remand centres, and related transport**
Expert engaged	**Emeritus Professor Neil Morgan**
Date	**October 2023**

United Nations Convention against Torture

The United Nations General Assembly 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.

Optional Protocol to the Convention against Torture ('OPCAT')

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 as Australia's NPM. The States and Territories are 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 is developing a set of 'Expectations' for every place of detention that he will examine as Tasmanian NPM. These Expectations are backed up by more detailed 'indicators' to help assess compliance.

For many places of detention, OPCAT implementation will be the first time there has been a system of independent, visit-based inspections. However, prisons, youth detention and associated services already have a well-established inspection regime which reports to the Tasmanian Parliament - the Office of the Custodial Inspector.

Office of the Custodial Inspector

The Custodial Inspector Act was enacted in 2016 and Mr Connock was appointed as the inaugural Custodial Inspector. The Custodial Inspector's functions include:

- Mandatory and occasional inspections and reviews of each custodial centre in Tasmania.
- Preparing and publishing guidelines in relation to the conduct of inspections and reviews.
- Reporting to the Minister and Parliament on inspections and any issues or general matters relating to the Inspector's functions.
- Providing an annual report to Parliament.
- Providing advice or recommendations relating to the safety, custody, care, wellbeing and rehabilitation of prisoners and detainees.
- Providing information relating to education and programs to assist in the rehabilitation of prisoners and detainees.

The Custodial Inspector's powers include the right to visit and examine custodial centres and the right to access documents and information relating to custodial centres or persons in custody.

Relationship between Custodial Inspector and the NPM

The Custodial Inspector will be a key part of Tasmania's NPM. The examination function under OPCAT is like the Custodial Inspector's inspection function; both are proactive and focus on preventing ill treatment of people in places of detention. The Custodial Inspector already visits custodial centres so they will work on behalf

of the Tasmanian NPM to fulfil that role's functions in these places as well as fulfilling their own role. The Custodial Inspector will also examine police and court custody settings on behalf of the Tasmanian NPM.

The Custodial Inspector will still have to meet their legal obligations under the Custodial Inspector Act. Notably, it is mandatory for the Custodial Inspector to inspect every custodial centre at least once every three years whereas the Tasmanian NPM has no set visit timeframe. These expectations will form the foundation of those inspections.

These Expectations and Indicators

Background

These Expectations are designed to meet the requirements of both the Custodial Inspector Act and OPCAT. They replace the 'Inspection Standards for Adult Custodial Centres in Tasmania', issued by the Custodial Inspector in 2018. They reflect national and international instruments, including:

> *The Nelson Mandela Rules* (The United Nations Standard Minimum Rules for the Treatment of Prisoners, 2015).
>
> *The Bangkok Rules* (The United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders, 2010).
>
> *Guiding Principles for Corrections in Australia* (2018 version). These Principles were developed and agreed by all Australian correctional services departments.
>
> *The European Prison Rules* (2020 version). The Rules apply to all 47 countries who are part of the Council of Europe.
>
> *The Yogyakarta Principles* (Principles on the application of international human rights law in relation to sexual orientation and gender identity, 2017 version)[1].

Structure

The Expectations are arranged thematically to ensure that people have easy access to specific areas and to support the Custodial Inspector's established thematic approach to inspections. There are three Parts to the Expectations:

- Part one lays out the general principles that are relevant to all persons in custody.

[1] These principles have not been adopted by the United Nations but offer useful guidance.

- Part Two provides supplementary Expectations for particular groups of people: Aboriginal people, remand prisoners, younger prisoners, older prisoners, women, LGBTQIA+ people, people with disabilities, and foreign nationals.
- Part Three covers planning, human resources, governance and sustainability.

Role of Expectations and Indicators

The Expectations are the criteria against which we assess the treatment of prisoners and the performance of prisons. Most of the Expectations are supported by a list of Indicators.

Indicators are a guide, not a 'tick-a-box' checklist. The key question is whether the Expectation is met, not whether the Indicators are met. For example, a facility may meet an Expectation in a different way from what the Indicators suggest. We may also decide to use different Indicators if circumstances require this.

Future

Corrections is always evolving. To remain contemporaneous and relevant, we intend to review these Expectations after they have been in operation for a few years.

Acknowledgments

We have made extensive use of the Expectations and Standards in other jurisdictions. In particular, we have drawn on the Office of the Inspector of Custodial Services, Western Australia: *Revised Code of Inspection Standards for Adult Custodial Services* (2020).

We also acknowledge the New Zealand Office of the Inspectorate *Te Tari Tirohia Inspection Standards* (2009) and HM Inspectorate of Prisons, *Expectations for men and women in prisons* (2014 and 2017).

This is an evolving document.

This is the first draft of the Tasmanian NPM's *expectations for the treatment of people deprived of their liberty in adult custodial centres*. These expectations will be updated in response to feedback and changes in international and local best practice. The Tasmanian NPM welcomes feedback from all stakeholders on the draft document, particularly people with lived experience

PART ONE:

EXPECTATIONS FOR ALL PRISONERS

Topic 1: Core Principles

The word 'prisoner' refers to all people held in Tasmanian prison facilities and transport vehicles. It includes people who are on remand, sentenced or appealing against conviction or sentence.

Prisoners are generally adults. However, on occasions, young people under the age of 18 are held in adult custodial facilities.

These expectations cover places and services run by the Tasmania Prison Service and by other custodial service providers and contractors.

The following principles underpin all expectations and Indicators:[2]

- All prisoners are treated with respect for their inherent dignity and value as human beings.
- Prisoners are protected from, and not subject to, any cruel, inhuman, or degrading treatment or punishment.
- Prison operations, procedures and activities reflect the fact that people are sent to prison as punishment, not for punishment.
- Every person in prison is safe and secure. This includes prisoners, staff, service providers, and visitors.
- The prison promotes personal responsibility, self-respect, and self-dignity, minimising the differences between life in custody and life at liberty.
- Prison operations, procedures and activities are age, gender and culturally appropriate.
- Prisoners are not discriminated against on any grounds, including race, colour, gender, gender identity, intersex status, sexuality, disability, language, religion, political opinion, national or social origin, property, birth, or any other status.
- Prisoners' individual needs are catered for, particularly those prisoners who are more vulnerable, more at risk, or have additional mental and physical health needs.
- Prisoners can access appropriate rehabilitation and reintegration activities, programs, and services to support their release.

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[2] NMR 1, 2, 3, 4, 5, 34
GPCA 2.1.1

- People working with prisoners have the right attitudes and are appropriately trained.
- Effective organisational leadership is backed by good on-site management.
- Record keeping is accurate, detailed, transparent and accountable.

Topic 2: Early days in custody

2.1 Transfer into Prison Service Custody

Expectations	Indicators
Expectation 2.1.1 There is an effective and respectful handover of the prisoner between police or other service providers and the Tasmania Prison Service	• People are only admitted to prison with valid documentation. Clear records are kept. • The prisoner is treated with respect. • The process is conducted expeditiously. • The party handing over the prisoner passes all relevant information to the Prison Service, including any indications of health or self-harm risks.

2.2 Reception and admission[3]

Expectations	Indicators
Expectation 2.2.1 Prisoners feel safe and are treated with decency and respect. Their needs and risks are identified and supported.	• Infrastructure is clean, hygienic, and fit for purpose. • Staff provide a welcoming and supportive environment. • Newly arrived prisoners' needs and risks are promptly assessed, especially risks of suicide, self-harm, and harm from others. • The prison checks for outstanding fines or warrants and advises the prisoner. • Interviews are conducted in a way that safeguards privacy. • Relevant information - and only relevant information - is passed on to unit staff. • Prisoners are informed of their rights and responsibilities in a language and format they understand, using accredited interpreters if required. • Prisoners receive basic supplies and can shower on their first night.

[3] NMR 7,54, 55, 62, 68
GPCA 1.2.2, 2.2.3
EPR 15.1,15.3, 16(d), 19.2, 24.8, 24.9, 37.1

	• New prisoners are separated from the general population. • Staff carry out regular welfare checks. • Staff are appropriately trained to manage people who are anxious, distressed, or uncooperative.
Expectation 2.2.2 Newly admitted prisoners can promptly inform family or other key contact persons and legal services of their detention and access services to help with family, domestic, social and financial matters.	• Prisoners can immediately inform their family or other key contact persons of their imprisonment. Free telephone calls are given. • If contact cannot be made, repeated efforts are made until notification is successful. • The Tasmanian Aboriginal Legal Service (TALS) is informed as soon as Aboriginal people are received into prison. • Additional support is provided to people who have no external support. If required, consular support is obtained. • Prisoners can promptly access services for their children, dependents, and pets, and to deal with housing, financial or work-related issues.

2.3 Physical and mental health screening[4]

Expectations	Indicators
Expectation 2.3.1 During reception, prisoners are screened to assess their physical and mental health. If problems are identified, appropriate measures are implemented.	• Health screening is conducted by people with appropriate physical and mental health qualifications. • Prisoners are offered an appointment with a general practitioner within 28 days of coming into custody. • Urgent health needs are prioritised. • Prisoners taking essential medication are treated in a way that ensures continuity of treatment. • Staff are informed of prisoners' health risks in a way that safeguards patient confidentiality.

[4] NMR 30, 80.2
GPCA 2.2.4, 2.3.3, 2.3.7
EPR 15.1(e), 15.1(f), 16(a), 38.3, 42.1

	• Interpreters are used as necessary, • Prisoners are informed of the results of screening, including detection of any illness or medical condition. • Prisoners who cannot be screened during reception are kept safe until their health status is known. • Prisoners know how to make future medical appointments.

2.4 Orientation[5]

Expectations	Indicators
Expectation 2.4.1 Prompt and supportive orientation processes ensure that prisoners understand life in prison, including their rights and responsibilities.	• Prisoners promptly receive comprehensive information about prison rules, regime, and services. • Up to date orientation information is prominently displayed and accessible. • Information is available in a language and format that prisoners can understand. • Staff are respectful to prisoners and engage with them to ensure they settle in safely. • Prisoners understand their obligations and the consequences of non-compliance. • Prisoners know how to access support, including counselling, peer support, and visiting agencies. • Prisoners know how to contact family and friends, and know that personal mail and telephone calls are monitored. • Prisoners know how to access internal and external complaints mechanisms and their right to communicate confidentially with official visitors, the Custodial Inspector, the Ombudsman, the Integrity Commission, the Health Complaints Commissioner, the Anti-Discrimination Commissioner and the Commissioner for Children and Young People.

[5] NMR 54, 55
GPCA 2.2.1
EPR 15.2, 30

Topic 3: Contact with the outside world[6]

3.1 Family and Friends

Expectations	Indicators
Expectation 3.1.1 Prisoners can maintain and develop relationships with family, friends, and community.	• Contact between prisoners and their family and friends is encouraged and facilitated. • Contact is only restricted by risk assessments. Restrictions are proportionate to the risk. • The prison makes use of modern technologies to promote contact. • Prisoners are encouraged to have visits with their children unless this is not in the child's best interests.
Expectation 3.1.2 Visiting arrangements are timely, respectful, and flexible.	• Sentenced prisoners are allowed a minimum of one visit per week. • Unconvicted prisoners can receive visits every day if this does not unfairly affect the visits of others. • The prison ensures that visits start and finish on time. • Visitor searches are conducted respectfully. • Prisoner searches and security arrangements are respectful and proportionate. • The prison allows flexible visit arrangements in cases of need, such as additional or extended visits at times of family bereavement and for visitors from inter-state or overseas. • Prisoners and visitors are informed in advance if a visit is cancelled.
Expectation 3.1.3 There is an efficient visit booking system and a welcoming,	• The visit booking system is simple, accessible, and efficient. • There is information on transport services, visiting hours, and what visitors can expect.

[6] NMR 58.1, 60, 63, 70, 80.2, 106
GPCA 2.1.10, 2.3.7, 2.3.15, 3.1.10, 3.2.7, 5.1.4, 5.2.2
BR 28
EPR 24.1-7, 24.10, 38.3

child-friendly visitors' centre.	• There are arrangements to help visitors to get to and from the prison if public transport is not viable. • Visitor parking and access arrangements are appropriate, especially for visitors with children or a disability. • Family support services are available before and after visits. • Amenities are welcoming and child friendly. • Visitors can leave property in lockers.
Expectation 3.1.4 Prisoners receive contact visits unless significant security or safety risks require non-contact visits.	• Prisoners generally receive contact visits. • Non-contact visits are only authorised if intelligence shows a significant safety or security risk. • Use of non-contact visits is reviewed regularly. • Prisoners are informed if their visit is changed to non-contact. • Non-contact visit booths are not unduly harsh and meet demand.
Expectation 3.1.5 Visit facilities are comfortable, pro-social, and safe.	• The visits area is not stark or sterile. • There are comfortable tables and seats. • There is adequate disability access. • There are clean and hygienic ablutions with hand washing facilities. • There is a suitable area to feed and change young children. • Clean play facilities, equipment, and toys are available for children, and for child-parent interaction. • Visitors and prisoners can access refreshments. • Security arrangements do not unduly encroach on privacy and restrictions on physical contact are not excessive.
Expectation 3.1.6	• There are electronic options to maintain family contact, including secure e–visit and e-mail systems. • Prisoners know their entitlements.

The prison arranges e-visits, phone calls, mail, and email contact.	• There are enough phones and e-visit facilities, and they are reasonably private. • Costs are kept to a minimum. • Prisoners can send as many letters as they can afford. There are no restrictions on how many they receive. • Outgoing mail is sent within 24 hours. Incoming mail is received by the prisoner within 24 hours of arrival. • Prisoners can access phone numbers of outside organisations. • Prisoners can access a phone interpreter service. • Prisoners who are unlikely to get regular visits due to distance receive extra calls and/or allowances.
Expectation 3.1.7 Security measures prevent the inappropriate use of phone, mail, e-visit, and email systems but do not unduly interfere with privacy.	• Recipients of prisoner communication approve of the contact. • Prisoners know their mail and phone calls can be security checked and recorded. • Mail is only opened to check for unauthorised enclosures. Valid reasons must exist to read prisoners' mail. • Staff observe confidentiality.

3.2 Visits between people in custody

Expectations	Indicators
Expectation 3.2.1 The prison facilitates visits when both parties are in custody.	• The prison facilitates visits between prisoners in different prisons and visits between prisoners and young people in detention.

3.3 Visiting sick relatives and attending funerals

Expectations	Indicators
Expectations 3.3.1 Prisoners can visit sick relatives and attend the funeral of a family member, subject to risk assessments.	• The prison advises prisoners promptly about the death or serious illness of a family member, provides support, and monitors the prisoner's wellbeing. • Subject to the necessary approvals, prisoners can visit sick relatives and can attend funerals, burials, and other occasions of special family significance. • Approval processes recognise the special kinship and family obligations of Aboriginal prisoners. The prison seeks advice from relevant community members as required. • Escorting staff are trained, sensitive, and culturally aware. Any necessary restraint use is as discreet as possible. • Where attendance is not possible, the prison provides appropriate internal supports to assist with grieving.

3.4 Knowing what's happening in the world

Expectations	Indicators
Expectation 3.4.1 Prisoners can keep up to date with news and current events,	• Prisoners can access information about news and current events through various mediums.

Topic 4: Resolving legal issues, requests and complaints

4.1 Access to lawyers and legal resources[7]

Expectations	Indicators
Expectation 4.1.1 Prisoners have confidential access to legal representatives.	• Prisoners are assisted to communicate with a legal representative of their choosing. • Prisoners are given help to find a legal representative if they do not have one. • Contact can be face-to-face, by telephone, mail, or by audio-visual link. • Prisoners can consult their legal representatives as often as required. • Facilities are available for legal representatives to review digital evidence with prisoners, such as police records of interview and CCTV footage. • Contact with legal representatives is legally privileged and confidential.
Expectation 4.1.2 Prisoners have access to legal resources.	• The library provides ready access to legislation, regulations, rules, and policy documents relating to the management, rights, and entitlements of prisoners. • Prisoners can access up-to-date Australian legislation and case law electronically and/or in hard copy. • Prisoners can access other legal resources relevant to their case.

4.2 Court appearances

Expectations	Indicators
Expectation 4.2.1 Prisoners are helped to prepare for court and tribunal hearings.	• Prisoners who have unresolved legal matters (including criminal law, family law, or business-related issues) have adequate time and facilities to prepare their case. • A computer and printer are available to prepare legal correspondence and documents.

[7] NMR 19.3, 20, 61, 119.2, 120
GPCA 2.3.5
EPR 20.4, 23.1, 23.2, 23.4, 23.6, 70.7

	• Remand prisoners can wear their own clean and pressed clothing when appearing before a court or tribunal. • The prison maximises the use of video-links without impinging on a prisoner's right to appear in person.

4.3 Requests and complaints[8]

Expectations	Indicators
Expectation 4.3.1 Every prison has a prisoner advisory group which meets with management to discuss concerns and issues amongst the prisoners.	• Every prison has a prisoner advisory group which reflects the demographics of the population of the prison. • The purpose of this group is to raise issues of general concern with prison management, not to pursue individual grievances. Examples include food, clothing, bedding, health services and access to recreation and employment. • Management provides feedback on the matters raised and reasons for their decisions.
Expectation 4.3.2 Internal request and complaint procedures are understood, timely, and effective.	• All prisoners, including people with low-level literacy or cultural barriers, know how to make requests and complaints. They can access information in a language and format they understand. • If required, prisoners receive help to make requests and complaints. • Staff and prisoners try to resolve issues at the lowest level before making a written request or complaint. • Requests and complaints can be lodged confidentially. • Complaints are investigated promptly and fairly. • Responses are thorough, and easy to understand, and address the issues raised. • All complaints are accurately recorded, including those resolved at the lowest level.

[8] NMR 8(d), 80.2, 56.1, 56.3, 56.4, 57
GPCA 1.3.1, 1.3.2, 1.3.3, 2.3.7

	• Prisoners know how to appeal decisions internally and through an independent authority.
Expectation 4.3.3 Prisoners can make requests and lodge complaints without being victimised.	• Prisoners are not victimised or disadvantaged for making complaints. • Prisoners are not prevented from using complaints procedures or encouraged to withdraw complaints. • Complaints about staff are investigated by an appropriately senior and independent person.
Expectation 4.3.4 Prisoners have confidential access to relevant external organisations.	• Prisoners can lodge complaints or concerns with recognised external organisations, including the Ombudsman, the Health Complaints Commissioner, the Custodial Inspector, the Integrity Commission, the Anti-Discrimination Commissioner, and the Commissioner for Children and Young People. • The prison provides distinctly marked envelopes and special post boxes for prisoners to send confidential mail to these organisations. The envelopes and boxes are not kept or monitored by staff. • Confidential mail is collected and forwarded without unnecessary delay. • Prisoners can also contact recognised external organisations by secure and confidential phone lines.
Expectation 4.3.5 The Prison Service promptly and fully addresses the issues raised by external organisations.	• The Prison Service respond promptly to external authorities' investigations and recommendations. • The responses fully address the issues raised and, when necessary, outline remedial measures and timelines for implementation.

