



**STATEMENT ON CONDITIONS AND TREATMENT IN  
YOUTH JUSTICE DETENTION**

November 2017

## Contents

Terminology.....	4
Position statements.....	5
Preamble .....	7
Children and young people in youth justice detention in Australia .....	9
Human rights standards in youth justice.....	10
Position statements.....	13
<b>1 Children and young people in youth justice detention should have their rights respected and supported, including their rights to participate in decisions that affect them. ....</b>	<b>13</b>
<b>2 The approach to working with children and young people in youth justice detention should be trauma-responsive.....</b>	<b>13</b>
<b>3 Children and young people in youth justice detention should be provided with supports and services that respond to the drivers of their offending, promote their development and meet their other needs.....</b>	<b>14</b>
<b>5 Additional measures should be adopted to address the overrepresentation of Aboriginal and Torres Strait Islander children and young people in youth justice detention, ensure cultural appropriateness in the detention environment, and ensure the right of the child or young person to exercise their culture. ....</b>	<b>15</b>
<b>6 Behaviour management and support in youth justice detention should be developmentally appropriate and promote the safety, wellbeing and rights of children and young people.....</b>	<b>16</b>
<b>7 The use of restraints on a child or young person should be prohibited, except when necessary to prevent an imminent and serious threat of injury to the child or others, and only when all other means of control have been exhausted. The use of restraints should not cause humiliation or degradation, should be used restrictively and only for the shortest possible period of time, and should be publicly reported to an independent oversight mechanism. The use of restraints as punishment should be prohibited. ....</b>	<b>17</b>
<b>8 The use of force on a child or young person should be prohibited, except when necessary to prevent an imminent and serious threat of injury to the child or others, and only when all other means of control have been exhausted. The use of force should not cause humiliation or degradation, should be used restrictively and only for the shortest possible period of time, and should be publicly reported to an independent oversight mechanism. The use of force as punishment should be prohibited.....</b>	<b>18</b>
<b>9 Searches of a child or young person should be conducted only when reasonable, necessary and proportionate to a legitimate aim. Searches should be publicly reported to an independent oversight mechanism.....</b>	<b>19</b>

ACCG STATEMENT ON YOUTH JUSTICE DETENTION  
NOVEMBER 2017

<b>10</b>	<b>The use of isolation on a child or young person should be prohibited, except when necessary to prevent an imminent and serious threat of injury to the child or others, and only when all other means of control have been exhausted. Isolation should be used restrictively and only for the shortest appropriate period of time, and be publicly reported to an independent oversight mechanism. The use of isolation as punishment, or on a vulnerable child or young person, should be prohibited.</b> .....	<b>20</b>
<b>11</b>	<b>Lockdowns should only be used as a last resort and in strictly limited circumstances</b> .....	<b>22</b>
<b>12</b>	<b>Youth justice centres should have adequate, skilled staff who are demographically representative of the children and young people in detention, including Aboriginal and Torres Strait Islander staff.</b> .....	<b>22</b>
<b>13</b>	<b>Youth justice detention centres should be subject to external and independent oversight</b> .....	<b>23</b>
	Appendix 1: Recent and current reviews of youth justice in Australia .....	24
	Appendix 2: Relevant principles and rules from General Comment 10, Committee on the Rights of the Child .....	27

ACCG STATEMENT ON YOUTH JUSTICE DETENTION  
NOVEMBER 2017

## Terminology

Child/children	<p>For the purposes of this statement, a person who is 10 or more years of age but below the age of 18 years (also described as a person aged 17 years or under).</p> <p>This reflects the fact that youth justice systems in Australia do not detain children under 10 years of age.</p>
Young person/young people	<p>For the purposes of this statement, a person aged 18 years or over in a youth justice detention facility.</p> <p>Most states have a very small number of young people in youth justice detention.</p>
Trauma-informed	<p>A framework for delivering services that is based on an understanding of how trauma affects people's lives and their service needs. At a minimum, trauma-informed approaches aim to do no further harm.<sup>1</sup></p> <p>Trauma-informed approaches should not only recognise the effects on trauma on people's behaviour but be responsive to those effects.</p>
Trauma-responsive	<p>For the purposes of this paper, involves understanding and providing services in a way that explicitly responds to the trauma that drives people's behaviour and determines their service needs.</p> <p>Reflecting the importance of responding to the trauma of children and young people in youth justice detention, this position statement refers to trauma-responsive approaches to youth justice detention, while acknowledging that trauma-responsive approaches are closely aligned, and sometimes synonymous with, being trauma-informed.</p>
Youth justice system	<p>The system (including its processes and practices) that deals with children and young people who have committed or allegedly committed offences.<sup>2</sup></p> <p>It encompasses children and young people who are in the community while being supervised by a court or corrections, because of their proven or alleged involvement in a crime, and children and young people in detention.</p>
Youth justice detention	<p>For the purposes of this statement, involves detaining a child or young person in a custodial setting within the youth justice system from which they are not permitted to leave of their own volition.<sup>3</sup></p> <p>See above for definition of youth justice system.</p>