Topic 5: Conditions, clothing, bedding, and food

5.1 Infrastructure[9]

Expectations	Indicators
Expectation 5.1.1 The physical environment is well designed and fit for purpose.	• The infrastructure is appropriately designed and constructed. • The built environment is not harsh or oppressive. • There is good line of sight. • Climatic controls guard against extreme temperatures, especially in living areas. • Areas used for industry and training have adequate ventilation. • There are storage areas for chemicals and other hazardous items.
Expectation 5.1.2 Infrastructure is well maintained and safe.	• Maintenance is proactive as well as reactive. • Hazards are dealt with promptly. • Equipment is properly maintained and cleaned.
Expectation 5.1.3 Cell sizes comply with the Standard Guidelines for Prison Facilities in Australia and New Zealand 1990.	• Cells meet or exceed the standards set out in the Standard Guidelines for Prison Facilities in Australia and New Zealand 1990.[10]

5.2 Environmental health and hygiene

Expectations	Indicators

[9] NMR 13, 14, 15, 16, 17, 18
GPCA 1.1.7, 2.1.2, 2.1.4, 3.2.2, 4.1.7, 4.2.6
EPR 18.1, 18.2, 19, 51.1

[10] https://www.ics.act.gov.au/__data/assets/pdf_file/0012/1311123/standard_guidelines_prison_facilities_1990small.pdf. See also Office of the Inspector of Custodial Services Western Australia, *Western Australia's Prison Capacity* (2016): https://www.oics.wa.gov.au/wp-content/uploads/2016/12/Prison-Capacity-Review-Final.pdf

Expectation 5.2.1 The physical environment is safe, clean, and meets public health standards.	• The infrastructure complies with environmental health regulations. • Prisoners live, work, and eat in a hygienic environment that is properly maintained and cleaned. • Good quality drinking water is available. • Food safety standards are met. • The prison has robust infection prevention and control measures.[11] • Smoking is prohibited.
Expectation 5.2.2 Prisoners are encouraged to keep themselves, their cells, and communal areas clean.	• The daily cleaning regime maintains proper standards of hygiene. • Bathrooms and toilet facilities are accessible, clean, and safe. • Prisoners receive basic hygiene and toiletry products, including sanitary items, for personal use. • Prisoners can shower or wash in private every day except in exceptional circumstances. • Prisoners can access cleaning materials to keep their cells and communal areas clean.

5.3 Clothing and bedding[12]

Expectations	Indicators
Expectation 5.3.1 Prisoners have decent quality clean clothing that is suitable for the climate and their needs.	• Prison issued clothing is in good repair and suitable for the climate. • Clothing fits properly and maintains dignity. • Prisoners have sufficient items for general use, work, and recreation. • Cultural and religious items of clothing are available unless there are strong reasons to the contrary.

[11] See also Expectations 10.1 and 10.2.

[12] NMR 19, 20, 21
GPCA 2.1.2, 4.2.4
EPR 19.7, 20.1-3, 21

	• Prisoners have access to laundry facilities sufficient for a daily change of clean clothes. • Prisoners receive new underwear on arrival in prison. • Prisoners' laundry is safeguarded from malicious tampering.
Expectation 5.3.2 Prisoners can wear non-prison clothing when attending court and on release.	• Prisoners can wear their own clothes when attending court in person or by video-link. • Prisoners' personal clothing stored at the prison is clean and well-presented when worn. • Family and friends can supply clothing for the prisoner to attend court or for release. • The prison provides non-prison clothing for prisoners who do not have access to their own clothes.
Expectation 5.3.3 Prisoners have a bed and clean bedding.	• Every prisoner has a bed. • Bunk beds are not used as a matter of routine practice. • If bunk beds are used, there is adequate space and ventilation, and safe access to the top bunk. • Clean bedding is provided for each new prisoner on arrival. • Bedding is in good repair and suitable to the climate. • Bedding is laundered weekly. • Mattresses and pillows are clean and provide adequate comfort and support. • Mattresses, pillows and bedding are durable and non-flammable. • Mattresses, pillows and bedding are replaced when worn or damaged.

5.4 Food and nutrition[13]

Expectations	Indicators

[13] NMR 22
GPCA 4.2.1, 4.2.2, 4.2.3
EPR 22.1, 22.3, 22.5

Expectation 5.4.1 There is a varied, healthy diet. Meals meet medical, religious, cultural, and dietary needs and preferences.	• Clean drinking water is available in the prison and for prisoners in transit or working outside the prison. • Menus are designed with advice from dieticians and nutritionists. • Fresh produce is used as much as possible. • Menus reflect climate and prisoner work requirements. • Prisoners can choose between food options. • The prison caters for medical diets. • Vegan and vegetarian lifestyle choices are catered for. • Religious and cultural requirements are observed. • Prisoners who miss normal mealtimes for reasons such as court appearances or offsite medical appointments receive meals at other times. • Meals prepared by prisoners in self-care units meet nutritional standards.
Expectation 5.4.2 Food preparation, storage and serving practices meet hygiene and safety standards.	• Prisoners and staff who work with food are trained, health-screened, and wear appropriate clothing. • Staff supervise the serving of food to prevent tampering and bullying, and to ensure portion control. • Prisoners eat with others in communal areas, wherever possible. • Areas where food or drinks are prepared or consumed meet hygiene and food safety standards. • The prison ensures that there are regular external food safety inspections.

Topic 6: Daily Life

6.1 General regime[14]

Expectations	Indicators
Expectation 6.1.1 The prison regime is purposeful and respectful and takes account of prisoner diversity.	• The prison has a balanced regime that meets the varied skills, capacities, needs, and interests of all prisoners. • The regime minimises the difference between life in prison and life in the community. • It maximises time out of cell. • It empowers prisoners to make positive choices and to be actively involved in purposeful activities.

6.2 Education and training[15]

Expectations	Indicators
Expectation 6.2.1 The prison delivers life skills courses.	• The prison offers life skills courses that are of practical value, including healthy lifestyles, budgeting, debt management, and legal rights and responsibilities. • Access is equitable and delivery is gender responsive and culturally appropriate. • There are enough courses to meet demand.
Expectation 6.2.2 Prisoners' learning abilities, needs and wants are promptly assessed.	• Prisoners' learning abilities, needs, and wants are assessed soon after they arrive in prison. • Prisoners actively participate in the assessment process. • Prisoners are informed of assessment outcomes and of the opportunities available to them.
Expectation 6.2.3 The prison provides a broad range of	• All prisoners are encouraged to participate in education and vocational training, including those on remand.

[14] NMR 3, 5.1, 11
GPCA 2.1.1, 2.1.3, 2.1.4, 3.1.1, 3.3.4
EPR 5, 18.8, 25, 49, 52.3, 102, 104.1
[15] NMR 4.2, 78, 87, 89, 92.1, 98.2, 98.3, 104
GPCA 5.1.6, 5.1.11, 5.1.12, 5.2.1
EPR 28.1, 28.2, 28.7(a), 89.1, 106

education and training opportunities relevant to prisoners' needs and interests and market need.	• Prisoners with low levels of literacy and/or numeracy can access education soon after they arrive in prison. • Education and training opportunities are gender responsive and culturally appropriate. • Education and training opportunities reflect personal interest and employability. • Wherever possible, they lead to formal qualifications. • Courses include social, technical, professional, and higher education options. • Resources are customised to suit the learning needs and styles of prisoners. • There are enough staff, physical locations, equipment and resources to meet demand. • There is continuity when prisoners move between prisons. • When possible, education is linked to community providers to allow continuity after release.

6.3 Employment[16]

Expectations	Indicators
Expectation 6.3.1 All prisoners can engage in purposeful work that increases their employability on release.	• All sentenced prisoners work or undertake education or training. • Remand prisoners are not required to work but do have access to meaningful work opportunities. • Work is constructive and enhances self-esteem and employability. It is not demeaning or pointless. • Employment opportunities are gender responsive and culturally appropriate. • Supervisors have appropriate qualifications, experience, and expertise.

[16] NMR 96, 97, 98, 99, 100, 101, 102, 104
GPCA 1.1.7, 3.3.10, 5.1.12, 5.1.13, 5.3.2, 5.3.3, 5.4.2, 5.4.3, 5.4.4
EPR 26, 105.2, 105.3

	• Work resembles work in the community and is of reasonable duration.
Expectation 6.3.2 Prisoner work is safe.	• Prisoner employment complies with Occupational Health and Safety Standards and with the National Code of Practice on Prison Industries and National Competition Policy. • All prisoners and staff have occupational health and safety training prior to, or early in their employment. • Prisoners are insured against industrial injury and disease.
Expectation 6.3.3 Prisoner work is not exploitative.	• Prison work is not undertaken for the private benefit of staff.
Expectation 6.3.4 Prisoners' work benefits the community and does not unduly affect local businesses.	• Prison-based industries and prisoners' community work do not unduly affect local business and employment. • Suitably assessed prisoners participate in community work outside the prison. • Local communities and not-for-profit organisations benefit from prisoners' community work.

6.4 Recreation and fresh air[17]

Expectations	Indicators
Expectation 6.4.1 All prisoners can spend at least two hours each day in the open air.	• All prisoners, including those who are subject to disciplinary sanctions or restrictive measures, can spend at least two hours per day recreating or relaxing in the open air. • The outdoor areas are of a suitable size for exercise, not oppressive, and allow prisoners to see the sky and get fresh air. • Access times are regular and predictable.

[17] NMR 4.2, 23, 64, 105,
GPCA 2.3.2, 2.3.6, 4.2.9, 5.3.2
EPR 27, 28.5

	• Prisoners do not have to choose between access to the open air and other important activities.
Expectation 6.4.2 Prisoners have regular access to exercise and other recreational activities out of their cell and in cell.	• The range of activities reflects the health and fitness needs of the population. • Protection prisoners have regular and equal access. • Recreational areas are fit for purpose, with adequate and safe equipment and shelter from the weather. • Outside exercise is only cancelled in severe conditions. • The prison encourages people to participate in physical education, fitness, team sports, and games. • Recreation options are gender responsive and culturally appropriate. • Passive recreation options, such as art and music, are available. Equipment is in good repair. • Prisoners can acquire personal development, skills, and training from recreational activities. • Approved prisoners can participate in structured recreational activities outside the prison.

6.5 Library

Expectations	Indicators
Expectation 6.5.1 Prisoners have regular access to a well-resourced library.	• Prisoners can regularly access a library. • The library has a wide range of physical and secure electronic resources that meets prisoners' needs. • Library resources are gender responsive and culturally appropriate. • The library encourages learning and social interaction in an informal and relaxed setting. • The library promotes literacy and numeracy, with resources that support education and training. • Prisoners have electronic or hard copy access to up-to-date legal resources.[18]

[18] See also Expectation 4.2.

6.6 Prisoners' property[19]

Expectations	Indicators
Expectation 6.6.1 Prisoners' property is securely stored. They can access it on reasonable request.	• Subject to security and volume considerations, prisoners can keep and receive property. • The prison has a list of allowed property that reflects the needs of the population. • All property is accurately recorded, and valuables are security marked. • Prisoners are compensated if possessions are lost or damaged in storage or in transit. • All property is returned to prisoners on release or transfer. • Fair and effective processes regulate the nature and amount of personal property held in cells. • Removal of property from cells is explained to prisoners and they can appeal against such decisions.

6.7 Incentives, gratuities and purchases[20]

Expectations	Indicators
Expectation 6.7.1 The incentive scheme is applied fairly, consistently, and transparently.	• Prisoners understand the incentives and earned privileges available to them, how to obtain them, and the behaviours that may result in them being lost. • All prisoners have equal opportunities to obtain incentives and earned privileges. • Prisoner behaviour is reviewed regularly so they can demonstrate their progress. • Prisoners know how to appeal against decisions about privileges and sanctions.

[19] NMR 67.1-3
GPCA 2.3.16
EPR 15.1(d), 31.1, 31.3, 31.7, 33.4
[20] NMR 95, 103,
GPCA 2.3.11, 4.2.8.
EPR 26.10, 26.11, 26.12, 28.4, 31.5, 105.4, 105.5

	• Changes to incentives or earned privileges are clearly communicated.
Expectation 6.7.2 The gratuity system is fair, transparent, and based on engagement and skill levels.	• Gratuities are accurately recorded and credited on time. • Different gratuity levels are applied fairly, based on skill and workload. • Prisoners with disabilities and prisoners from culturally diverse backgrounds have equal access. • Prisoners in education, training, and programs are eligible for gratuities. • Prisoners are not unduly penalised if the prison does not offer enough work, education, or programs. • Prisoners have easy access to accurate and up-to date records of their finances. • Prisoners are helped to budget and save money. • Visitors can deposit money into prisoners' accounts.
Expectation 6.7.3 Prisoners can purchase a range of items that meet their diverse needs.	• Prisoners can buy approved items through the prison canteen system, placing orders at least once a week. • New prisoners without private money can access an advance, with repayment staged over time. • The products meet the diverse needs of the population. • There is a wide range of approved hobby materials. • Prices are broadly equal to those in the community. • The prison consults prisoners about the range of goods available for purchase. • Prisoners are not bullied or intimidated and do not have their purchases stolen.

6.8 Getting support[21]

Expectations	Indicators
Expectation 6.8.1	• All prisoners have access to a peer support program.

[21] GPCA 5.4.4
EPR 50

There is an active and structured peer support program.	• The peer support group reflects the age and cultural diversity of the prison population. • It has access to prison management to raise concerns and issues. • Peer supporters are provided with incentives and gratuities for their work. • Peer supporters are used effectively in reception, orientation, and during first night arrangements. • Peer supporters are appropriately trained, including in self-harm and suicide prevention.
Expectation 6.8.2 The prison provides a range of supports internally, and from external service providers.	• A range of paid staff and people from eternal organisations provide support services to prisoners. • All prisoners have access to such services. • Services are designed to meet the needs of different prisoner groups. • As recommended by the Royal Commission into Aboriginal Deaths in Custody, the prison has Aboriginal Prison Visitors who provide spiritual support and link Aboriginal prisoners with their communities.

6.9 Religious and spiritual freedom[22]

Expectations	Indicators
Expectation 6.9.1 Freedom of religion is respected and facilitated. Prisoners of no faith can also access spiritual support.	• The prison has a tolerant approach to religious and spiritual diversity. • Prisoners can practice their beliefs fully and in safety. • Prisoners of faith have access to worship and faith-based groups and pastoral visits. • Prisoners of no faith can also access spiritual support. • There are dedicated facilities for quiet reflection. • Religious service times are advertised. Times do not clash with key regime activities.

[22] NMR 65, 66
GPCA 2.1.6
EPR 29.1, 29.2, 38.2

	• Staff supervision is respectful and proportionate. • The prison provides food which respects prisoners' religious dietary requirements. • Subject to risk, prisoners can obtain, and use publications, artefacts, and clothing of religious significance.
Expectation 6.9.2 Chaplaincy services provide support to all prisoners irrespective of faith.	• Prisoners of faith and prisoners of no faith have equal access to chaplains. • Chaplaincy teams establish and maintain links with faith communities outside the prison. • Chaplains offer help to all prisoners who have experienced bereavement or loss. • When a prisoner is near to death or has died, chaplains offer support to the prisoner, relatives, other prisoners, and staff. • Chaplains identify and challenge extremist ideologies that purport to be based on religious belief. • Chaplains help prisoners to pursue their faith and spirituality on release.

Topic 7: Rehabilitation and reintegration

7.1 Classification, sentence administration, and case management[23]

Expectations	Indicators
Expectation 7.1.1 People are held in custody and released in accordance with the law.	• People are only received into custody and released from custody with valid documentation. • Release dates and parole eligibility dates are accurately calculated. • Prisoners are never held beyond their date of release unless they request in writing to remain in prison overnight for travel or other compassionate reasons. • Prisoners facing immigration removal or deportation are only held after their release date if there is valid Commonwealth authorisation for their continued detention.
Expectation 7.1.2 Prisoners understand the details of their custody.	• Prisoners are told of the reason for their custody in a language and format they understand. • Prisoners know their key sentence dates, including potential parole and release dates. • Prisoners are informed of any court appearances. • The prison reconfirms all dates with the prisoner at least every six months and informs them of any updates.
Expectation 7.1.3 Assessment and classification systems are based on individual risk and need.	• Assessment and classification reflect the risks and needs of the individual prisoner. • Staff conducting assessments are adequately trained. • The system is accurate, timely, and transparent. • It has graduated levels of security, privileges, opportunities, and freedoms. • Prisoners are held under the least restrictive regime and lowest security rating that the assessment dictates. • Security classifications are reviewed at least every six months.

[23] NMR 7, 8(a-c), 59, 89.1, 92, 93, 94, 119.1
GPCA 1.1.1, 1.1.2, 1.1.3, 1.1.4, 2.1.3, 2.1.8, 2.1.9, 3.3.1, 3.3.2, 5.1.1, 5.1.2, 5.1.3, 5.1.5, 5.3.1
EPR 14, 15, 16(b), 16(c), 17, 18.10, 30.3, 33.1, 51, 52, 103, 104

	• Prisoners know the outcome of their assessment and classification, and any reviews. • Assessment tools are objective, reflective of gender and culture, evidence based, and regularly reviewed. • Professional override is used appropriately and accountably.
Expectation 7.1.4 Case management plans meet the prisoner's needs and risks.	• All sentenced prisoners and prisoners remanded for six months or more have a case management plan. • Case management plans are developed promptly. • The plans provide a pathway to release. • Prisoners actively participate in developing their plan and in regular progress reviews. • The plans contain measurable and achievable short and long-term goals and identify program needs. • There is effective coordination between prisons and community corrections
Expectation 7.1.5 Prisoners are supported to achieve the goals of their case management plan.	• The prison delivers purposeful activities and criminogenic programs to prepare prisoners for release and to reduce their risks of reoffending. • Staff motivate and support prisoners to engage in such activities and programs.
Expectation 7.1.6 Information is shared with relevant authorities and stakeholders.	• Up-to-date, impartial, and relevant information is shared with courts, releasing authorities, community corrections and other relevant parties.

7.2 Offending programs[24]

Expectations	Indicators

[24] NMR 87, 88, 91
GPCA 1.1.4, 1.5.3, 5.1.6, 5.1.7, 5.1.8, 5.1.9, 5.3.2
EPR 16(e), 18.8(b)

Expectation 7.2.1 Prisoners have equal access to a range of programs to address offending behaviour.	• Prisoners are encouraged to take responsibility for their own rehabilitation. • They can access criminogenic interventions, psycho-educational and cognitive skills courses, and self-help programs. • Access is equitable. Programs are gender sensitive and culturally appropriate. • Sufficient programs are available. • Program facilitators are trained. • Facilitators use modes of delivery that are appropriate for the people undertaking the program, including people with learning difficulties.
Expectation 7.2.2 Programs are evidence-based, evaluated, and subject to effective governance.	• Programs are based on best practice. • Offenders access programs according to the principles of need, responsivity, and intensity. • Interventions are adapted for delivery to prisoners with diverse gender, cultural, and responsivity needs. • Programs have been evaluated for their effectiveness for Australian offenders.
Expectation 7.2.3 Programs are delivered on time.	• Programs are scheduled and delivered in accordance with case management plans. • Programs that the Parole Board considers relevant to its decisions are completed in time for the Board to be able to consider program completion reports.
Expectation 7.2.4 Prison based treatment programs link with community-based programs.	• Community corrections delivers programs that complement or supplement prison-based programs. • The prison has links with other community-based services to provide ongoing treatment and support.

7.3 Preparation for release[25]

Expectations	Indicators
Expectation 7.3.1 Prisoners are prepared for release.	• When relevant, community corrections are involved in developing release plans. • Prisoners being released on parole understand their parole conditions, rights and responsibilities. • They receive practical services to assist their return to the community, including: - financial management advice; - housing assistance; - employment assistance; - life skills; and - sexual health. • They have an up-to-date plan for addressing outstanding rehabilitation needs, including access to post-release treatment services
Expectation 7.3.2 Prisoners nearing release are placed in minimum-security facilities unless they pose too high a risk.	• Minimum security facilities are widely available. • Prisoners who are rated as minimum security but cannot access a minimum security prison can undertake out of prison activities, subject to risk assessments and security requirements. • Suitably assessed prisoners can have home leave. • Minimum security prisons provide skills and knowledge relevant to release.
Expectation 7.3.3 On the day of release, prisoners receive all necessary practical support and information.	• Prisoners have valid up-to-date identity documents. • All documents, identification papers, money, clothing, and other property are returned to prisoners. • Prisoners who do not have their own clothes are given clean, decent clothing fit to wear in the community, including a change of clothes. • Prisoners have accommodation upon release.