## Position statements

Noting that detention of children and young people should be used as a last resort and that all possible efforts must be made to maximise diversion of children and young people who offend, the ACCG calls on all state and territory governments<sup>4</sup> to apply the following principles on the conditions and treatment in youth justice detention centres operating within their jurisdictions:

1. Children and young people in youth justice detention should have their rights respected and supported, including their rights to participate in decisions that affect them.
2. The approach to working with children and young people in youth justice detention centres should be trauma-responsive.
3. Children and young people in youth justice detention should be provided with supports and services that respond to the drivers of their offending, promote their development and meet their other needs.
4. Planning and support for community reintegration should start when a child or young person enters youth justice detention and continue after their release into the community.
5. Additional measures should be adopted to address the overrepresentation of Aboriginal and Torres Strait Islander children and young people in youth justice detention, ensure cultural appropriateness in the detention environment, and ensure the right of the child or young person to exercise their culture.
6. Behaviour management and support should be developmentally appropriate and promote the safety, wellbeing and human rights of children and young people.
7. The use of restraints on a child or young person should be prohibited, except when necessary to prevent an imminent and serious threat of injury to the child or others, and only when all other means of control have been exhausted. The use of restraints should not cause humiliation or degradation, should be used restrictively and only for the shortest possible period of time, and should be publicly reported to an independent oversight mechanism. The use of restraints as punishment should be prohibited.
8. The use of force on a child or young person should be prohibited, except when necessary to prevent an imminent and serious threat of injury to the child or others, and only when all other means of control have been exhausted. The use of force should not cause humiliation or degradation, should be used restrictively and only for the shortest possible period of time, and should be publicly reported to an independent oversight mechanism. The use of force as punishment should be prohibited.
9. Searches of a child or young person should be conducted only when reasonable, necessary and proportionate to a legitimate aim. Searches should be publicly reported to an independent oversight mechanism.
10. The use of isolation on a child or young person should be prohibited, except when necessary to prevent an imminent and serious threat of injury to the child or others, and only when all other means of control have been exhausted. Isolation should be used restrictively and only for the shortest appropriate period of time, and be publicly reported to an independent oversight mechanism. The use of isolation as punishment, or on a vulnerable child or young person, should be prohibited.

ACCG STATEMENT ON YOUTH JUSTICE DETENTION  
NOVEMBER 2017

11. Lockdowns should only be used as a last resort and only in strictly limited circumstances.
12. Youth justice centres should have adequate, skilled staff who are demographically representative of the children and young people in detention, including Aboriginal and Torres Strait Islander staff.
13. Youth justice detention centres should be subject to external and independent oversight.

## Preamble

The Australian Children's Commissioners and Guardians (ACCG) is a coalition of independent commissioners, guardians and advocates for children and young people from around Australia that aims to:

- promote the rights of children and young people, including their right to participate in decisions relating to them, as articulated in the United Nations Convention on the Rights of the Child (CRC)
- ensure the best interests of children and young people are considered in the development of policies and programs
- give voice to the views of, and encourage direct consultation with, children and young people on matters that affect them
- encourage systemic improvement, informed by evidence-based research, in areas that impact on the rights, interests and wellbeing of children and young people.

We note that Australian Governments must ensure that youth justice systems around Australia are based on the fundamental principles of youth justice, namely:

- measures to minimise the use of custody and ensure it is imposed as a last resort and for the shortest appropriate period of time
- legislation and programs that maximise diversion
- early interventions that promote children and young people's education, health and well-being and prevent them from engaging in offending behaviour
- rehabilitation as the primary goal when dealing with children in conflict with the law
- using justice responses that are restorative wherever possible.

We note that the UN Committee on the Rights of the Child has urged States Parties, including Australia, to raise the minimum age of criminal responsibility to 12 years as the absolute minimum, and to continue to increase it to a higher age level.<sup>5</sup>

We are concerned that youth justice systems in many states and territories are under considerable strain. Growing numbers of children and young people on remand, the overrepresentation of Aboriginal and Torres Strait Islander children and young people in youth justice detention, staffing challenges in detention centres, poor facilities, mistreatment of children and young people, the misuse of isolation and restraints, and incidents between children, young people and staff have prompted a number of recent reviews of youth justice detention systems (Appendix 1 sets out these reviews).

The Australian Government has also recently announced that it will ratify the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment* by December 2017.<sup>6</sup> This will allow for the treatment of people in custody, including children and young people in youth justice detention, to be monitored by independent bodies. Some ACCG members may be actively involved in this monitoring.

Now is our opportunity to ensure that youth justice detention in Australia is genuinely rehabilitative, trauma-responsive and based on best practice.

This position statement advances that goal. It affirms the ACCG's commitment to the fundamental principles of youth justice and articulates a set of positions to guide improvements in each jurisdiction and promote national consistency regarding the conditions and treatment in youth justice detention. It also affirms that, like all children and young people, those in youth justice detention have human rights that must be recognised, respected and promoted. They also have specific rights that must be respected while they are in detention.

ACCG STATEMENT ON YOUTH JUSTICE DETENTION  
NOVEMBER 2017

Achieving a trauma-responsive and rehabilitative approach to youth justice detention will be challenging. But we know that it can be done. It starts with cultural change at an institutional level and requires leadership, the recruitment of quality staff and comprehensive training. It demands a commitment by staff at all levels to promoting the safety and wellbeing of children and young people and reducing the use of restrictive practices.

Initiatives implemented internationally are proving that reducing the use of force, restraints and isolations is achievable. New Zealand's youth justice system is underpinned by the practice of non-violent interventions to de-escalate crises, which is reinforced by a legislative prohibition on the use of force save for in some very limited circumstances. This shows that it is possible to shift towards a youth detention environment that safeguards the rights of children and young people and supports their rehabilitation. Such approaches are more effective in managing behaviour and reducing reoffending, which in turn benefits children and young people, youth justice detention staff and the community at large.



## Children and young people in youth justice detention in Australia

Children in the youth justice system make up a very small portion of the overall population of children in Australia: in 2015-16, less than 1 per cent (or just 1 in every 476) children between the ages of 10 and 17 were in the youth justice system.<sup>7</sup> In recent years, this number has been steadily falling.<sup>8</sup>

Smaller still is the population of children and young people in the youth justice system who are in detention, and their numbers are also falling.<sup>9</sup> In 2015-16, on an average day there were 914 children and young people in detention in Australia.<sup>10</sup> This is down from 1,083 children and young people in detention on an average day in 2010-11.<sup>11</sup> In the 12-month period between July 2015 and June 2016, 4,807 young people passed through the detention system.<sup>12</sup> This is down from 6,161 children and young people passing through youth justice detention between July 2010 and June 2011.<sup>13</sup>

The majority of children and young people in youth justice detention have not been sentenced. Australia-wide, the number of children and young people in unsentenced detention on an average day remained around 500 between 2011-12 and 2015-16.<sup>14</sup> In 2015-16, more than half (57 per cent) of the children and young people in youth justice detention were unsentenced.<sup>15</sup> The proportion increases to nearly two thirds (64 per cent) if only children and young people between the ages of 10 and 17 are considered.<sup>16</sup>

Aboriginal and Torres Strait Islander children and young people continue to be vastly over-represented.<sup>17</sup> On an average day in 2015-16, 501 of the 914 children and young people (54.8 per cent) in youth justice detention were Aboriginal and Torres Strait Islander young people.<sup>18</sup> In addition, on an average day in 2015-16, 469 of the 789 (59.4 per cent) of children aged 17 years or under in youth justice detention were Aboriginal or Torres Strait Islander.<sup>19</sup> Despite making up only 5.5 per cent of children between 10 and 17 years of age, Aboriginal and Torres Strait Islander children and young people make up more than half of the youth justice detention population on any one night.

It is well recognised that children and young people are continuing to develop physiologically, psychologically and emotionally, and this must be taken into account when responding to their criminal offending. In addition, the small group of children and young people who enter the youth justice system experience increased vulnerability in a range of ways. Many children and young people in youth justice detention have a history of trauma, neglect and abuse, and child protection involvement.<sup>20</sup> They are also more likely to experience family violence, have mental health problems or a disability, engage in drug and alcohol misuse, be disengaged from school and experience homelessness.<sup>21</sup> Aboriginal and Torres Strait Islander children and young people experience intergenerational trauma and the continuing impacts of dispossession, colonisation and discrimination. Children and young people from refugee backgrounds may have experienced war and conflict, which can be compounded by experiences of displacement and the loss of family networks.<sup>22</sup>

The need for a separate youth justice system is premised on the fact that children and young people are at a different stage of development, and many also have complex needs. This warrants a youth justice system that promotes the rehabilitation of children and young people, provides therapeutic and developmentally appropriate services and education, and creates effective pathways for reintegration into the community. Implementing a trauma-responsive and

rehabilitative approach to youth justice detention is an effective way of preventing children and young people reoffending, which in turn has benefits for the community at large.