[25] NMR 67.2, 87, 88, 89.2, 90, 106, 107, 108
GPCA 5.2.1, 5.2.3, 5.2.4, 5.2.6, 5.3.3, 5.3.4
EPR 6, 33.3, 33.4, 33.7, 33.8, 107

	• The prison ensures that prisoners have the means to safely reach their accommodation. • Prisoners can make a phone call and charge their mobile phone prior to release. • Prisoners who need additional support are met at the gate and taken to their initial appointments. • On release, all prisoners receive a summary of their health status and referral to a community health care provider of their choice, including Aboriginal Health Services.

Topic 8: Health

This section provides the Expectations relating to all prisoners in relation to physical health, mental health and substance misuse. Other sections deal with issues relating to people who have experienced trauma[26] and people at risk of self-harm,[27] women and their resident children,[28] people with disabilities,[29] and pandemics and infectious diseases.[30]

8.1 Physical health care[31]

Expectations	Indicators
Expectation 8.1.1 Prisoners have equal access to health care, which is independent of the prison service, in an environment of dignity and privacy.	• Access is equal. No prisoner is disadvantaged or receives preferential treatment. • Prisoners can access information about services and processes in a language and format they understand. • Prisoners are treated as patients - with dignity, respect, compassion, and sensitivity. • Prison service staff understand and respect the independence of health services. • Health staff feel able to advocate on behalf of their patients without fear of reprisal.
Expectation 8.1.2 Prisoners are supported and encouraged to optimise their health and wellbeing.	• The prison delivers general and individual health education programs. • These programs are non-judgmental, gender sensitive, and culturally appropriate. • Prisoners can access health checks, disease prevention and screening programs, sexual health services, smoking cessation, addictions support and counselling, and other health-related programs.

[26] See Expectation 9.1.
[27] See Expectations 9.2-9.7.
[28] See Expectations 18.16-18.21 and 18.29-18.36.
[29] See Expectations 20.1-20.21
[30] See Expectations 10.1-10.2.
[31] NMR 24, 25, 26, 27, 30, 31, 32, 33, 35, 46, 67.4, 80.2
GPCA 1.1.4, 1.5.1, 1.5.3, 1.5.4, 1.5.5, 2.3.1, 2.3.7, 3.1.8, 3.3.6, 4.1.1, 4.1.3, 4.1.4, 4.1.5, 4.1.7, 4.1.8, 4.1.9, 4.1.10, 4.2.5. 5.1.6, 5.2.4
EPR 16(a), 22.6, 31.6, 38.3, 39, 40, 41, 42.2, 42.3, 43, 44, 46, 48.

Expectation 8.1.3 Health care is multi-disciplinary, gender sensitive, and culturally appropriate.	• Health care staff adopt a holistic and multi-disciplinary approach. • Prisoners have adequate and timely access to all forms of physical health care, including dental services, optometry, audiology, physiotherapy, podiatry, and other allied health services. • Services are gender sensitive and culturally appropriate. • There are working partnerships with external service providers, including the Aboriginal Health Service.
Expectation 8.1.4 The prison has sufficient facilities and equipment.	• There are enough rooms with sufficient space to provide a full range of health services. • Prisoners are seen in private, except in clearly documented exceptional circumstances. • Health services have all required equipment and it is up-to-date. • All clinical areas and equipment are cleaned, maintained, and serviced to clinical standards.
Expectation 8.1.5 Only qualified health care staff do clinical tasks. There are enough staff to perform the required services.	• Only qualified staff perform tasks such as triaging, medical testing, and diagnosis. • There are enough staff on-site during the day. • There are effective out of hours on-call services. • Prisoners can access staff of their own gender or have a representative present if health staff are of a different gender. • Health care staff can provide feedback on any aspect of the prison regime that involves prisoner health
Expectation 8.1.6 Health care staff are fully accredited and have access to professional development.	• Staff maintain their professional registration and have regular clinical and managerial supervision. • Staff can access professional development.

Expectation 8.1.7 Prisoners receive a health examination by qualified health staff within 72 hours of reception.	• Newly received prisoners receive a full health examination within 72 hours. • Prisoners who received a full assessment at one prison are screened when they move to another prison. • Health staff consult files from external health providers and previous times in custody. • Prisoners can continue pre-existing medical treatment or medication if endorsed by health staff. • Prisoners with major or chronic needs have care plans. The plans are implemented and regularly reviewed.
Expectation 8.1.8 Health services are timely and easy to access.	• There is a simple, confidential process for booking a medical appointment. • Prisoners are seen promptly. They are triaged according to health risk, diagnosis, and prognosis. • Health staff respond promptly to medical emergencies and have all necessary emergency equipment.
Expectation 8.1.9 Prisoners are kept informed and give informed consent.	• Prisoners are informed in a language and format they understand about their health status, the results of consultations and tests, and available treatment options, including potential side-effects. • Voluntary informed consent is always obtained for medical treatment. Consent can be written, oral or implied. Accredited interpreters are used when required. • Consent can be withdrawn any time. • If a prisoner lacks capacity to consent, health staff make 'best interests' decisions in line with legislation. • The effects of not receiving treatment are fully explained. Treatment refusal is documented. • Prisoners are not the subject of unreasonable medical or scientific research.
Expectation 8.1.10 Information sharing about prisoners' health balances risk and medical confidentiality.	• Medical confidentiality is always respected but does not override issues of injury, self-harm, or harm to others. • If a prisoner's health creates a risk of injury, self-harm, or harm to others, health services give custodial staff

	the information they require to manage the person safely and to mitigate the risks.
Expectation 8.1.11 Prisoners have timely access to specialist services.	• Prisoners receive timely treatment from specialist external practitioners. • Referrals are based on medical opinion and are not unduly influenced by security. • Acute needs are immediately addressed. • Prisoners on waiting lists are informed of expected wait times.
Expectation 8.1.12 The prison implements effective harm minimisation measures.	• Prisoners can confidentially access harm minimisation measures such as condoms, dental dams, sterilising products and needles.
Expectation 8.1.13 Medications are distributed safely and securely.	• Medication distribution times are clinically appropriate and not unduly impacted by security. • Prisoners can access over-the-counter medications. This must be documented. • Prescription medications only cease when determined by appropriately qualified health staff. • Medications with the potential for misuse or dependency are only prescribed if there is no alternative, and with strict controls.
Expectation 8.1.14 Health services promote continuity of care on release or transfer.	• Prisoners receive seamless health care on transfer to another facility. • On release, prisoners receive a summary of their health status, a referral to a community health care provider of their choice, prescription medications, and individualised health advice.
Expectation 8.1.15 Prisoner health files are accurate, up-to-date, and confidential.	• Prisoners have accurate health records from admission to release. • Files are securely stored. • Access to medical files is limited to appropriate personnel.

	• Prisoners have the right to access their own health information and files. • Prisoner health information is provided to state and federal health record systems on release.
Expectation 8.1.16 Prisoners can access health advocacy services and complaint mechanisms.	• Prisoners can access independent health advocacy services. • Prisoners can complain about their treatment in confidence without recrimination. Responses are timely, easy to understand and address the issues raised.

8.2 Mental health care[32]

Expectations	Indicators
Expectation 8.2.1 The prison provides sufficient services to meet the health needs of prisoners with mental illness, neurological and developmental disorders, trauma, personality disorders and comorbidities.	• Prisoners' mental health needs are screened on admission and fully assessed in the first 72 hours. • If issues are identified, there is a timely process for review by a relevant specialist. • Qualified practitioners deliver a community-equivalent range of evidence-based interventions and supports. • Prisoners have timely and effective access to a psychiatrist. • Prisoners requiring secure forensic mental health care can access it. • There are robust protocols and well-working relationships between the Prison Service, Wilfred Lopes Centre, and other service providers, including Aboriginal Health Services. • Adequate psychological counselling services are available. • Mentally ill prisoners are not punished for behaviour which is a consequence of their illness.

[32] NMR 5.2, 24, 25, 31, 109, 110
GPCA 4.1.4, 4.1.6, 4.1.12, 4.1.13, 4.2.5, 4.2.7, 5.1.6, 5.1.8, 5.1.10
EPR 12, 40.4, 40.5, 43.1, 47.2

	• Prisoners with mental illness have care plans which are regularly reviewed. • Prisoners under medical or psychiatric treatment when they enter custody receive continuity of care. • There is continuity of care when prisoners move between facilities. • On release, prisoners receive a summary of their mental health status, a referral to a community health care provider of their choice, prescription medications, and individualised health advice.
Expectation 8.2.2 All staff are suitably qualified.	• All custodial staff undertake mental health awareness training, including information on trauma. • Every prison has adequate access to a registered mental health nurse. All nurses have adequate mental health training. • General Practitioners are up to date with mental health practices. • Staff understand that cultural factors and beliefs may impact on diagnosis. Advice is sought, as appropriate, from Aboriginal and culturally and linguistically diverse (CALD) organisations in the community.
Expectation 8.2.3 The prison promotes and supports resilience in prisoners and staff.	• The regime promotes good mental health and minimises the negative impacts of imprisonment. • Prisoners and staff can access information and programs to promote mental health and resilience. • Prisoners and staff are encouraged to manage stress in a timely and effective way. • Staff assist prisoners to cope with changes in their circumstances.

8.3 Substance use and co-morbidity[33]

Expectations	Indicators

[33] NMR 24.2
GPCA 1.1.4, 4.1.11, 5.1.6, 5.1.7
See also Expectations 8.12 (harm minimization) and 11.7 (supply reduction).

Expectation 8.3.1 Newly arrived prisoners are screened for substance use and supervised detoxification processes are available.	• Initial health assessments identify dependencies, detoxification requirements and immediate risks of harm. • Interventions for withdrawal and detoxification commence immediately. • The prison implements evidence-based detoxification practices. • Prisoners are clinically supervised during withdrawal and detoxification.
Expectation 8.3.2 There are effective strategies to reduce demand for illicit drugs, prescription drugs, alcohol, and cigarettes, and to refer prisoners to treatment programs.	• The prison has an evidence-based demand reduction strategy. • There are working partnerships with local drug rehabilitation, counselling, and education services. • Staff are adequately trained to support and manage prisoners with substance misuse problems. • There is a clear pathway for referring prisoners for assessment and treatment. • Prisoners can access gender-sensitive and culturally appropriate education packages about the effects of substance misuse and available services.
Expectation 8.3.3 Prisoners with a history of substance misuse receive individualised treatment and support.	• The prison delivers evidence-based substance misuse treatment programs and other support services. • Interventions are accredited, meet prisoners' needs, and are regularly evaluated. • There are enough programs and services to meet demand. • Pharmacotherapy programs are available subject to strict eligibility criteria and clinical monitoring. • Culturally appropriate support groups and individual supports are available. • Whenever possible, people receiving treatment in the community can continue the treatment in prison. • People receiving treatment in prison are supported to continue treatment on release.
Expectation 8.3.4	• Drug services are well integrated with health services.

Prisoners with a history of co-morbidity receive multi-disciplinary, coordinated interventions and support.	• Prisoners with mental health and substance-related problems have prompt access to comprehensive coordinated support services.

Topic 9: People who have experienced abuse or trauma, prisoners at risk of self- harm, and deaths in custody

9.1 People who have experienced abuse or trauma[34]

Expectations	Indicators
Expectation 9.1.1 People who have experienced abuse or trauma receive appropriate support and are helped to seek redress.	• The prison encourages people who have experienced abuse or trauma to seek support and help. • Staff working with prisoners are sensitive to issues of trauma and abuse. • Trained staff are available to handle disclosures or evidence of abuse or trauma. • People who have experienced abuse or trauma are supported by gender-specific and culturally appropriate services, including health and counselling. • People who have experienced abuse or trauma can access legal advice about their rights and potential legal remedies.

9.2 Prisoners at risk of suicide or self-harm[35]

Expectations	Indicators
Expectation 9.2.1 There are effective systems to identify prisoners at risk of self-harm or suicide.	• There are effective mechanisms to promptly identify at risk prisoners. • Staff are trained to identify prisoners exhibiting signs of crisis. • All staff working with prisoners are trained in identifying risks of self-harm and suicide, and suicide prevention.
Expectation 9.2.2 At-risk prisoners are treated safely and with dignity and respect.	• The prison responds promptly when prisoners are identified to be at-risk. • Staff are adequately trained to manage at-risk prisoners.

[34] NMR 30(b)
GPCA 3.1.8
BR 7.1, 7.2, 25.1, 25.2
EPR 25.4
[35] GPCA 3.1.6, 3.1.7
EPR 47.2

	• Risk factors, historical information, and cultural factors are considered in responding to self-harm and suicide. • Multidisciplinary intervention is available. • At-risk prisoners are held under the least restrictive regime for their risk, needs, and wellbeing. • Prisoners who are not in their normal accommodation because of their self-harm risks are regularly monitored. Detailed observation reports are made. • They return to mainstream accommodation as soon as their risks, needs, and wellbeing permit. They continue to be monitored.
Expectation 9.2.3 A multi-disciplinary team meets daily to consider the management of at-risk prisoners.	• A multi-disciplinary team meets daily to consider the progress and management of people at risk of self-harm. • The team includes representatives from custodial, health, and prisoner support services. • All information is shared, including medical information which is necessary for effective risk management. • Records are kept of discussions and reasons for decisions.
Expectation 9.2.4 The prisoner's family and supports are informed and are consulted as appropriate.	• Subject to confidentiality, the prisoner's family and supports in the community are informed of their progress and consulted about potential risk factors and support options.
Expectation 9.2.5 The prison, the Department of Justice and the Department of Health monitor and communicate about risks, trends, and inquest findings.	• If an incident occurs that reveals a physical or procedural weakness, information is shared across the system. • The prison collates data on the rate, nature, and circumstances of self-harm. • Data for the whole system are analysed centrally and shared with every site.

	• There are effective systems to communicate and respond to the findings of Coronial inquests and other reviews.

9.3 Death and serious self-harm[36]

Expectations	Indicators
Expectation 9.3.1 The prison promptly notifies all relevant parties about serious incidents, facilitates a comprehensive investigation, and provides support.	• The prison notifies all relevant parties, including next of kin, about any death in custody or serious self-harm. • The Tasmanian Aboriginal Legal Service is informed of the death of an Aboriginal person. • If there is a death in custody, the area is treated as a potential crime scene, evidence is preserved, any victims and witnesses are protected, and appropriate authorities are notified. • The prison facilitates a comprehensive independent investigation of any serious incident. The investigation team does not include any potentially implicated staff. • The body of a deceased person is treated with dignity and respect. • All actions regarding a death in custody comply with the requirements of the Corrections Act 1997, Corrections Regulations 2017, the Coroners Act 1995 and any other relevant legislation. • Comprehensive supports are in place for staff and prisoners affected by a death in custody or serious incident. • The prison facilitates appropriate cultural and religious practices if a prisoner dies in custody.

[36] NMR 8(f), 69, 71.1, 71.3, 72
GPCA 1.4.4, 1.4.6, 2.3.13, 2.3.14
EPR 24.8, 24.9

Topic 10: Emergency Management[37]

Expectations	Indicators
Expectation 10.1 The prison has a comprehensive emergency management plan which includes Memoranda of Understanding (MOU) with Police, Fire Services and other emergency services.	• The prison's emergency management plan addresses all potential emergencies, including fire, flooding, storms, serious disturbances, and infectious disease. • The plan addresses the emergency management principles of Prevention, Preparedness, Response, and Recovery (PPRR). • There are up to date and workable MOUs with police, fire, and other emergency services. • There are appropriate plans for evacuation.
Expectation 10.2 The prison implements effective measures to prevent and respond to pandemics and outbreaks of infectious disease.	• At times of pandemic or major community outbreaks of disease, there are screening processes to reduce the risk of such diseases entering the prison. • The prison has adequate stocks of personal protective equipment (PPE). • In the event of an outbreak, prisoners are managed in a way that respects their rights while reducing the risk of spread of disease. • Prison authorities communicate clearly and regularly with staff and prisoners. • If prisoners' daily lives are seriously impacted, the prison implements compensatory measures, such as extra video visits and phone calls, and more options for study and recreation in-cell or in accommodation units.
Expectation 10.3 Alarms and emergency equipment are working, staff are properly trained, and the prison conducts regular emergency	• The prison is fully fitted with approved fire alarms, sprinklers, fire hoses and extinguishers. • All emergency equipment is working, fully maintained, and regularly tested. • Staff are trained for all relevant emergencies. Training is contemporary, thorough, and up-to date.

[37] GPCA 1.4.3, 1.4.6, 3.1.1, 3.2.1
EPR 52.2

management exercises.	• The prison conducts regular emergency management exercises and training, including joint exercises with police, fire, and other emergency services.
Expectation 10.4 The prison has measures that reduce the risk of disturbance and responds appropriately if incidents break out.	• The prison monitors operations for any predictors of disturbance. • The prison acts to mitigate identified risks. • Responses are tailored to the incident. They are disciplined, well-managed, and proportionate. • Staff use the minimum force required to legally carry out their duties and are accountable for use of force. • If necessary, the prison can access specialised services with controlled equipment and specialist tactical knowledge and skills. The actions of specialised services are subject to independent review and investigation.
Expectation 10.5 The prison and the Department invest sufficient resources into recovery.	• Timely recovery to a standard regime is a priority. • Restrictive practices are not imposed for any longer than necessary. • Additional staff and other resources are provided as appropriate. • Staff and prisoners can access psychological and trauma counselling and support. • Prisoners' families are kept informed.

Topic 11: Security

11.1 Relational security

Expectations	Indicators
Expectation 11.1.1 Staff have a positive, proactive and respectful relationship with prisoners which reduces the risks of aggression and confrontation and helps to de-escalate tensions.	• The prison has a positive, pro-social culture. • Staff understand the benefits of strong relational security. • They respond respectfully and patiently to prisoners' questions. • They spend time 'on the floor', interacting with prisoners in positive ways. • Professional boundaries and confidentiality are fully observed. • There are effective processes for staff to inform management if they become aware of risks, tensions or concerns, including assaults, self-harm, disorder and drugs.

11.2 Physical security

Expectations	Indicators
Expectation 11.2.1 Physical security is proportionate to risk and not unduly restrictive.	• Building design and layout are functional and meet the prisoner profile. • Perimeter barriers are sufficient to deter and withstand determined internal or external breaches but do not overpower the senses. • In prisons without perimeter barriers, or where barriers are open for part of the day, there is clear zoning with signs indicating the limits of prisoner and outsider access. • The internal environment is normalised as far as possible. Internal fences and barriers are used only when necessary. They are proportionate to risk, and do not overpower the senses.

11.3 Procedural security[38]

Expectations	Indicators
Expectation 11.3.1 Access to the prison is well-controlled and respectful.	• Effective processes and procedures control entry and exit by staff, prisoners and visitors. • Access control processes and procedures are respectful and efficient, and do not interfere arbitrarily with family contact.
Expectation 11.3.2 Internal movements and prisoner counts are well-controlled and respectful.	• There are safe and efficient processes to manage movements within the prison. • The frequency and style of prisoner counts are not oppressive. • Prisoner counts accurately for all prisoners, including those working or engaged outside the prison. • The prison knows where prisoners are meant to be at any given time.
Expectation 11.3.3 Security and intelligence systems successfully identify current and emerging threats.	• Effective security systems and procedures detect and prevent escape. They are regularly tested and serviced. • Systems for gathering, recording, and managing intelligence are ethical, effective and legal. • Decisions based on intelligence are proportionate to risk and to the reliability of the evidence. • Intelligence reports are regularly reviewed for volume, nature, accuracy and trends.
Expectation 11.3.4 There are effective measures to prevent the entry of contraband.	• The prison implements effective measures to prevent contraband entering the prison, including weapons, mobile phones, drugs, alcohol and cigarettes. • The entry and exit of vehicles and tools is thoroughly checked. Records are kept, and property that was taken onto the prison is checked on departure. • All visitors are subject to these measures unless they are exempt.

[38] GPCA 1.1.8, 2.1.10, 3.1.5, 3.2.1, 3.2.4, 3.2.7
EPR 49, 51.2

	• The strategy includes use of technologies such as hand-held scanners, body scanners and drones. • Detection dogs are used appropriately and sensitively.
Expectation 11.3.5 There are effective measures to deter and detect drugs, alcohol and other contraband within the prison.	• There is a strategic approach to reducing the demand for drugs and alcohol as well as the supply. • Prisoners take medication in front of staff unless instructed otherwise. • Random and targeted drug testing is used. It is carried out respectfully and sensitively. • The testing of prisoners is subject to proper oversight to ensure appropriate and fair targeting. • There are systems to ensure the integrity of the test and results. • There are clearly defined penalties for drug use or refusing to undertake a test. • Prisoners who test positive, refuse drug testing, or are involved in suspected drug-related incidents, are referred to substance misuse services.

11.4 Searches[39]

Expectations	Indicators
Expectation 11.4.1 Searches are only conducted when necessary and with respect for the person's dignity and privacy.	• Staff conducting searches are appropriately trained and provided with Personal Protective Equipment. • People are clearly informed about search procedures. They are never humiliated or degraded. • Accurate records are maintained, including reason for search, results, and parties involved. • Cells and property are left in the same condition they were found in.

[39] NMR 1, 50, 51, 52, 53
GPCA 2.3.12

	• Search strategies include both targeted and random searches. • Search strategies, policies, and procedures are transparent and regularly reviewed. • There are prominent signs and notices advising people entering the prison of prohibitions and permissions. • Prisoners can keep documents relating to their legal proceedings. These cannot be searched.
Expectation 11.4.2 Prisoners, staff, and visitors are only strip-searched when absolutely necessary, and with respect for individual rights, dignity, and comfort.	• The prison minimises the use of strip searching. Alternatives such as body scanners, are used whenever possible. • People are not strip searched unless there is specific intelligence and proper authority to do so. • Strip searches are only conducted by trained staff of the same gender. • Strip searches are conducted with regard to the person's modesty. • Resident children and child visitors are never strip searched.

11.5 Incident response[40]

Expectations	Indicators
Expectation 11.5.1 The prison has efficient and effective incident response capacity. Incident responses are proportionate.	• The prison takes all necessary measures to reduce and prevent incidents. • All staff are trained in incident response procedures. • When necessary, there is a dedicated incident response team on site. • Responses to incidents are proportionate to the threat and risks. They do not escalate the problem.

[40] See also Expectation 10.4.

11.6 Use of force and restraints[41]

Expectations	Indicators
Expectation 11.6.1 Force is only used a last resort. It is legitimate, proportionate, and never used as a punishment.	• Force is never used as punishment. • Staff are fully trained in de-escalation techniques. • Force is the last resort and used for the shortest time necessary. • Staff are fully trained in use of force methods and in the risks associated with force and restraints. • Weapons and restraints are officially approved and regularly reviewed. • Weapons and restraints are only issued to general duty prison officers in exceptional circumstances. • Firearms are not used against peoples except in accordance with the relevant laws. • Planned use of force is properly authorised. • Prisoners receiving end-of-life care are not restrained unless there is an assessed serious risk. • Health staff attend use of force situations, assess prisoners' well-being during and after an incident, and promptly initiate any required treatment.
Expectation 11.6.2 Use of force is subject to strict governance and record keeping.	• All planned uses of force are recorded. • Unplanned uses of force are recorded whenever possible. • Staff involved in a use of force are debriefed and can access support if required. • Staff complete incident reports promptly and do not collaborate on a 'version of events'. • Prisoners are debriefed verbally after an incident. They are told why force was used on them. • Use of force is subject to effective, independent, and timely review.

[41] NMR 8(c), 8(f), 43.2, 47.2, 48.1, 49, 82
GPCA 3.1.5, 3.1.14, 3.1.15, 3.1.16
EPR 60.6, 64, 65, 66, 68.2, 68.3, 68.4, 69

	• Use of force data is monitored. Emerging patterns and risks are identified and acted on. • Use of force documentation and associated footage is securely retained. • Prison management identify good practice, opportunities for improvement, and possible ill-treatment.
Expectation 11.6.3 Prisoners are not placed in special accommodation, mechanical restraints or anti-rip clothing except as a last resort and with proper authorisation.	• Special accommodation, mechanical restraints and anti-rip clothing are properly authorised. They are only used for the shortest time necessary. • There is clear authorisation and detailed documentation if a prisoner is placed in a cell from which normal furniture, bedding or sanitation has been removed or if they are held in anti-rip clothing. • Prisoners placed in special accommodation are not strip searched or deprived of their normal clothing without specific intelligence and proper authorisation. • Prisoners with severe mental illness and prisoners at risk of suicide or self-harm are not held in special accommodation except in exceptional circumstances and in consultation with the mental health team. • Prisoners in special accommodation are monitored at frequent and irregular intervals. Accurate and detailed records are maintained. • Prisoners return to a standard cell as soon as risks and needs permit.

11.7 High-security management regimes[42]

Expectations	Indicators
Expectation 11.7.1 Prisoners in special high-security management regimes	• Special high-security management regimes are only used for prisoners who cannot be safely managed in mainstream maximum-security regimes.

[42] GPCA 1.1.4, 3.1.4, 3.2.9, 3.3.4, 3.3.8, 3.3.9
EPR 53.1, 53.2, 53.4, 53.5, 53.7

are treated with decency and humanity.	• There must be clear, recorded authorisation for such placement. • Prisoners are treated with decency and humanity. • The environment is physically, physiologically and emotionally safe. • The regime is engaging, constructive and dynamic. • The regime prioritises safety and the prevention of self-harm and suicide. • Every prisoner has a multidisciplinary case management plan. It addresses individual need and is regularly reviewed. • The prison and the Department monitor all prisoners placed in special high-security management regimes.

Topic 12: Safety and behaviour management

12.1 bullying and violence[43]

Expectations	Indicators
Expectation 12.1.1 Prisoners feel safe from bullying and victimisation.	• The prison has an effective anti-bullying strategy that addresses all forms of abuse and violence. • The prison promptly investigates allegations and responds where required. • Prompt action is taken to protect prisoners at risk. • People allegedly subject to bullying are not discriminated against. • There are systems to prevent retaliation and further victimisation. • People who are bullied are provided appropriate support. • Bullies are supported to change their behaviour

12.2 Shared cells[44]

Expectations	Indicators
Expectation 12.2.1 Prisoners are only allocated to shared cells after a formal risk assessment.	• Where possible, prisoners do not share single cells. • Prisoners are only placed in shared cells after a formal risk assessment. • There are consultations with the prisoners involved. • Shared cell placements are administered fairly. • Prisoners can request to be moved to another cell. Processes are fair and respectful. • Staff respond promptly and respectfully to emergency cell calls from shared cells. • Cell observation panels are not obstructed.

[43] GPCA 1.1.4, 3.1.4, 3.2.9, 3.3.4, 3.3.8, 3.3.9
EPR 53.1, 53.2, 53.4, 53.5, 53.7
[44] NMR 12.1
EPR 18.5, 18.6, 18.7

12.3 Radicalisation and violent extremism

Expectations	Indicators
Expectation 12.3.1 The prison works to prevent radicalisation and violent extremism from being organised or supported by any prisoner.	• Prison staff are trained to identify radicalisation and violent extremism of all forms. • The prison provides opportunities for de-radicalising extremists. • Anti-radicalisation measures do not stop prisoners accessing recognised religious texts and artefacts.

12.4 Protection and administrative segregation[45]

Expectations	Indicators
Expectation 12.4.1 Protection prisoners are safely managed to prevent harm, abuse, and neglect.	• Prisoners can apply for protection status or be placed in protection by the prison. • Prisoners requesting protection are segregated until an assessment and determination is made. • If harm or abuse is alleged or suspected, prompt action is taken to protect the prisoner and to investigate. • Protection prisoners are in a safe and secure part of the prison. • Different groups of protection prisoners are protected from each other if risk requires this. • Protection prisoners have equal access to the services and activities available to other prisoners. • Staff working with protection prisoners are trained to recognise signs of harm, abuse or bullying. • Protection status is regularly reviewed to see if the prisoner can return to a standard regime. Reviews include prisoner consultation. • Prisoners who want to return to a standard regime remain segregated until it is safe and appropriate to return.

[45] GPCA 3.1.3, 3.3.5, 3.3.7

	• Prisoners can appeal against their placement or non-placement in protection.
Expectation 12.4.2 Administrative segregation is strictly governed.	• Prisoners in administrative segregation are told the reason for segregation in a language and format they understand. • Administrative segregation is never used for an extended period or as punishment. • Any regime deprivations are clearly explained to the prisoner, and accurately recorded. • Prisoners in administrative segregation are: • Not placed in a punishment cell. • Managed under the least restrictive regime consistent with the reasons for segregation. • Are visited daily by prison management. • Never denied access to medical attention or to existing medications. • Administrative segregation is regularly reviewed to see if the prisoner can return to a standard regime. Reviews include prisoner consultation. • Prisoners can appeal against their placement in administrative segregation.

12.5 Encouraging positive behaviour[46]

Expectations	Indicators
Expectation 12.5.1 Staff behaviour models what is expected from prisoners.	• Staff are good role models. They behave ethically, professionally and respectfully towards each other and towards prisoners. • Interactions and banter are not sexist, racist, homophobic, transphobic or misgendering. • Staff treat prisoners with dignity and respect.

[46] NMR 1, 77, 91
GPCA 2.3.1, 2.4.1, 2.4.2, 2.4.3, 3.2.3, 3.4.1, 3.2.3, 5.3.2
EPR 30.1, 51.2, 72.1, 73, 75

	• Staff engage proactively with prisoners and seek to know them as individuals. • Staff exercise care and regard for prisoners' rights to privacy and confidentiality. • Staff treat prisoners' property and cells with respect. • Staff know how disability, trauma, abuse and mental illness can impact on behaviour, and respond accordingly.
Expectation 12.5.2 Prisoners are encouraged to show pro-social behaviours and to take responsibility for their actions.	• Staff support prisoners to change their behaviour, giving them advice and opportunities to improve. • When rules are breached, staff take time to explain how and why to the prisoner. • Prisoners are encouraged to think before they act and to show personal responsibility.
Expectation 12.5.3 The prison has clearly defined codes of conduct for staff, prisoners, and visitors.	• All rules and codes of conduct are prominently displayed in appropriate areas of the prison. • They are clearly explained and culturally appropriate. • Staff respond to code of conduct breaches quickly, and at the lowest appropriate level. • When necessary, breaches of rules or codes of conduct are formally investigated and action taken as necessary.

12.6 Punishment and segregation[47]

Expectations	Indicators
Expectation 12.6.1 Prisoner disciplinary proceedings are legal,	• Antisocial behaviour is managed at the lowest possible level. Formal disciplinary proceedings are a last resort. • Disciplinary proceedings comply with legislative requirements.

[47] NMR 8(c), 8(e), 23, 36, 37, 38, 39, 40.1, 41, 42, 43, 44, 45, 46, 80.2
GPCA 2.3.2, 2.3.7, 3.4.2, 3.4.3, 3.4.4, 3.4.5
EPR 38.3, 43.2, 56.1, 57.2, 58, 59, 60, 61, 62

fair, proportionate, and efficient.	• The prison does not impose punishment under the guise of 'administrative' or 'management' measures. • Unofficial punishments are never used. • Punishments reflect the individual prisoner's behaviour. • 'Group' or 'collective' punishments are never used. • Alleged breaches are investigated promptly. • Prisoners are promptly informed of the charges or proceedings they will face. • Prisoners can access interpreters and other support as required. • Disciplinary processes are fair, balanced and accurately recorded. • Where an alleged breach is prosecuted as a crime, prisoners are entitled to all the due process protections that exist in criminal proceedings, including unimpeded access to a legal representative.
Expectation 12.6.2 Prisoners are not subject to any cruel, inhuman, or degrading punishments, such as prolonged solitary confinement, corporal punishment, placement in a dark or constantly lit cell, sensory deprivation or reduced diet.	• Prisoners are not subject to any form of cruel, inhuman, or degrading punishment. • Sanctions are proportionate to the seriousness of the offence. • Sanctions do not prohibit family contact. • Prisoners are not sanctioned twice for the same act or offence. • Prisoners can appeal against sanctions imposed on them.
Expectation 12.6.3 Prisoners are only segregated with proper authority and for the shortest period.	• Prisoners are not segregated except as a last resort and for the shortest time possible • Prisoners are not segregated without proper legal authorisation. • Prisoners know why they have been segregated. • Accurate records are maintained, including the nature and duration of the segregation.

Expectation 12.6.4 Prisoners are kept safe while segregated. They can access fresh air and their individual needs are met.	• Staff monitoring segregated prisoners are trained and supported to recognise mental health issues or distress. They are vigilant in detecting signs of decline in mental health and can escalate any concerns. • Prisoners in segregation can exercise in the open air for at least two hours every day. The outdoor area is of a suitable size for exercise, not oppressive, and allows prisoners to see the sky and get fresh air. • Prisoners in segregation have meaningful daily conversations with various staff, including prison management and health services. • A multidisciplinary team, including health professionals, monitors the wellbeing and progress of people in segregation on a daily basis.

Topic 13: Transport[48]

Expectations	Indicators
Expectation 13.1 Vehicles used to transfer prisoners meet safety, dignity and security standards.	• Vehicles are fully maintained, clean and hygienic. • There is adequate leg and head room. • Seats face forwards or backwards and are moulded or cushioned. • Compartments are ligature free, and safe seat belts are fitted. • There are hatches for items to be passed and handcuffs to be applied. • There are working audio visual monitoring and communication systems. • There is adequate climate control. • There is adequate storage.
Expectation 13.2 Prisoner transfers are conducted safely and	• Prisoners are assessed pre-travel to identify and mitigate any risks. They understand why and where they are being transferred.

[48] NMR 18.1, 21, 22, 68, 73
GPCA 2.1.4, 3.1.5, 3.1.11, 3.1.12, 3.1.13, 3.3.9
EPR 17.3, 32

with respect and decency.	• Transfers are delayed if the prisoner is distressed, unless there are good, documented reasons to the contrary. • Non-standard vehicles are used when necessary if the prisoner has a disability or is pregnant, infirm or injured. • Prisoners are not exposed to public view. • They have access to drinking water, sanitary packs and adequate comfort breaks and food. • Prisoners are constantly monitored and can communicate with staff.
Expectation 13.3 Staff conducting transfers are adequately trained.	• Staff have been trained to conduct prisoner transfers in a safe, secure, respectful, and decent way. • They have been trained to deal with all types of emergencies, including accidents, breakdowns and medical emergencies.

PART TWO:

SUPPLEMENTARY EXPECTATIONS FOR SPECIFIC GROUPS OF PRISONERS

These Expectations apply in addition to the Expectations for All Prisoners (Part One) and the Expectations for Leadership, Management, Staffing and Governance (Part Three).

Topic 14: Aboriginal prisoners

In the 2021 census, 5.4% of Tasmania's population identified as Aboriginal or Torres Strait Islander. 92% of them identified as Aboriginal, 4% as Torres Strait Islander, and 4% as both Aboriginal and Torres Strait islander.

This is above the national average (3.2%) and higher than any other State or Territory other than the Northern Territory.[49]

The Aboriginal imprisonment rate is lower in Tasmania (730 per 100,000) than in Australia as a whole (2329 per 100,000).[50] However, this must not obscure the facts, trends, and challenges:[51]

- In 2022, Aboriginal people comprised 23% of Tasmania's prison population.
- The number of Aboriginal prisoners in Tasmania has risen rapidly and disproportionately in the last ten years:
    - In 2012, the Aboriginal imprisonment rate was 480 per 100,000. In 2022, it was 730 per 100,000.
    - By contrast, the non-Aboriginal imprisonment rate was the same in 2022 as in 2012 (112 per 100,000).
    - Aboriginal people accounted for 50% of the rise in prisoner numbers from 2012 to 2022.
    - In 2012 Aboriginal people were 4.3 times more likely to be in prison than non-Aboriginal people. In 2022, they were 6.5 times more likely to be in prison.
    - Aboriginal women are even more over-represented than men. In 2022, Aboriginal women were 8 times more likely to be in prison than non-Aboriginal women.

In part, these trends may reflect the fact that more people now identify as Aboriginal. However, the key point is that Aboriginal people currently comprise almost a quarter of the prison population, and numbers have grown rapidly.

Royal Commissions, government inquiries and government policies have consistently demanded proactive measures to tackle Aboriginal disadvantage and reduce overrepresentation. For present purposes, the most significant are:

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[49] Australian Bureau of Statistics, *Aboriginal and Torres Strait Islander people: Census 2021*: https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/aboriginal-and-torres-strait-islander-people-census/2021. Over 26% of NT inhabitants identify as Aboriginal or Torres Strait Islander. After Tasmania, the next highest is Queensland, at 4.6%.

[50] Australian Bureau of Statistics, *Prisoners in Australia (2022)*: https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia

[51] *Ibid.*

- The Royal Commission into Aboriginal Deaths in Custody 1991 (RCIADIC)[52]
- The national Closing the Gap Agreement 2020.[53]
- The Tasmanian government's *Closing the Gap Implementation Plan 2021-2023*.[54] This included a target of reducing the number of Aboriginal people in prison by at least 15% by 2031.[55]

Throughout these Expectations we have referred to the importance of culturally appropriate processes, supports and services, often with specific mention of Aboriginal people.[56] The following Expectations supplement the others, and should be read in conjunction with them.

14.1 Strategic Planning

Expectations	Indicators
Expectation 14.1.1 The Prison Service has a strategic plan to address the targets and actions identified in the government's *Closing the Gap Implementation Plan 2021-2023* and other government plans.	• The Prison Service has a strategic plan for identifying and supporting Aboriginal prisoners. • Aboriginal people have been involved in developing the plan. • The plan sets clear goals and measures in line with the Closing the Gap Implementation Plan 2021-2023 and other government plans. • It is age and gender sensitive. • It is known and understood by staff.

[52] The Commission's reports can be found at https://www.austlii.edu.au/au/other/IndigLRes/rciadic/. Volume 3 deals with custodial care and practices. In 2018, a review found there had been mixed progress in implementing RCIADIC recommendations across the country. Against most measures, Tasmania ranked as one of the poorest performing jurisdictions: see Deloitte Access Economics, *Review of the implementation of the recommendations of the Royal Commission into Aboriginal deaths in custody* Department of the Prime Minister and Cabinet, August 2018: https://www.niaa.gov.au/sites/default/files/publications/rciadic-review-report.pdf

[53] https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap

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

[55] In June 2023, the Department of Justice released Changing Lives, Creating Futures: A Strategic Plan for Corrections in Australia 2023. It contains extensive reference to the need to reduce Aboriginal incarceration rates, to reflect the different challenges faced by Aboriginal people, and to partner with Aboriginal organisations.

[56] Expectations and Indicators with specific reference to Aboriginal people include 2.3 (informing TALS of a person's reception); 3.9 (visiting sick relatives and attending funerals); 6.17 (an Aboriginal Visitor Service); 7.13, 8.3, 8.17 and 8.18 (health and mental health care); 9.7 (informing TALS of the death of any Aboriginal prisoner); 17.8 (older Aboriginal prisoners); 18.6 (Aboriginal women); 20.13 (Aboriginal people with disability); and 23.4 (relationships with Aboriginal organisations).

	• In partnership with Aboriginal people, the Prison Service and the Department track the delivery of such initiatives and evaluate the outcomes.

14.2 Staff culture and training

Expectations	Indicators
Expectation 14.2.1 Staff relate well with Aboriginal people and recognise that they may have different needs.	• Staff receive cultural awareness training, including an understanding of intergenerational trauma and Aboriginal disadvantage. • Staff treat Aboriginal prisoners with dignity and respect and recognise that they have different needs and may have significant cultural obligations.

14.3 Connecting to family and culture

Expectations	Indicators
Expectation 14.3.1 Aboriginal prisoners are identified on admission.	• Every prisoner is asked on admission whether they identify as Aboriginal.
Expectation 14.3.2 Aboriginal prisoners can learn about their family history and connect with family and community.	• Aboriginal people and organisations support prisoners to explore and understand their genealogy and family history, and to connect or reconnect with family, community, and culture.

14.4 Physical environment

Expectations	Indicators
Expectation 14.4.1 New prison buildings are designed with input from Aboriginal people.	• Aboriginal people are consulted about the planning, design, and construction of new custodial infrastructure.

Expectation 14.4.2 Prison buildings use artwork, landscaping and other features that reflect local Aboriginal culture.	• Aboriginal artwork, such as murals and paintings, is prominently displayed. • Landscaping reflects consultation with Aboriginal people, including prisoners. • The prison has a meeting place / cultural place where Aboriginal people can meet, especially on culturally significant occasions.

14.4 Staffing

Expectations	Indicators
Expectation 14.4.1 Aboriginal people are employed in a variety of roles in the prison.	• Proactive recruitment strategies encourage Aboriginal people to apply for Prison Service jobs. • The prison employs Aboriginal people in a variety of roles across the prison (management, custodial, health, support, education, programs, and reintegration).

14.6 Time in custody

Expectations	Indicators
Expectation 14.6.1 Aboriginal people have equal access to employment, training, education, and treatment programs.	• Aboriginal people are proportionately represented in employment, training, education, and programs. • They are proportionately represented in higher level prisoner jobs and gratuities.
Expectation 14.6.2 Aboriginal people and organisations are delivering services and supports.	• Aboriginal peer support prisoners play a significant role in supporting other Aboriginal prisoners, especially those at risk of self-harm or suicide. • There is a visible and regular Aboriginal Visitor Service (AVS). The AVS has access to all prisoners. • The Prison Service is partnering with Aboriginal people and organisations who are delivering culturally appropriate support services and programs in the prison.

Expectation 14.6.3 Events and cultural activities are organised throughout the year.	• The prison organises a wide program of activities during NAIDOC week. Aboriginal prisoners are involved in planning, preparing, and participating in the program. • The prison organises Aboriginal-centred activities throughout the year, especially to mark significant occasions.
Expectation 14.6.4 Aboriginal programs and support services are age and gender sensitive.	• Support services and programs address the specific needs of younger and older Aboriginal people and women. • The prison respects the important role of Aboriginal women in their communities, including family obligations and extended kinship ties.

14.7 Preparation for release

Expectations	Indicators
Expectation 14.7.1 Aboriginal prisoners receive help to transition back to the community.	• Aboriginal prisoners have equal access to minimum security facilities and pre-release services. • Aboriginal organisations are involved in providing pre-release support, including connecting prisoners with family and community, and assisting with issues such as housing. • On leaving prison, Aboriginal people can access culturally appropriate, place-based support from Aboriginal organisations.

Topic 15: Remand prisoners[57]

Remand prisoners can also be called 'unconvicted' prisoners as they are awaiting the outcome of their cases. Those prisoners who already serving a sentence but have other outstanding criminal charges are sentenced prisoners.

There are two groups of remand prisoners. Some have been remanded in custody by the court and they cannot be released until their cases are finalised or the court decides to grant bail after they make another application. Other remand prisoners already have bail, but it is subject to conditions. They will be held in prison unless or until they meet those conditions.

Remand prisoners therefore have a different legal status. The Prison Service needs to have systems and processes that respect their status and assists them to meet bail and to prepare for court. The expectations governing 'Early Days in Custody', 'Access to Lawyers and Legal Resources', and 'Court Appearances' are of particular relevance to remand prisoners.[58]

The number and proportion of remand prisoners has risen significantly in Tasmania and in Australia as a whole. In 2022, they comprised one third of Tasmania's prisoners. In 2012, they were less than a quarter. This presents significant challenges.

15.1 Planning

Expectations	Indicators
Expectation 15.1.1 The Prison Service has a strategic plan for remand prisoners.	• The Prison Service has a strategic plan for housing, managing, and assisting remand prisoners. • The plan sets clear goals and measures. • It is age and gender sensitive and culturally appropriate. • It is known and understood by staff.

15.2 Staff training

Expectations	Indicators
Expectation 15.2.1	• Staff understand that remand prisoners have different rights and needs and act accordingly.

[57] NMR 11(b), 111.2, 111.3, 112.1, 113, 116, 118,
GPCA 2.3.9, 3.3.3, 5.1.8
EPR 18.8(a), 95.1, 96, 99, 100.1, 101
[58] Expectations 2.1-2.5 and 4.1-4.3.

Staff understand and respect the legal status, entitlements, needs and risks of remand prisoners.	

15.3 Assisting remand prisoners

Expectations	Indicators
Expectation 15.3.1 Prisoners are helped to meet bail conditions or to apply for bail.	• Prisoners with bail conditions are given advice and support to meet those conditions. • Prisoners without bail are given information and support to apply for bail.
Expectation 15.3.2 The prison assists remand prisoners on release.	• The prison immediately returns identification, legal documents, property and medication to people released on bail. • Remand prisoners are released with, appropriate clothing, money for food, and access to accommodation. • The prison ensures that prisoners have the means to safely reach their destination.
Expectation 15.3.3 The prison endeavours to minimise the stress and uncertainty of being remanded in custody.	• The prison assists remand prisoners to resolve any urgent matters arising from their transition to prison. • Prisoners remanded for longer than six months are case managed. • Conditions of custody are regularly reviewed. • Incentives and privileges are available.

15.4 Regime and conditions

Expectations	Indicators
Expectation 15.6.1 The regime reflects the fact that remand	• Remand prisoners are not required to work or undertake education but can do so if they wish.

prisoners have not been convicted.	• They have access to courses such as life skills, cognitive skills, personal development and drug and alcohol counselling. • They are not expected to undertake treatment programs that depend on them acknowledging guilt. • They can receive social visits every day. • They can undertake reasonable activity to maintain external interests.
Expectation 15.6.2 Remand prisoners are managed safely, and separately from sentenced prisoners.	• Security assessments are completed promptly. • Remand prisoners are managed at the lowest level of security consistent with their risk. • They are not placed in accommodation with sentenced prisoners unless they indicate in writing that they have no objection. • If remand and sentenced prisoners are placed together, regular assessment occurs to prevent bullying.
Expectation 15.6.3 Conditions for remand prisoners are no less favourable than those for sentenced prisoners.	• Conditions for remand prisoners are at least equal to those of sentenced prisoners. • Where possible, remand prisoners are allocated a single cell.

Topic 16: Younger people[59]

Generally, young people who are under the age of 18 years are held in a youth detention centre not a prison. However, they are sometimes held in an adult prison, either by order of a court or because they are transferred from youth detention. Special provision must be made for such prisoners.

Young people aged 18 years of age or more also need additional consideration. Legally, they are adults, but they are still developing and transitioning to adulthood. Some are vulnerable, all face significant social problems, and many are already parents. It is in the community's interests to maximise the opportunities for young people aged between 18 to 25 years to be skilled-up to desist from crime and to live law-abiding lives.

16.1 Planning

Expectations	Indicators
Expectation 16.1.1 The Prison Service has a strategic plan for prisoners up to the age of 25 years.	• The Prison Service has a strategic plan to assist young people transition to adulthood in custody and the community. • The plan sets clear goals and measures. • It is age and gender sensitive and culturally appropriate. • It is known and understood by staff.

16.2 Staff training

Expectations	Indicators
Expectation 16.2.1 Staff adopt an age-appropriate approach to managing young people.	• Staff are trained in the backgrounds and developmental needs of young prisoners, including issues of trauma and maturity. • Management styles, behaviour management and disciplinary processes take account of age and maturity.

[59] NMR 11(d), 98.2, 104.1
BR 36, 37, 38, 39
EPR 18.8(c), 26.5, 28.3, 81.3

16.3 Prisoners under 18 years of age

Expectations	Indicators
Expectation 16.3.1 Strict protocols and procedures govern the admission to prison of people under 18 years of age.	• The Prison Service has up-to-date MOUs with the government department responsible for youth detention. • Decisions to transfer a young person from youth detention are taken in the best interests of the young person. They are not driven by Departmental preferences or management challenges in youth custody. • Family guardians, the Custodial Inspector, and the Commissioner for Children and Young People are promptly informed when a young person is transferred from youth detention to prison, and of the reasons for transfer.
Expectation 16.3.2 Young people under 18 years of age are separated from adults, and receive age-appropriate care, treatment and support.	• Prisoners under 18 years of age are treated appropriately to their age, development and needs. • They are kept separate from adult prisoners unless there are exceptional and positive reasons for them to mix, such as socialising with another family member. • They have multidisciplinary individualised care plans. The plans are implemented and regularly reviewed. • They have access to age and gender appropriate: • Education and training. • Counselling, with a focus on trauma, abuse and victimisation. • Personal development programs with a focus on life skills, parenting and cognitive skills. • Pre-release services from community corrections and community-based organisations. • Recreation, fresh air, and exercise are an integral part of the regime. • They are given additional opportunities for family visits.

16.4 Prisoners aged 18 to 25 years

Expectations	Indicators

Expectation 16.4.1
 	
Prisoners aged 18 to 25 years are treated and supported in a way that is appropriate to their age, gender and development.
	• Prisoners aged 18 to 25 are identified on reception and actively supported.
	• They are safe from harassment, victimisation, and bullying.
	• They are not disadvantaged in accessing employment and other activities, programs, and services.
	• They have access to age and gender appropriate:
	  ○ Education and training.
	  ○ Counselling, including trauma, abuse, and victimisation.
	  ○ Personal development programs with a focus on life skills, parenting and cognitive skills.
	  ○ Pre-release services from community corrections and community-based organisations.
	• Recreation, fresh air, and exercise are an integral part of the regime.

Topic 17: Older people

The prisoner population is ageing. This is partly because the general population is ageing, and people are living longer. More people over 50 years of age are also being received into prison.

As in the general community, people do not become physically or mentally 'old' at a pre-determined age. Some 60 or 70-year-olds are in good health, and some are in poor health. However, everyone experiences more health issues as they get older.

Researchers have also found a 10-year difference between the overall health of prisoners and that of the general population. This usually reflects lifestyle factors prior to entering prison, such as poor nutrition, substance misuse, and limited medical care.[60] Given this lower life expectancy, most experts and practitioners say that prisoners aged 50 or more should be regarded as 'older'.

The following expectations revolve around prisoner need rather than a 'cut-off' age. They reflect two principles. First, systems must be in place to identify, screen and respond to ageing-related needs of people, especially those aged 50 or more. Secondly, prisons must not accelerate the impact of age-related illnesses and conditions.

17.1 Planning

Expectations	Indicators
Expectation 17.1.1 The Prison Service has a strategic plan for older prisoners.	• The Prison Service has a strategic plan for housing, managing, and assisting prisoners through the ageing process. • The plan sets clear goals and measures. • It is age and gender sensitive and culturally appropriate. • It is known and understood by staff.

17.2 Staff training

Expectations	Indicators
Expectation 17.2.1 Custodial staff know about age-related	• Staff are trained about age-related physical and mental health decline and act on such issues. They know that imprisonment and lifestyles leading to imprisonment can accelerate ageing.

[60] Australian Institute of Criminology, Older prisoners - A challenge for Australian Corrections (2011).

physical and mental health decline, and the implications for prisoner management.	

17.3 Early days in custody

Expectations	Indicators
Expectation 17.3.1 Older prisoners' needs and risks are identified early.	• Older prisoners' age-specific needs and risks are identified promptly and effectively on reception. • Custodial staff are given enough information to manage the person's needs and risks, but medical confidentiality is also respected. • Older prisoners' individual management plans reflect their medical conditions and prognosis.

17.4 Placement and accommodation[61]

Expectations	Indicators
Expectation 17.4.1 There is suitable accommodation for older prisoners. Placement decisions prioritise age-related needs.	• The prison has accommodation that is safe and suitable for older prisoners with mobility or health issues. • Accommodation and aides are equivalent to those in residential aged care facilities. • Aides are, as far as possible, ligature-free. • Prisoners with age-related mobility limitations are allocated ground level cells. • If sharing a cell with bunk beds, they have the lower bed. • When necessary, reasonable adjustments are made to infrastructure to meet a prisoner's needs.
Expectation 17.4.2 Prisoners with age-related health issues	• Staff are vigilant to identify and respond to bullying and victimisation of older, vulnerable prisoners.

[61] NMR 76.2
EPR 81.3

are managed safely, respectfully and fairly.	• Older prisoners with age-related health concerns are not routinely segregated or separately confined. • Behaviours associated with ageing are not mistaken for disrespect or non-compliance.

17.5 Daily life[62]

Expectations	Indicators
Expectation 17.5.1 The regime for older prisoners is purposeful and respectful. It differs, as necessary, from the general prison regime.	• The prison has a purposeful regime for older people. • Reasonable adjustments are made to standard regimes to ensure older prisoners can access a full range of services and activities.
Expectation 17.5.2 Older prisoners have access to meaningful education, employment, and program opportunities.	• The prison has sufficient educational, employment, and program opportunities for older prisoners, including those who are medically unfit for physical work. • Older prisoners are not disadvantaged due to age. • They can earn higher level gratuities despite age-related limitations on work placement.
Expectation 17.5.3 The prison uses the experience and skills of older prisoners.	• The regime uses the mentoring skills of older prisoners, particularly older Aboriginal people. • Older prisoners are engaged as advisors on ageing issues in the prison.

17.6 Health and support[63]

Expectations	Indicators
Expectation 17.6.1	• The prison provides high quality physical and mental health care for prisoners with age-related decline.

[62] GPCA 5.1.9
[63] NMR 24.1
GPCA 4.1.17

Older prisoners receive proactive, respectful and age-appropriate health care.	• Older prisoners' health needs are regularly reviewed. • Age-related health checks, disease prevention, and screening programs are equal to community standards. • There are health staff with qualifications in gerontology, and in aged care and nursing.
Expectation 17.6.2 Older prisoners have adequate support.	• Older prisoners have individualised support plans which include all information relevant to their daily management and support needs. • Plans are developed promptly and in consultation with the prisoner. • If necessary, appropriately trained prisoner carers are employed and assigned to older prisoners for support.
Expectation 17.6.3 The prison deals appropriately with end of life decisions, care and support.	• Prisoners have equal legal rights to end of life decisions, as they would in the community. • Terminally ill prisoners' health and social care needs are adequately and compassionately managed. • The prison facilitates additional end of life family visits.

17.7 Preparation for release[64]

Expectations	Indicators
Expectation 17.7.1 Older prisoners are adequately prepared for release.	• The prison has strategies to reduce institutionalisation. • Older prisoners access advice and support to increase their financial stability on release, including advice on employment, pensions and social security. • They have adequate transition support, including links to aged care and support agencies.

[64] NMR 90, 108.1, 108.2
EPR 107.2

Topic 18: Women

Women are a small but significant group of prisoners. In Tasmania, they currently comprise around 9 per cent of the total prisoner population.

Women in prison face different challenges from their male counterparts and have different needs and risks. Most have complex health and wellbeing needs and have experienced trauma and abuse, including sexual assault, intimate partner violence and family violence. Many have low self-esteem, and histories of self-harm and substance misuse. They also may carry heavy family responsibilities. The challenges they face may be further exacerbated by time in custody due to grief and anxiety arising from separation from children.

This section begins with expectations for all female prisoners. It then provides expectations relating to pregnant women, women who give birth while in custody, and children who reside with their mothers.

18.1 Planning

Expectations	Indicators
Expectation 18.1.1 The Prison Service has a strategic plan for female prisoners.	• The Prison Service has a strategic plan for housing, managing and assisting female prisoners. • The plan sets clear goals and measures. • It is age and gender sensitive and culturally appropriate. • It is known and understood by staff.

18.2 Staff

Expectations	Indicators
Expectation 18.2.1 Staff working with female prisoners are carefully selected and have completed gender-specific training.	• All staff working with female prisoners have completed training on their backgrounds and their gender-specific needs and risks. • Staff are screened and selected based on their suitability to work with women.

18.3 Reception, admission and orientation[65]

Expectations	Indicators
Expectation 18.3.1 Women are safe and treated with respect during reception and admission.	• Reception and admission processes recognise the particular needs of women. • Female staff are responsible for reception and admission.
Expectation 18.3.2 Women receive immediate help, support and information in relation to their children and dependants.	• Support and counselling services are available to reduce the trauma of separation from children and other dependents. • Pregnant prisoners and mothers of young children receive information about options for their children to remain with them in prison. Staff assist prisoners to apply for these opportunities.

Expectation 18.3.3
 	
Women receive comprehensive, gender-specific health screening on reception. It includes a focus on trauma and abuse.
	• Health examinations take full account of women's gender-specific needs and risks. Areas of focus include:
	  ○ Physical, mental, and psychiatric care needs.
	  ○ Self-harm and suicide risks.
	  ○ Histories of abuse and trauma.
	  ○ Sexual health, including reproductive health and sexually transmitted infections.
	  ○ Substance misuse and dependencies.

Expectation 18.3.4 Orientation processes are gender-specific and culturally appropriate.	• Women are provided information about their rights, responsibilities, and entitlements while in prison. • Information is provided in a language and format they understand. • Orientation is culturally appropriate and acknowledges the roles women play in various cultures.

[65] BR 2, 6

18.4 Placement and accommodation[66]

Expectations	Indicators
Expectation 18.4.1 Women are held in conditions that are suitable for women.	• Women's prisons are secure, safe, and separated by sight and sound from male areas. • The prison design and the accommodation areas support women's health and wellbeing. • Suitable antenatal and postnatal accommodation is available. • There are enough open air exercise and passive recreation areas.
Expectation 18.4.2 Women are held under the least restrictive regime for their assessed risks.	• Women are held in the least restrictive regime based on their assessment. • Women are only segregated as a last resort and with consideration for the effect on children and family. • Minimum security women have access to pre-release activities and external work opportunities. Access is equal to that of male prisoners.

Regime[67]

Expectations	Indicators
Expectation 18.4.3 The regime is purposeful, respectful, and gender responsive.	• The prison has a constructive, gender-responsive regime. • There is a strong focus on self-esteem and personal development. • The women are encouraged to actively participate in the regime. • The regime is flexible enough to meet the needs of pregnant women, nursing mothers, and women with resident children.

[66] NMR 11(a)
GPCA 2.1.4
BR 4
EPR 18.8(b), 34.1
[67] BR 10.1, 42.2
EPR 34.1

18.5 Living conditions and hygiene[68]

Expectations	Indicators
Expectation 18.5.1 Living conditions are dignified, clean and hygienic.	• Living areas and cells are appropriate for women, dignified, clean and hygienic. • The infrastructure is well-maintained. • Bathroom and toilet facilities afford privacy and minimise risk.
Expectation 18.5.2 Women maintain their own personal care and hygiene.	• Period/menstrual hygiene products are readily available and never require a request to a male officer. • Women are active participants in maintaining their personal care and hygiene. • Staff sensitively and professionally encourage women to maintain personal care and hygiene, particularly women from circumstances of disadvantage and marginalisation.

Clothing[69]

Expectations	Indicators
Expectation 18.5.3 Women have clean, gender-appropriate clothing that is dignified and in good condition.	• Prison issued clothing and underwear is designed for women, respectful and dignified. • Clothing is clean, fits properly, and in good condition. • Underwear provides adequate support for daily life and physical activity. • Pregnant women and nursing mothers have suitable clothing.

[68] NMR 13, 14, 15, 16, 17, 18
BR 5
EPR 19.3, 19.4, 19.7, 34.1
[69] NMR 19
EPR 34.1

18.6 Family and community contact[70]

Expectations	Indicators
Expectation 18.6.1 The prison helps women to develop and maintain family and community contact.	• Mothers can access their children, unless it is not in the child's best interests. • The prison works with other government and non-government agencies to facilitate contact with children and family. • The prison respects the roles of Aboriginal women, including family obligations, child care practices, and extended kinship ties.

18.7 Incentives, privileges, and gratuities

Expectations	Indicators
Expectation 18.7.1 Women have equal access to incentives, privileges and gratuities.	• The system of incentives, privileges and gratuities is designed for women. It recognises that women are not men. • Women can access the highest level of incentives, earned privileges and gratuities. • Pregnant prisoners who are unable to work can maintain their incentives, privileges, and gratuities.

18.8 Women at risk of self-harm[71]

Expectations	Indicators
Expectation 18.8.1 Responses to risks of self-harm and suicide are gender-specific, culturally appropriate, and individualised.	• Women at risk of self-harm or suicide are treated as women, and with dignity and respect. • Their care addresses their individual needs and stressors, including family matters. • Their treatment is culturally appropriate.

[70] NMR 106
BR 26
[71] BR 16

18.9 Health care[72]

Expectations	Indicators
Expectation 18.9.1 Women's health services are delivered in a safe, respectful, and dignified environment.	• The health centre is welcoming, calm, and female-friendly. • Women can access female doctors, where this is preferred. They can have a representative present if they receive treatment from health staff of a different gender. • If non-medical staff have to be present during medical examinations, they are female.
Expectation 18.9.2 Health services are holistic.	• The complex health and wellbeing needs of women are identified, treated, and managed holistically. • Treatment takes full account of issues such as childhood sexual abuse, intimate partner violence and family violence, self-harm, grief, anxiety, separation from children, and low self-esteem.
Expectation 18.9.3 Preventative health care is available.	• Women are encouraged to access and learn about preventative health care, sexual health and reproductive care. • They have gender-specific preventative health care services equal to those in the community, including equivalent access to pap smears and mammograms. • Health checks and screening are performed by qualified health staff.
Expectation 18.9.4 Women's mental health needs are identified, treated, and supported by services	• The prison provides gender-specific mental health services, including counselling and support. • Mental health services are trauma informed. • Health staff are qualified to identify, treat, and support women's mental health needs.

[72] NMR 24.1, 28
GPCA 4.1.1, 4.1.14, 4.1.6, 4.2.5
BR 7, 8, 10, 11.1, 12, 13, 15, 16, 17, 18, 35 48
EPR 34
Expectations 17.29 to 17.37 deal with pregnant women and resident children.

equal to those in the community.	• Custodial staff can identify female prisoners who are feeling particularly distressed and refer them to appropriate services.

18.10 Substance use and comorbidity[73]

Expectations	Indicators
Expectation 18.10.1 Female prisoners receive gender-specific substance use treatment and support.	• Women's substance use issues are managed with gender-specific treatment, programs, support, and counselling. • Access is at least equal to that available to male prisoners.
Expectation 18.10.2 Women with histories of co-morbidity receive coordinated multi-disciplinary support.	• Female prisoners with both mental health and substance-related problems have prompt access to comprehensive multi-disciplinary support. • Drug treatment services link in with physical and mental health services.

18.11 Classification, sentence administration, and case management[74]

Expectations	Indicators
Expectation 18.11.1 Sentence administration and case management systems are based on women's risks and needs.	• Assessment tools and case management plans acknowledge that women generally pose a lower risk to other people but have higher needs than men.

18.12 Offender programs[75]

Expectations	Indicators

[73] BR 15
[74] BR 40, 41(a)
EPR 34.1
[75] GPCA 5.1.9

Expectation 18.12.1 Women can access gender-specific, culturally appropriate programs to address their offending behaviour.	• Gender-specific criminogenic programs meet the needs of female prisoners. • Access is substantively equal to that available to male prisoners. • The programs reflect the fact that the causes of female offending are different from those of men. • The programs respect the fact that women can respond differently to interventions compared to men. • A safe therapeutic environment supports women dealing with victimisation, trauma, and abuse. Individual counselling is available. • Programs and service are available to pregnant women, nursing mothers and women with resident children.

18.13 Education and employment[76]

Expectations	Indicators
Expectation 18.13.1 Education and employment opportunities for female prisoners are diverse, of interest, and increase the likelihood of successful reintegration.	• Education and employment opportunities reflect the diversity of female prisoners. • They are not limited to stereotypical gender skills and roles. • They develop skills for employment post release, including for women entering the workforce for the first time.

18.14 Preparation for release[77]

Expectations	Indicators

BR 41(c), 42.3, 42.4
EPR 34.1
[76] EPR 26.4, 34.1
[77] NMR 108.1, 108.2
BR 45, 46, 47, 55
EPR 34.1

Expectation 18.14.1 Female prisoners are prepared for release.	• Release plans are developed in consultation with the prisoner. • Women can access personal development programs on issues such as personal safety, parenting and money management. • There are strong links with government services. • There are strong links with community-based support services dealing with issues of trauma and family violence. • Female prisoners have substantive equity in accessing work release and reintegration programs, including unsupervised opportunities in the community.

18.15 Security and behaviour management

Expectations	Indicators
Expectation 18.15.1 Search practices maintain the dignity of female prisoners, resident children, and child visitors.[78]	• Searches of women are only conducted by female staff. These staff have been trained in trauma informed practice. • Searches are respectful and have full regard for experiences of trauma, violence, and abuse. • Women are not strip searched unless absolutely necessary. If a woman is strip searched, she must never be fully naked, and two appropriately trained female staff must be present. Males must not be present. • Resident children and child visitors are only searched if absolutely necessary. They are never strip searched. • If resident children or child visitors are searched, a parent or guardian must be present. Staff must show sensitivity and professionalism.
Expectation 18.15.2	• Female prisoners do not face disciplinary procedures which are conducted by all male personnel.

[78] NMR 50, 51, 52.1
BR 19, 20, 21
EPR 34.1, 54.5

Punishment and disciplinary procedures for women are fair, reasonable, and gender responsive. They do not unduly impact on their children.[79]	• Sanctions for female prisoners do not restrict contact with their children. • Prisoners who are pregnant or breastfeeding, and prisoners with resident children, are not placed in separate confinement.
Expectation 18.15.3 Use of force and restraint practices are respectful and gender-responsive.[80]	• Staff know that force and restraint practices can cause further trauma to women who have experienced prior violence and abuse. • Force and restraints on women are applied by female staff. • Force is not used against pregnant women or women with resident children unless there is an immediate risk and all other means have been exhausted. The safety of the unborn baby or resident child is paramount. • Pregnant women are not routinely restrained. If there is an assessed immediate risk, and it cannot be managed by other means, pregnant women are only to be mechanically restrained with handcuffs at the front of their body.

18.16 Pregnancy, birth and postnatal support[81]

Expectations	Indicators
Expectation 18.16.1 Pregnant women receive care that is	• Pregnant women's needs are prioritised in accommodation placement decisions. • Pregnant women have 24-hour access to prison and hospital-based care.

[79] NMR 43.2
BR 22, 23
[80] NMR 48.2, 49
GPCA 3.1.16
BR 24
EPR 34.1
[81] NMR 28, 90
BR 42.2, 48.1
EPR 34.1

equal to care in the community.	• All necessary steps are taken to reduce the chances of miscarriage, stillbirth and infant mortality. • Health checks and screening meet community standards. • Pregnant women have individual health care plans which include information on pregnancy, parenting, health, diet, and exercise. • Subject to any overriding issues of medical confidentiality, staff know which prisoners are pregnant. • Qualified staff provide information and counselling on pregnancy, miscarriage, and options for termination. • Pregnant and postnatal prisoners are given advice and support about the potential removal of their babies into government care.
Expectation 18.16.2 The prison responds promptly and appropriately to emergencies involving pregnant women.	• Custodial staff respond respectfully, promptly and effectively when pregnant prisoners express concern about their health or safety. • Health staff are fully trained to respond to pregnancy-related emergencies. • Prison security measures do not hinder a timely and effective response.

Expectation 18.16.3
 	
Prisoners give birth in hospital.
	• Prisoners give birth in a hospital unless it is a health emergency that cannot await transfer.
	• Transfers to and from hospital are conducted with respect and decency in appropriate vehicles.
	• Security arrangements during transfer and hospital stays are the minimum necessary.
	• Women are never restrained during labour, while giving birth, or immediately after delivery.
	  ○ If a woman has to give birth in prison:
	  ○ She does so in clinically clean and respectful conditions.
	  ○ She and her child receive full medical support.
	  ○ They are transferred to hospital as soon as necessary.

	○ The birth certificate does not record the child as born in prison.
Expectation 18.16.4 Postnatal prisoners are well-supported and treated with dignity and respect.	• Suitable accommodation is available for women who have recently given birth. • The prison meets the medical and nutritional needs of women who have recently given birth. • Postnatal prisoners can access all appropriate services and supports. • Women are not discouraged from breastfeeding unless there are specific health reasons to do so.

18.17 Children[82]

Child wellbeing

Expectations	Indicators
Expectation 18.17.1 Where it is in the best interests of the child, women can access programs and support to develop and maintain relationships with a child, including a child for whom they are the recognised primary carer.	• Female prisoners have a range of opportunities to develop and maintain relationships with their children, including child residence and programs for extended day stays and overnight stays. • The primary consideration for accessing these programs is the best interests of the child. • The prison respects the cultural diversity of female prisoners and supports their different childcare traditions.

Resident children

Expectations	Indicators
Expectation 18.17.2	• Clear policies govern the resident children program.

[82] NMR 29
GPCA 3.1.9
BR 9, 33.3, 49, 50, 51, 52
EPR 36.1, 36.3

The resident children program operates on comprehensive, fair, equitable, and inclusive criteria.	• Women know the policies and how to appeal decisions. They are given all necessary assistance. • The primary consideration is the best interests of the child. • Other relevant considerations are environmental conditions, risks, quality of care, and time left in prison. • The prison has a coordinator responsible for overseeing the resident children program.

Expectation 18.17.3
 	
Resident children are safe, and mothers are empowered.
	• Resident children are not treated as prisoners.
	• Accommodation is domestic rather than custodial.
	• The environment is suitable, child safe, and includes outdoor play spaces.
	• There is enough capacity to meet demand.
	• Mothers with resident children:
	  ○ Are responsible for the care of their children.
	  ○ Spend the maximum possible time with them.
	  ○ Can make informed choices.
	  ○ Can access parenting programs equal to those in the community.
	  ○ Are given the knowledge and skills necessary for child emergencies, including first aid.
	• Staff who have contact with children have:
	  ○ Registration to Work with Vulnerable People.
	  ○ Adequate training, knowledge, and skills, including for child emergencies.

Health care for resident children

Expectations	Indicators
Expectation 18.17.4 Resident children have community-standard health care.	• Resident children have access to 24-hour health care services. • Access is equal to that available in the community. • The prison facilitates child health nurse visits, and in reach general health care for children.

	• Where risk permits, mothers can attend their resident child's health appointments in the community. If this is not possible, the prison facilitates contact between the mother and the child's nominated carer. • In emergencies, health centre staff can advise and assess the health care needs of resident children. • Subject to legal requirements and proper documentation, mothers can access over-the-counter medications for resident children.

Removing a child from prison

Expectations	Indicators
Expectation 18.17.5 Mothers are well supported when their children are removed from the prison.	• Decisions about removing a child from prison are based on individualised and comprehensive assessments. • The paramount consideration is the best interests of the child. • A separation management plan is developed in consultation with the mother and nominated carer. • Mothers receive counselling and all necessary support services during and after separation. • Separation is performed sensitively and professionally. Child safety is the paramount consideration. • After the child is removed, the prison makes every effort to facilitate contact between the mother and child.

Topic 19: Gender diverse and sexually diverse prisoners

Gender identity, sexuality and sexual preference take many forms. Prisons must be aware of and responsive to these issues to ensure a safe, respectful, and effective custodial culture. The acronym LGBTQIA+ is commonly used to refer to people who are gender diverse or sexually diverse.

Lesbian, gay and bisexual people generally identify as male or female according to their assigned sex at birth. Their management is relatively straightforward. They will be allocated to a male or female prison and managed in accordance with their assigned and self-identified gender. Normal searching and other practices can be used. However, the prison must ensure that they are safe, have equal access to activities, services and supports, and are protected from discrimination and bullying.

However, some people do not identify according to traditional binary categories of male and female. Their experiences of gender, and how they identify, may not correspond with their assigned sex at birth and may shift over time.[83]

Terminology differs, but the United Nations uses ‘transgender’, ‘intersex’ and ‘gender diverse’ as follows:

- Transgender people identify as a different gender from the sex assigned to them at birth, for example, a person who was born female may identify as male, or vice versa. Transgender or trans people may or may not undertake surgery and/or hormone treatment.[84]
- Intersex people are born with sex characteristics that do not fit typical definitions for male or female bodies, including sexual anatomy, reproductive organs, hormonal patterns, and/or chromosome patterns.[85]
- Gender diverse refers to people whose gender identity and gender expression differs from the perceived gender norm, including not identifying within the male/female binary.’[86]

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[83] The Yogyakarta Principles, 2007.
[84] United Nations, The struggle of trans and gender-diverse persons, Geneva, https://www.ohchr.org/en/special-procedures/ie-sexual-orientation-and-gender-identity/struggle-trans-and-gender-diverse-persons#:~:text=The%20term%20%22gender-diverse%22,binary%3B%20the%20more%20specific%20term
[85] UN Human Rights Office. (2016), Background Note on Human Rights Violations against Intersex People, United Nations Human Rights Office of the High Commissioner.
[86] United Nations, The struggle of trans and gender-diverse persons, Geneva, https://www.ohchr.org/en/special-procedures/ie-sexual-orientation-and-gender-identity/struggle-trans-and-gender-diverse-persons#:~:text=The%20term%20%22gender%2Ddiverse%22,binary%3B%20the%20more%20specific%20term

Because prisons are male or female, gender identity and gender diversity present significant challenges. For example, where is the person to be held? How does their gender identity impact on prison operations and procedures such as searching and use of force?

Sexuality and gender can also be fluid and overlap. For example, some prisoners who have only opposite sex relationships in the community will practise same sex in prison. A transgender person may be lesbian or gay. An intersex person may be gender diverse. And a gay or straight person may prefer to dress as the opposite sex.

19.1 Core principles

The following Expectations use the term 'gender diverse and sexually diverse' to refer to all categories of LGBTQIA+ prisoners. The core principles are clear and simple.

Expectations
Expectation 19.1.1 Prisoners are treated with dignity, respect and equality irrespective of sexuality or gender identity.
Expectation 19.1.2 Gender diverse and sexually diverse prisoners are safe and appropriately managed, and have equal access to activities, services and supports.
Expectation 19.1.3 Staff know and apply principles of equality and non-discrimination relating to gender.

19.2 Gender identification

Expectations	Indicators
Expectation 19.2.1 Prisoners are addressed and referred to in the gender with which they identify.	• On reception, prisoners are sensitively asked about their preferred gender, name and pronoun. • They are addressed according to their preferences. • Prisoners can identify as transgender, gender diverse, or intersex at any stage during their time in prison.

	• Records accurately reflect prisoners' details. • Staff ensure prisoners' right to privacy.

19.3 Bullying, violence and abuse[87]

Expectations	Indicators
Expectation 19.3.1 All prisoners are safe from violence or abuse, irrespective of sexuality or gender identity.	• The prison ensures that prisoners are not bullied, abused or assaulted because of their sexuality or gender identity.
Expectation 19.3.2 Prisoners in intimate relationships are protected from partner abuse.	• If prisoners form intimate relationships, the prison takes measures to ensure that the relationship is not abusive.

19.4 Placement and accommodation[88]

Expectations	Indicators
Expectation 19.4.1 Placement decisions are based on a comprehensive consideration of the person's safety and wellbeing.	• Placement decisions are based on a robust assessment of the prisoner's individual needs, including their safety and preferences. • A multidisciplinary team conducts placement assessments for transgender, gender diverse and intersex prisoners. • Prisoners participate in discussions and have a right of appeal.
Expectation 19.4.2 Prisoners are held in a prison, or part of a	• Prisoners identifying as transgender, gender diverse and intersex are held in a place consistent with their gender identity.

[87] NMR 76.2
YP 9(d), 9(g), 10(a), 10(b), 10(c)
EPR 81.3
[88] YP 9(a), 9(c), 9(d)

prison, that is consistent with their gender identity and offers the least restrictive regime for their needs and risks.	• Gender diverse and sexually diverse prisoners are not routinely segregated due to their sexuality or gender identity, but they can apply for protection status or be placed in protection if this is necessary or appropriate. • Gender diverse and sexually diverse prisoners have equal access to minimum security placements.

19.5 Property, clothing and appearance[89]

Expectations	Indicators
Expectation 19.5.1 Transgender, gender diverse, and intersex prisoners can access personal effects to maintain their gender identity and appearance.	• Transgender, gender diverse, and intersex prisoners are asked about their preferred clothing and underwear on reception. This is provided, subject to safety and security assessments. • They can maintain hairstyles they feel are consistent with their gender identity. • They can access personal property and purchase items via the canteen to maintain their gender identity and appearance, subject to safety and security assessments.

19.6 Health and support[90]

Expectations	Indicators
Expectation 19.6.1 Gender diverse and sexually diverse prisoners have access to health care that meets their needs and is equivalent to community standards.	• Gender diverse and sexually diverse prisoners receive physical and mental health care and health promotion services that meets their needs and risks. • Access is equal to that available in the community. • Health staff are competent to respond to the needs of gender diverse and sexually diverse prisoners.

[89] NMR 18.2
[90] NMR 24.1, 24.2, GPCA 4.1.16, 4.2.5 YP 9(b)

Expectation 19.6.2 Transgender, gender diverse, and intersex prisoners receive continuity of treatment.	• Prisoners who are undergoing gender transitioning at the time of reception can continue treatment if endorsed by health staff. • Prisoners can commence gender transitioning treatment in prison. • Health services promote continuity of care on release, particularly for hormone therapy and specialist care.
Expectation 19.6.3 Transgender, gender diverse, and intersex prisoners can access support services.	• Transgender, gender diverse, and intersex prisoners have individualised support plans relevant to their management, support and counselling needs. • They can access the prison-based support and counselling supports that they require. • They can contact appropriate external support networks.

19.7 Searches[91]

Expectations	Indicators
Expectation 19.7.1 Search procedures maintain the inherent dignity of transgender, gender diverse, and intersex prisoners.	• Transgender, gender diverse, and intersex prisoners are not searched more often than other prisoners. • Staff are adequately trained to perform searches, including the sensitivities of transgender, gender diverse, and intersex prisoners. • Prisoners are asked to confirm their gender identity before being searched. Searches are carried out by a person of the gender preferred by the prisoner. If this cannot be done, the prisoner is safely managed until there can be a search or appropriate alternative arrangements are made.

19.8 Transport

Expectations	Indicators

[91] NMR 50, 52.1

Expectation 19.8.1 Transport arrangements for transgender, gender diverse, and intersex prisoners ensure safety, security, and dignified treatment.	• Risk assessment processes are conducted before the person is transported. • They are transported safely, securely and with dignity.

19.9 Rehabilitation and reintegration[92]

Expectations	Indicators
Expectation 19.9.1 Gender diverse and sexually diverse prisoners have equal access to rehabilitative and reintegration opportunities.	• Transgender, gender diverse, and intersex prisoners have equal access to the full suite of services, programs, and treatment available to other prisoners to meet their rehabilitative and reintegration needs. • Prisoners are not denied access to services, programs, and treatment due to their gender identity.

[92] NMR 108.1, 108.2
GPCA 5.1.9

Topic 20: Prisoners with disability

Article 1 of the United Nations Convention on the Rights of Persons with Disabilities 2006 (CRPD) provides that:

> Persons with disabilities include those who have long-term physical, mental, intellectual, or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

Although the Convention refers to 'long-term' impairments, these expectations also apply to people with short term physical, mental, intellectual, or sensory impairments.[93]

In line with the national Disability Discrimination Act, the term 'disability' in these expectations includes mental illness.[94]

People with mental, intellectual, and sensory impairments are over-represented in the criminal justice system. It is estimated that:

- Around 40% of prisoners have experienced some level of mental illness.[95]
- It has been estimated that 20% of the prison population or more has a cognitive or intellectual disability compared with 2-3 % of the general population.[96]
- People with sensory disabilities, particularly deafness and hearing impairments, are also overrepresented. Research in Victoria found that 12% of prisoners had a hearing loss,[97] and research in the Northern Territory found more than 90 per cent of Aboriginal prisoners had significant hearing loss.[98] (Vanderpol & Howard, 2011)

By contrast, people with physical disability are underrepresented. This may be because the physical disability limits the ability to engage in criminal activity (Human Rights and Equal Opportunity Commission, 1989). However, as the population ages, more prisoners have a physical disability.[99]

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[93] See also OICS (WA), Inspection Standards, 2020, p 67.
[94] See also Expectations 8.17 to 8.19
[95] Australian institute of Health and Welfare (AIHW), 'Health of Prisoners' (2022): https://www.aihw.gov.au/reports/australias-health/health-of-prisoners
[96] People with Disability Australia, Productivity Commission Issues Paper: Access to Justice Arrangements, 2013.
[97] Quinn, S and Rance, G 'The extent of hearing impairment amongst Australian Indigenous prisoners in Victoria, and implications for the correctional system', Int J Audiol 2009 Mar 48(3):123-34.
[98] Vanderpol, T., & Howard, D 'Investigation into hearing impairment among Indigenous prisoners within the Northern Territory Correctional Services', 2011, Darwin: Northern Territory Correctional Services.
[99] See Expectations 17.1 to 17.12.

Prisoners with disability are at risk of discrimination, negative attitudes, social isolation, and lack of awareness on the part of other prisoners and staff. They can be vulnerable to manipulation and assault, and communication barriers can result in incidents and management issues. People with disability can also experience difficulties meeting parole requirements and transitioning back to the community.

20.1 Planning

Expectations	Indicators
Expectation 20.1.1 The Prison Service has a strategic plan for prisoners with disabilities.	• The Prison Service has a strategic plan for housing, managing and assisting prisoners with disabilities. • The plan sets clear goals and measures. • It is age and gender sensitive and culturally appropriate. • It is known and understood by staff.

20.2 Staff training

Expectations	Indicators
Expectation 20.2.1 Staff are adequately trained to manage and assist people with disability.	• Staff are trained so they can manage prisoners with disability fairly, safely and effectively. • Staff understand that 'non-compliance' may result from the person's disability and should be managed accordingly.

20.3 Screening[100]

Expectations	Indicators
Expectation 20.3.1 Prisoners are systematically screened for disability on admission.	• A safe and supportive environment puts prisoners at ease to disclose any impairments, not just already-diagnosed disabilities. • The prison has valid and reliable assessment tools to identify types of disabilities, so identification does not depend on self-reporting. • Screening occurs within 72 hours of reception. • Screening is conducted by appropriately qualified staff.

[100] GPCA 4.1.15

	• Results are accurately recorded. • Details are communicated with the prisoner in an empathetic language and format they understand.

20.4 Information sharing

Expectations	Indicators
Expectation 20.4.1 Information relevant to the prisoner's management is shared with relevant staff.	• Subject to privacy requirements, relevant staff are informed when a prisoner's disability will affect their management (including hearing impairment and communication difficulties). • The prisoner's disability is factored into their individual management plan, subject to privacy considerations.

20.5 Guardianship[101]

Expectations	Indicators
Expectation 20.5.1 Prisoners under legal guardianship are appropriately represented and supported.	• Prisoners under legal guardianship orders can easily access their guardian. • Staff can identify when a prisoner under guardianship requires access to their legal guardian. • The prison promptly informs legal guardians of significant changes to a prisoner's circumstances. • The prison has procedures identifying when a prisoner may need a guardian to be appointed. • Safeguards are put in place until guardianship can be activated, or access to the guardian is obtained.

20.6 Requests and complaints

Expectations	Indicators
Expectation 20.6.1	• Prisoners with disability have access to request, complaint and advocacy services that is at least equal

[101] GPCA 2.3.5, 2.3.8

Prisoners with disability can access advocacy services.	to that available in the community and to other prisoners.

20.7 Dignity, respect, and safety

Expectations	Indicators
Expectation 20.7.1 Prisoners with disability are treated with dignity and respect.	• Staff are good role models. They treat prisoners with disability in a respectful and dignified manner. • All prisoners are given education about disability and impairment.
Expectation 20.7.2 Prisoners with disability feel safe from bullying, victimisation and violence.	• Staff are vigilant to identify and respond to bullying, victimisation, and violence towards prisoners with disability, particularly those who are vulnerable to such abuse. • Prisoners with disability can easily report bullying, victimisation, and violence. Reporting mechanisms account for the person's specific impairment.

20.8 Placement and accommodation[102]

Expectations	Indicators
Expectation 20.8.1 Accommodation is suitable, decent, and safe.	• The prison design reflects the needs of people with disability. • Where required, appropriate modifications and adjustments are made to the built environment. • Conditions do not impose an undue burden on a prisoner because of their disability. • Prisoners with mobility limitations are allocated to ground level cells and lower bunk beds. • Prisoners' disability needs are assessed prior to placement, including whether to allocate them to a shared cell.

[102] NMR 109.1

	• Prisoners with disability are not routinely segregated or placed in separate confinement.

20.9 Daily life

Expectations	Indicators
Expectation 20.9.1 Prisoners with disability have a meaningful and purposeful regime.	• The prison provides a purposeful daily regime for prisoners with disability. • They can access all reasonably necessary aids, technology, and supports. • Prisoners with disability understand the regime rules and requirements, especially those with psychosocial, intellectual, and cognitive impairments. • The privileges system takes adequate and respectful account of prisoners' disabilities. • The prison seeks advice from prisoners with disability on issues of prison regime.

20.10 Employment, education and programs[103]

Expectations	Indicators
Expectation 20.10.1 Prisoners with disability have equal access to employment, education and training.	• Prisoners are not excluded from employment, education, or training because of their disability. • The prison provides employment opportunities tailored to the needs of prisoners with disability. • Prisoners with disability can access education and training opportunities tailored to their needs. Delivery is in a language and format they understand. • Appropriately qualified staff are skilled to deliver courses and programs to prisoners with disability. • Access to employment, education and training is substantively equal to that of other prisoners. • Prisoners with disability have equal access to higher level gratuities.

[103] GPCA 5.1.9

20.11 Rehabilitation programs

Expectations	Indicators
Expectation 20.11.1 Prisoners with disability have timely access to treatment programs that meet their needs.	• Prisoners who have a disability that precludes participation in mainstream group treatment programs can access group or individual programs that meet their needs. • Programs are completed, and reports are prepared before the prisoner becomes eligible for parole.

20.12 Health care[104]

Expectations	Indicators
Expectation 20.12.1 The prison meets the health care needs of prisoners with disability.	• Prisoners with disability can reasonably access the treatment, therapies, aids, and medications they need to manage their health. • Prisoners receive ongoing assessments to ensure their impairments are not exacerbated by imprisonment. • Health staff are appropriately qualified. • Prisoners with disability have a right to privacy equal to other prisoners. • Prisoners with disability maintain their right to consent and refuse medical treatment. Where necessary, the prisoner's guardian is involved. • The prison accesses community-based services when appropriate.

20.13 Support[105]

Expectations	Indicators
Expectation 20.13.1	• Prisoners with disability are adequately supported while in custody.

[104] NMR 109.3
GPCA 2.3.8, 4.1.15
[105] NMR 76.2
EPR 81.3

Prisoners with disability receive comprehensive individualised support.	• Staff sensitively manage prisoners with disability, particularly at times of crisis. • Prisoners with disability have individualised support plans which include all information relevant to the person's daily management, and their support needs. The plans are regularly reviewed. • Adequate cultural support is available, particularly for Aboriginal people with disability.

20.14 Searches[106]

Expectations	Indicators
Expectation 20.14.1 Prisoners with disability are treated with dignity and respect during searches. When appropriate, alternatives are used.	• Prisoners with disability are not disproportionately searched more often than other prisoners. • Alternative search methods are used if a search of the person may cause undue pain, discomfort, or stress. • Before a search is conducted, prisoners with disability are informed about search procedures in a language and format they understand. • Prisoners with disability can sit down as much as required during the search process. • Health staff are involved in the removal of any artificial limb or aids, including bandages or casts, where these impede a search and there are reasonable grounds to suspect unauthorised concealment. • Searches are conducted with due regard to the prisoner's privacy and modesty. • Aids are inspected respectfully and promptly reassembled and returned.

[106] NMR 50

20.15 Use of force and restraints[107]

Expectations	Indicators
Expectation 20.15.1 Force and restraints are only used as a last resort on prisoners with disability. When used, the prisoner is treated with respect and dignity.	• Before using force or restraints on a prisoner with disability, staff use all de-escalation options. • Instructions and explanations are delivered to prisoners with disability in a way they understand. • Prisoners with disability are not subject to force or restraints that exacerbate their disability. • Care plans for prisoners with disability highlight risk factors and set out alternative management protocols. • Staff do not use restraints on prisoners with disability unless they have been appropriately trained and the techniques have been approved.

20.16 Disciplinary procedures and punishment[108]

Expectations	Indicators
Expectation 20.16.1 Disciplinary processes and punishment take full account of a prisoner's impairment.	• Prisoners with disability are not sanctioned or disciplined for behaviour resulting from their disability. • Disciplinary procedures take full account of the prisoner's impairment. • Behaviour management procedures provide positive behaviour support for prisoners with disability. • Where necessary, health or disability support staff provide specialist advice. • Punishment does not exacerbate or cause harm to a prisoner's disability. • Alternatives to formal disciplinary procedures are used whenever possible. • Staff are encouraged to use alternative management options.

[107] GPCA 3.1.16
[108] NMR 39.3, 45.2

Expectation 20.16.2
 	
Restrictive practices are used only as a last resort for prisoners with disability.
	• The prison does not limit the rights or freedom of movement of people with disability unless all other options have been exhausted.[109]
	• If used, restrictive practices are imposed:
	  ○ For the shortest possible time.
	  ○ In line with a behaviour support plan
	  ○ Under the guidance of an appropriately qualified clinician or disability professional.

20.17 Transport[110]

Expectations	Indicators
Expectation 20.17.1 Transport arrangement for prisoners with disability are safe and secure.	• Staff conduct a risk assessment prior to any escort ensuring adequate and appropriate resources, aids, and vehicles are used in the transport. • If necessary, suitable, and safe non-standard vehicles are available for use. • Staff are well trained and equipped to respond to in-transit emergencies involving prisoners with disability.
Expectation 20.17.2 Prisoners with disability have an equal opportunity to attend court, medical appointments, and other out of prison activities.	• A prisoner's disability does not prevent them attending court hearings, medical appointments and other activities outside the prison in person.

20.18 Preparation for release[111]

Expectations	Indicators

[109] On the meaning of 'restrictive practices', see Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. *Restrictive Practices Issues Paper*, May 2020: https://disability.royalcommission.gov.au/publications/restrictive-practices
[110] GPCA 1.2.2
[111] NMR 108.1, 108.2

Expectation 20.18.1 Prisoners with disability are adequately prepared with any reasonable and necessary supports in place prior to their release.	• Prisoners with disability can access advice, support, and skills to prepare them for their release. • They have equal access to minimum security, pre-release opportunities. • They have suitable accommodation on release. • The prison provides effective transition support, including coordinated links with support organisations, the NDIS, and other government and non-government services.

Topic 21: Foreign national prisoners

Expectations	Indicators
Expectation 21.1 Foreign national prisoners are supported to maintain connection with their family and community of interest.	• Foreign national prisoners know how to maintain connection with their family and community of interest. • They have access to information in a language and format they understand. • Consular assistance and interpreter services are obtained as required. • Foreign national prisoners receive extra calls and/or allowances where they are unlikely to receive regular visits. Where necessary, phone calls are facilitated at a mutually appropriate time of day. • The prison provides advice to prisoners who wish to consider international transfer back to their country, • The prison supports foreign nationals who are being deported or removed from the country upon release.

PART THREE:

PLANNING, HUMAN RESOURCES, GOVERNANCE AND SUSTAINABILITY

Topic 22: Planning, governance and human resources

22.1 Planning[112]

Expectations	Indicators
Expectation 22.1.1 The Department has a strategic plan for corrections.	• There is a clear, comprehensive, corporate plan for corrective services. • The plan covers prisons and community-based corrections. • It includes broad objectives, underlying principles, and measurable targets. • It is based on a robust analysis of prisoner population trends and predicted future changes. • It caters for the needs of different prisoner groups, not just prisoner numbers. • It identifies the roles of each prison within the system. • Staff know and understand the Department's strategic plan.
Expectation 22.1.2 The prison itself has an operational plan, including philosophy, guiding principles and projected outcomes.	• The prison has an operational plan. It is underpinned by a philosophy and a set of guiding principles. • Staff know the prison's operating philosophy and put it into practice. • The plan caters for the needs of all prisoners at that prison. • The plan states the prison's goals and projected outcomes. • Staff are involved in developing, evaluating and amending the plan.
Expectation 22.1.3 Planning is financially robust, responsible, and responsive.	• Corporate and prison-based planning is supported by a robust budget. • The Department and its prisons develop and present detailed and responsible business cases.

[112] GPCA 1.4.4, 2.3.4
EPR 72.2

	• The Department and its prisons respond to budget pressure by implementing safe, secure, and sensible cost-saving measures.

22.2 Standard Operating Procedures

Expectations	Indicators
Expectation 22.2.1 Standard operating procedures are clear, consistent, and comply with legislation and international standards.	• The Department has up-to-date operating procedures for all prisons. • The procedures are user-friendly and internally consistent. • They comply with domestic legal requirements and meet international and national standards. • They are easily accessible to staff. • They are evaluated and updated as required. • When changes are made, staff are informed and trained as required. • They are publicly available unless there are strong reasons to the contrary.

22.3 Communication

Expectations	Indicators
Expectation 22.3.1 There are robust and effective processes for communication.	• The Department communicates effectively with the prisons. Staff are clearly informed of changes. • Communication is regular, respectful, and recorded. • Prison managers communicate effectively with staff at the prison. • Staff have appropriate avenues to communicate with local management and head office leadership.

22.4 Human resources and staff management[113]

Expectations	Indicators

[113] NMR 74.1, 74.2, 75, 76, 78.1, 79.1, 80.1

Expectation 22.4.1 On-site staffing levels are sufficient for the prison to manage prisoners safely, securely and respectfully, and to deliver all relevant programs and services.	• Staff numbers meet the prison's needs in all operational and service areas. • There are effective rostering processes and systems to cover planned and unplanned leave. • Unscheduled absences are minimised through effective monitoring and staff welfare support. • The prison is not over-reliant on overtime. • An up-to-date workforce strategy anticipates future recruitment needs and helps to ensure staff retention.

Expectation 22.4.2
 	
Staff have the necessary knowledge, skills, and authorisations. They are trained to the highest standards of professionalism, competence, integrity, and honesty.
	• All positions have an accurate and current Job description.
	• Staff have full authorisations and security clearances for the work they do.
	• All staff:
	  ○ Understand the legislation and policies to which they must adhere.
	  ○ Understand the role of independent oversight bodies and cooperate with them.
	  ○ Demonstrate the knowledge and skills to perform their work professionally.
	  ○ Are trained and can access professional development relevant to their role and skills.
	  ○ Are culturally competent.
	• Staff working with prisoners are trained in prisoners' human rights.
	• Staff can provide input on their training and professional development needs and their input is valued.

Expectation 22.4.3 The staff profile is diverse. As far as	• Recruitment is gender responsive and culturally appropriate. • As far as possible, the gender and ethnic mix of custodial staff reflects the prison population.

GPCA 1.1.4, 1.1.7, 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5, 1.2.7, 1.4.4, 1.5.6, 2.4.6.
BR 30
EPR 8, 25.2, 72.2, 72.4, 73, 76, 77, 81.1-3, 85

possible, it reflects the prisoners' profile.	
Expectation 22.4.4 Staff have the necessary support.	• All staff have access to the resources and supports necessary to do their jobs, including how to manage burn out, trauma, vicarious trauma and compassion fatigue.
Expectation 22.4.5 Appointments, promotions and access to other opportunities and benefits are governed by effective, transparent, and fair processes.	• Staff appointments, transfers, promotions, opportunities to act in higher positions, and payment of special allowances are decided by transparent, merit-based systems. • There is a transparent, fair and effective staff performance management system. • Accurate records are kept of staff misconduct, associated evidence, and actions taken. • There are opportunities for appeal.
Expectation 22.4.6 Processes relating to pay, leave, and leave management are accurate, fair and effective.	• Staff are paid accurately and on time. • Leave entitlements are accurately recorded. • Leave application processes allow the prison to plan effectively and are fair to staff. • Leave management arrangements ensure that staff do take leave, and that the prison does not carry an excessive leave liability.

22.5 Staff grievances

Expectations	Indicators
Expectation 22.5.1 Staff have appropriate and effective ways to express and resolve work related grievances.	• Staff know their rights and responsibilities in resolving grievances. • Grievances are resolved promptly, fairly, sensitively, and confidentially. • Every attempt is made to resolve the grievance at the lowest level. • Staff are clearly informed of the outcome and have a right of appeal.

22.6 Records management[114]

Expectations	Indicators
Expectation 22.6.1 The Department and the prison keep comprehensive and accurate prisoner records.	• Official records are kept for each prisoner. • Records are comprehensive, accurate, and up to date. • Records are securely managed and archived. They are not accessible to unauthorised persons. • Effective procedures prevent unauthorised access or modification of prisoner files. • Prisoners and people who have been released from prison can access information in their personal file, subject to any necessary authorised redactions. Information is available to prisoners about their ability to make an application for their personal information or information under the *Right to Information Act 2009*.

[114] NMR 6, 7, 8, 9, 92.2, 92.3
GPCA 1.5.1, 1.5.2, 1.5.3, 1.54, 1.5.5, 1.5.6

Topic 23: Environmental sustainability and community relations

23.1 Environmental sustainability

Expectations	Indicators
Expectation 23.1.1 The Department is committed to environmental sustainability.	• Procurement aligns with environmental management agendas, including clean energy, energy and water efficiency, and recycling. • New buildings are designed with environmental factors and climate change in mind. • Land management is responsible and sensitive. • Prison transport arrangements are environmentally friendly. Vehicles have regular environmental and efficiency assessments.
Expectation 23.1.2 The prison implements effective environmental sustainability practices.	• Water and energy use is efficient. Consumption is minimised. • Waste is minimised and handled in a safe, legal, and environmentally responsible manner. • Staff and prisoners are informed about sustainable practices.

23.2 Community relations[115]

Expectations	Indicators
Expectation 23.2.1 A wide range of community-based service providers are involved with the prison.	• Community-based service providers deliver services such as domestic, financial, and life skills, spiritual guidance and post-release connections. • Service providers are security checked, authorised, and receive an adequate induction to the prison. • All prisoners can receive access and assistance from service providers. • The prison evaluates the material used by service providers and the results of their services, using the views of participants and other relevant criteria.

[115] NMR 74.2, 88
GPCA 1.4.1, 2.4.4, 5.1.6, 5.2.4, 5.4.2, 5.4.4
EPR 90.1

Expectation 23.2.2 The community knows about and has input into prisons, staff, and their work.	• Prison management meets regularly with a representative Community Reference Group to provide information and updates. The meetings help to inform prison operations and community engagement activities. • The prison has a positive relationship with Aboriginal and CALD agencies and support groups and groups that provide services to LGBTQIA+, young people, women and people with disabilities.

Tasmanian NPM National Preventive Mechanism

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Appendix 8: Detailed budget modelling for the Tasmanian NPM 2023 - 2026

Tasmanian National Preventative Mechanism Budget (excluding Custodial Inspector costs)

	FY23/24 Budget	FY24/25 Budget	FY25/26 Budget
Total Operational Expenses	$ 907,045.03	$ 1,487,024.27	$ 1,740,429.99

Natural Account	Expenses	FY23/24 Budget	FY24/25 Budget	FY25/26 Budget	Comments
	OFFICE OF THE NPM				
	Salaries and Wages - Office of the NPM	$ 400,730.50	$449,772.50	$ 466,863.86	Please see detail in tab "Staffing". CPI adjusted for FY 24/25 and FY 25/26.
	Salary Allowances - Office of the NPM	$ -	$ -	$ -	No salary allowances budgeted.
	Higher Duty Allowance - Office of the NPM	$ -	$ -	$ -	No higher duty allowance budgeted.
	Annual Leave - Office of the NPM	$ 30,825.42	$ 30,290.08	$ 31,441.10	20 days. CPI adjusted.
	Superannuation - Office of the NPM	$ 55,901.90	$ 62,743.26	$ 65,127.51	10.5% Superannuation.
	Sick Leave - Office of the NPM	$ 15,412.71	$ 15,145.04	$ 15,720.55	10 days. CPI adjusted.
	Other Employees Expenses	$ 20,036.53	$ 23,140.80	$ 24,932.91	Includes provision of 10% of salaries and wages for oncosts. CPI adjusted.
52906	Other Consultants Fees	$ 50,000.00	$ 50,000.00	$ 60,000.00	Development and implementation of ICT strategy (FY 23/24 and FY24/25) and strategic review and definition of governance and outcomes measures (FY 25/26).
	Marketing and Communications	$ 16,525.00	$ 6,431.25	$ 6,675.64	Includes development of marketing and communication plans and collateral for marketing purposes ($125 per hour, 50 hours per year. Includes 52820 Graphic Design and 52342 Publications. CPI adjusted.
52326	Public Relations	$ 3,132.00	$ 3,222.83	$ 3,345.30	Equivalent budget to the Office of the Custodial Inspector, CPI adjusted.
52859	Memberships and Affiliations	$ 104.40	$ 107.43	$ 111.51	Equivalent budget to the Office of the Custodial Inspector, CPI adjusted.
52860	Miscellaneous	$ 70,000.00	$ 110,000.00	$ 110,000.00	Includes contingency of ~10% of total budget and additional provision for educational collateral ($10,000 in FY24/25) and establishment of the Advisory Committee ($10,000 in FY25/26).
51201	Fringe Benefits Tax	$ -	$ -	$ -	No fringe benefits provided.
		$ 662,668.46	**$ 750,853.19**	**$ 784,218.38**	
	PREVENTATIVE FUNCTIONS				
	Salaries and Wages - Monitoring & Policy Officers	$ -	$ 279,088.31	$ 427,394.95	Please see detail in tab "Staffing". CPI adjusted.
	Salary Allowances - Monitoring & Policy Officers	$ -	$ -	$ -	No salary allowances budgeted.
	Higher Duty Allowance - Monitoring & Policy Officers	$ -	$ -	$ -	No higher duty allowance budgeted.
	Annual Leave - Monitoring & Policy Officers	$ -	$ 21,468.33	$ 32,876.53	20 days. CPI adjusted.
	Superannuation - Monitoring & Policy Officers	$ -	$ 38,932.82	$ 59,621.60	10.5% Superannuation.
	Sick Leave - Monitoring & Policy Officers		$ 10,734.17	$ 16,438.27	10 days. CPI adjusted.
51203	Other Employees Expenses	$ 7,200.00	$ 21,767.89	$ 30,515.40	Includes 52514 Car Parking and provision of 10% of salaries and wages for oncosts. Car Parking budge equivalent to the Office of the Custodial Inspector, CPI adjusted.
51205	Training	$ 20,000.00	$ 20,580.00	$ 21,362.04	Includes 51212 - Professional Development and 52858 - Seminars and Conferences. CPI adjusted FY24/25 and FY25/26.
52911	Consultants Expenses	$ 78,300.00	$ 154,350.00	$ 155,700.00	CPI adjusted.
52413	Motor Vehicle Leases	$ 11,400.00	$ 17,595.90	$ 18,264.54	One car leased in FY23/24, two cars leased from FY24/25 onwards, one being for the Head of Agency (50% cost). Estimated cost (myfleet.lease) includes finance costs, insurance, maintenance, registration, tyres and roadside. CPI adjusted.
52415	Motor Vehicle Oils & Lubricants	$ 1,000.00	$ 2,058.00	$ 2,136.20	Equivalent budget to the Office of the Custodial Inspector for FY23/24, increase of 100% from FY24/25 onwards. CPI adjusted.
52405	Part Day Travel - Meal Allowance	$ 2,000.00	$ 5,145.00	$ 6,228.00	20 days in FY23/24 (Education Function and start of the Visiting Function), 50 days in FY24/25 (Education and Visiting Functions) and 60 days in FY25/26 (Education, Visiting and Collaboration Functions). $100 per day allowance. CPI adjusted.
52406	Interstate Actual Travel Costs (Hotels etc)	$ 8,000.00	$ 8,232.00	$ 8,544.82	Covers 52401 Interstate Airfares. Equivalent budget to the Office of the Custodial Inspector. CPI adjusted.
52424	Intrastate Actual Travel Costs (Hotels etc)	$ 3,800.00	$ 5,865.30	$ 6,088.18	Equivalent budget to the Office of the Custodial Inspector for FY23/24, increase of 50% from FY24/25 onwards. CPI adjusted.
52832	Voice (VOIP) – Calls and usage charges	$ 2,500.00	$ 2,572.50	$ 2,670.26	Equivalent budget to the Office of the Custodial Inspector, CPI adjusted.
52854	Entertainment	$ -	$ -	$ -	No entertainment expenses budgeted.
		$ 134,200.00	**$ 588,390.22**	**$ 787,840.79**	
	BUSINESS ENABLEMENT				
52922	Service Level Agreement Services	$ 40,073.05	$ 74,999.78	$ 92,824.06	Corporate services to be outsourced to TAS DoJ in FY23/24 and potentially another provider from FY24/25 onwards. Assuming no change in costing with change of suppliers. Estimated cost 10% of salaries and wages. CPI adjusted.
	Electricity	$ 6,697.65	$ 6,891.88	$ 7,153.77	CPI adjusted.
52852	Insurance	$ 4,257.62	$ 4,381.09	$ 4,547.57	Equivalent budget to the Office of the Custodial Inspector, CPI adjusted.
52311	Plant and Equipment Maintenance	$ 522.00	$ 537.14	$ 557.55	Equivalent budget to the Office of the Custodial Inspector, CPI adjusted.
	Telephone & Internet	$ 1,378.08	$ 1,418.04	$ 1,471.93	Estimated cost of $2,000/month. CPI adjusted.
52344	Other Printing/Binding	$ 1,252.80	$ 1,933.70	$ 2,007.18	Includes stationery and printing. $100/month in 23/24, $150/month from 24/25 onwards. CPI adjusted.
	Office rent	$ 37,584.00	$ 38,673.94	$ 40,143.55	80sqm office space, CPI adjusted. Assuming that rent covers all utilities except electricity.
	Website management	$ 6,000.00	$ 6,174.00	$ 6,408.61	Estimated cost $500 per month. Includes website design & development and website maintenance. CPI adjusted FY24/25 and FY25/26.
52204	Software and Licences	$ 1,566.00	$ 1,611.41	$ 1,672.65	Equivalent budget to the Office of the Custodial Inspector, CPI adjusted.
52206	Computer Leases	$ 261.00	$ 268.57	$ 278.77	Equivalent budget to the Office of the Custodial Inspector, CPI adjusted.
52299	Other Computers / IT	$ 10,584.36	$ 10,891.31	$ 11,305.18	Equivalent budget to the Office of the Custodial Inspector, CPI adjusted.
		$ 110,176.57	**$ 147,780.86**	**$ 168,370.83**	
	TOTAL	**$ 907,045.03**	**$ 1,487,024.27**	**$ 1,740,429.99**	

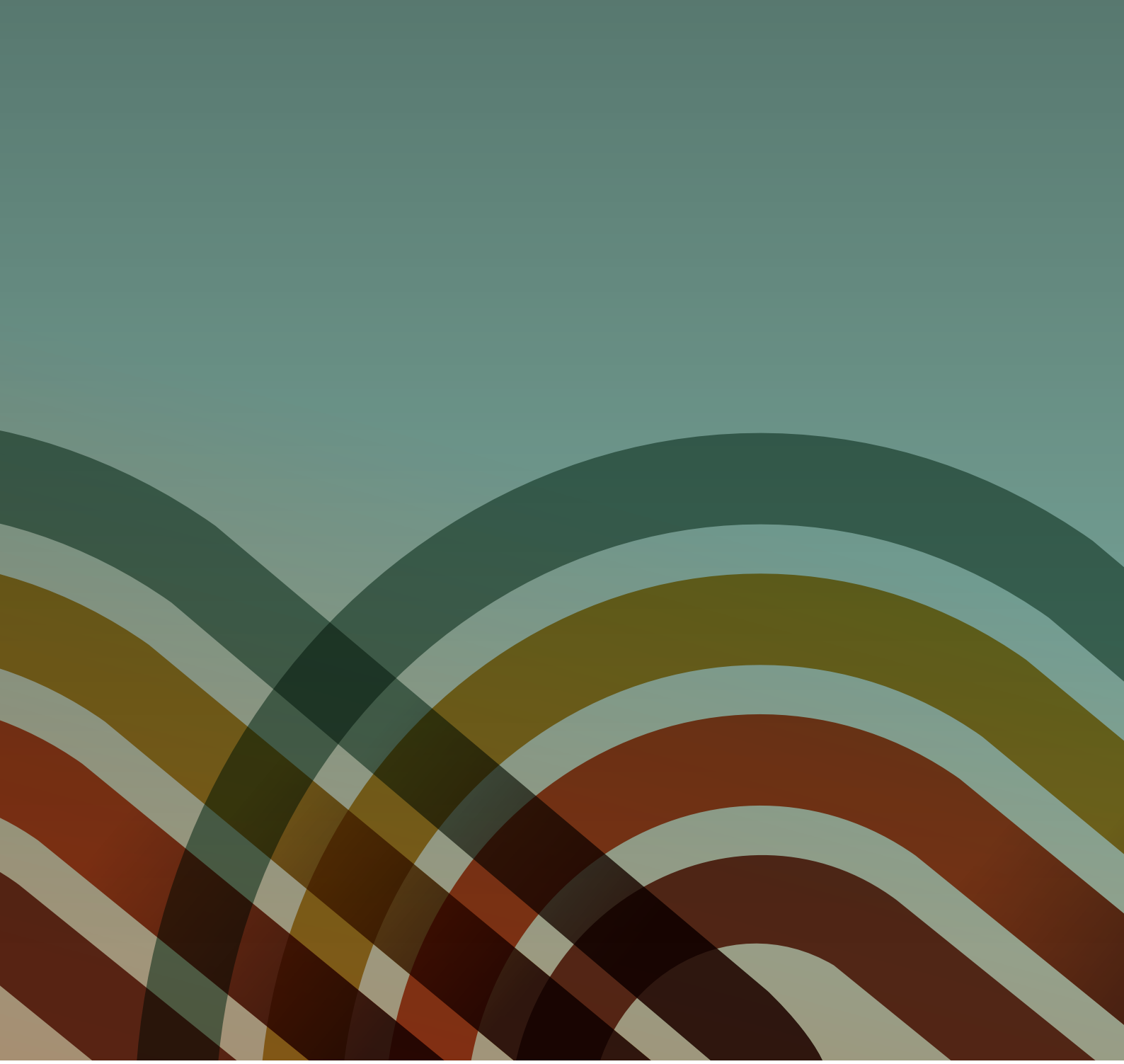
Staffing Role	Band	Base Annual Salary (upper range)	Hourly Salary	Start Date	Superannuation (13.95%)	Annual Leave	Sick Leave	Comment
Director Tasmanian NPM	Band 8	$150,553.00	$76.19	1/09/2023	$21,002.14	$11,581.00	$5,790.50	Office of the NPM
Senior Monitoring Officer	Band 7	$136,304.00	$68.98	1/07/2024	$19,014.41	$10,484.92	$5,242.46	Preventive Function
Monitoring Officer	Band 6	$123,488.00	$62.49	1/07/2025	$17,226.58	$9,499.08	$4,749.54	Preventive Function
Policy Officer	Band 6	$123,488.00	$62.49	1/07/2024	$17,226.58	$9,499.08	$4,749.54	Preventive Function
Community Liaison Officer	Band 6	$123,488.00	$62.49	1/10/2023	$17,226.58	$9,499.08	$4,749.54	Office of the NPM
NPM & CI Head of Agency	SES4	$308,497.00	$156.12	1/07/2024	$43,035.33	$23,730.54	$11,865.27	Office of the NPM
Project Manager - OPCAT Implementation Project	Band 7	$136,304.00	$68.98	1/07/2023	$19,014.41	$10,484.92	$5,242.46	Office of the NPM
Business Manager	Band 5	$104,259.00	$52.76	1/07/2024	$14,544.13	$8,019.92	$4,009.96	Office of the NPM

Notes:

The Project Manager was engaged in 2022 to support the implementation of the NPM. This role will be extended until the end of FY 23/24

Source: Department of Justice salary table provided on 22 Jun 2023 (for reference, please see table below). Information used: upper range base salary, superannuation and on-costs.

Detailed Assumptions - Description	Value	Notes
Scope and Cost p.a. of Corporate Services to be outsourced to a government department. For FY23/24, these will be provided by the Tasmanian Department of Justice (DoJ) as part of the Service Level Agreement between the DoJ and the Office of the Ombudsman and Health Complaints Commissioner. From 24/25, another provider will potentially be engaged. Estimated cost per employee 10% of salary costs as per advice of the Department of Finance of the DoJ. Services provided (payroll, finance, recruitment, IT etc) can be scaleable based on FTE in each output relative to salaries costing.	10%	**Human Resources:** advertising, recruitment administration, selection procedure guidance, workplace health and safety services including Employee Asssistance Programs (EAPs), workers compensation and rehabilitation and industrial, award, and grievance management processes in accordance with Justice's Human Resource policy framework. Creation of new permanent and temporary positions, advice relating to the drafting of Statement of Duties and positions classifications. All Payroll services including processing, and advice on payroll-related matters. Performance Management. WHS **Finance:** Access to system to upload cashflow budget, Enter budget variations into Treasury's Budget Management System, Preparation of financial statements, Accounts payable and accounts receivable processing, Provision of credit cards, Bank and system reconciliations, Finance One support, Provision of taxation services for PAYG and FBT, Treasury Financial Reporting System (TFRS) mandatory data reporting **Property and Facility Services:** Identification cards for employees **Information Technnology:** Management and support of the computing and network environment, helpdesk, procurement service for IT equipment and software, including access to the following systems: Internet web content management service, HP RM8 Records Management, Resolve Case Management, Email service, Corporate applications, File Sharing Service (departmental), Managed Deskstop environment, Networking Services, Printing Services, Internet VPN Remote Access Service, Wireless Remote Access Service, Antivirus SPAM and web content filtering, Auditing and investigation, Intrusion Detection services **Communications and Executive Support:** Web and intranet hosting services including basic site support and training in host program (Squiz Matrix) features
Other employee expenses in addition to 52514 Car Parking include a provision of 5%, which added to other leave and training, which are budgeted separately, is equivalent to the 23.7% used by the calculations provided by the DoJ, This provision is also in line with the advice provided by the DoJ of provisioning between 5 and 10% of the wages for oncosts. This should be revisited after the Office of the NPM is fully established.	5%	
Scope of Corporate Services that are the responsibility of NPM staff. These will be the responsibility of the NPM leadership team.	N/A - scope to be incorporated into NPM leadership roles.	**Human Resources:** training to manage the performance of staff, align performance management process with DoJ's policies and guidelines, provide and maintain safe workplaces, convene a regular meeting of managers to consider WH&S issues, notify DoJ of incidents or hazards **Finance:** budget and cashflow management, calculation, analysis and approvals for budget variations, preparation of annual report, resolving overdue accounts, ongoing maintenance of the office's financial delegations, external audit services, **Property and Facility Services**: maintenance and lease costs of the premises that the office occupies, leasing of motor vehicles and associated maintenance, fuel and registration, procurement and tender processes under Treasurer's Instructions, establishment and maintenance of telecommunication services **Information Technology**: administering, operating and training staff in the use of its business systems Communications and Executive Support: site maintenance, design and content
FY19/20 Consumer Price Index (source: IBISWorld)	1.60%	
FY20/21 Consumer Price Index (source: IBISWorld)	1.80%	
FY21/22 Consumer Price Index (source: IBISWorld)	5.30%	
FY22/23 Consumer Price Index (source: IBISWorld)	7.10%	
FY23/24 Consumer Price Index (source: IBISWorld)	4.40%	
FY24/25 Consumer Price Index (source: IBISWorld)	2.90%	
FY25/26 Consumer Price Index (source: IBISWorld)	3.80%	
Superannuation (source: Department of Justice salary table provided to Mark Huber on 22 Jun 2023)	13.95%	
Annual leave loading assuming all staff works full-time - 20 days at 7.6h/day	152.00	
Sick leave - 10 days, at 7.6h/day	76.00	
Office size (in square meters)	80.00	
Average lease price p.a. per square meter in Hobart CBD (source: https://www.realcommercial.com.au/for-lease/hobart-tas-7000/ accessed on 11 Apr 2023)	$450	
Office rent p.a.	$36,000.00	
Average electricity bill p.a. small business in Tasmania, CPI adjusted to 2023 value. (source: https://energyconsumersaustralia.com.au/wp-content/uploads/SME-Retail-Tariff-Tracker-Final-Report-June-2018.pdf)	$ 6,415.37	
External support to develop and implement ICT strategy	$ 100,000.00	50% on FY23/24 and 50% on FY24/25
Strategic Planning costs - FY 25/26	$ 60,000.00	Estimated cost of external consultancy support for strategic review ($35k) and definition of governance and outcomes measures ($25k)
Development of Marketing and Communications Plan - FY23/24	$ 10,000.00	Estimated cost of external consultancy support
Miscellaneous - FY 23/24	$ 70,000.00	Contingency of ~10% of total budget
Miscellaneous - FY 24/25	$ 110,000.00	fy 24/25: create education collateral, graphic design plus contingency of ~10% of total budget
Miscellaneous - FY 25/26	$ 110,000.00	FY 25/26: expenses to support the establishment of the Advisory Committee plus contingency of ~10% of total budget
No financial audit fees budgeted, as the Audit will be undertaken by the Tasmanian Audit Office	N/A	
Vehicles and equipment to be leased - no capital expenditure budgeted		
Annual training and development budget to suport the delivery of core functions	$ 20,000.00	
Consultancy budget for visiting function - FY 23/24	$ 75,000.00	Activities covered: develop policies and procedures and visit plan. Visits to be started at the end of the year.
Consultancy budget for visiting function - FY 24/25	$ 150,000.00	Estimated cost to engage a specialist consultant - $15k per week. 10 visits/year, 1 week/visit, 1 specialist consultant per visit.
Consultancy budget for visiting function - FY 25/26	$ 150,000.00	Estimated cost to engage a specialist consultant - $15k per week. 10 visits/year, 1 week/visit, 1 specialist consultant per visit.
Community liaison officer cost to be split evenly by the Office of the Custodial Inspector and the Office of the NPM	50%	Salaries and wages cost allocation
Head of Agency NPM+CI cost to be split evenly by the Office of the Custodial Inspector and the Office of the NPM	50%	Salaries and wages cost allocation
Business Manager cost to be split evenly by the Office of the Custodial Inspector and the Office of the NPM	50%	Salaries and wages cost allocation
Office of the NPM to include salaries and wages for the Director of the NPM and 50% of the cost of the Community Liaison Officer and the Head of Agency NPM + CI, and the Project Manager	N/A	
Workers Compensation		6% as per the Department of Justice salary table provided to Mark Huber on 22 Jun 2023. Not included in staffing costs as it is in the scope of the SLA for Corporate Services.
Overheads		15% as perthe Department of Justice salary table provided to Mark Huber on 22 Jun 2023. Not included in staffing costs as it is in the scope for the SLA for Corporate Services.



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