## Human rights standards in youth justice

### International treaties

Australia ratified seven major human rights treaties, relating to:

- civil and political rights
- economic, social and cultural rights
- the rights of the child
- racial discrimination
- discrimination against women
- rights of persons with disabilities
- torture, cruel, inhuman or degrading treatment.

Each of these treaties contains human rights standards relevant to the rights and treatment of children in youth justice detention.

The *Convention on the Rights of the Child* (CRC) provides that the best interests of the child must be a primary consideration in all actions concerning children, including children in youth justice detention.<sup>23</sup> The UN Committee on the Rights of the Child has stated that ‘the purpose of assessing and determining the best interests of the child is to ensure the full and effective enjoyment of the rights recognised in the Convention and its Optional Protocols, and the holistic development of the child’. The best interests of the child therefore must be considered by reference to the other rights of the child enshrined in the CRC, including those specifically about the standard of care and treatment in detention.

The CRC requires governments to ensure, among other things, the following:

- every child enjoys their rights in the CRC without discrimination of any kind<sup>24</sup>
- every child has the right to life, survival and development<sup>25</sup>
- every child has the right to be heard and to participate in decisions that affect them<sup>26</sup>
- no child is subjected to torture or other cruel, inhuman or degrading treatment or punishment<sup>27</sup>
- no child is deprived of their liberty unlawfully or arbitrarily, and that detention of a child is only used as a measure of last resort and for the shortest appropriate period of time<sup>28</sup>
- every child deprived of their liberty is treated with humanity and respect for their inherent dignity, and in a manner that takes into account the needs of people their age<sup>29</sup>
- every child deprived of their liberty is separated from adults unless it is considered in the child's best interest not to do so, and has the right to maintain contact with their family through correspondence and visits, save in exceptional circumstances<sup>30</sup>
- every child deprived of their liberty has the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action<sup>31</sup>
- every child accused or convicted of a crime is treated in a manner consistent with the child's sense of dignity and self-worth, which reinforces the child's respect for human rights and takes into account their age and the desirability of promoting their reintegration into society<sup>32</sup>
- a child deprived of their family environment is entitled to special protection and assistance provided by the government<sup>33</sup>

ACCG STATEMENT ON YOUTH JUSTICE DETENTION  
NOVEMBER 2017

- children are protected from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation<sup>34</sup>
- all appropriate measures are taken to promote the physical and psychological recovery and social reintegration of a child victim of neglect, exploitation, abuse, torture or any other form of cruel, inhuman or degrading treatment or punishment<sup>35</sup>
- no child is subjected to arbitrary or unlawful interference with their privacy.<sup>36</sup>

The *International Covenant on Civil and Political Rights* (ICCPR)<sup>37</sup> provides for the following:

- the right to non-discrimination<sup>38</sup>
- the right to life and to physical and moral integrity<sup>39</sup>
- no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment<sup>40</sup>
- all persons deprived of their liberty shall be treated with humanity and respect for their dignity<sup>41</sup>
- accused juveniles must be separated from adults and have their matter adjudicated as quickly as possible<sup>42</sup>
- juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.<sup>43</sup>

The *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT)<sup>44</sup> prohibits acts of torture, cruel, inhuman or degrading treatment or punishment carried out by public officials on behalf of a state or territory.<sup>45</sup> It also contains provisions requiring that all public officials, including those in detention settings, be provided with education and training about this prohibition and systematic review of arrangements to prevent torture in detention.<sup>46</sup> The CAT also requires prompt investigation of allegations of torture, access to a complaint mechanism and investigation of complaints, and access to remedies for breaches.<sup>47</sup>

The *Convention on the Rights of Persons with Disabilities* (CPRD)<sup>48</sup> is also relevant, given the large proportion of children and young people in youth justice detention have a physical or intellectual disability or mental health problems. The CPRD requires governments to:

- ensure children with disabilities enjoy their human rights on an equal basis with other children
- take measures to combat harmful practices and prejudices about children and young people with disabilities
- put in place child-focused measures to identify, investigate and prosecute the exploitation of children with disabilities
- ensure that the best interests of children with disabilities are paramount in all cases
- ensure children with disabilities are not excluded from the education system.

Rights that complement these provisions are also found in the following treaties:

- *Convention on the Elimination of All Forms of Racial Discrimination*
- *Convention on the Elimination of All Forms Discrimination Against Women*
- *International Covenant on Economic, Social and Cultural Rights*.

### **International guidelines, principles or rules**

There are several international guidelines, principles or rules that set out minimum standards for the treatment of children involved in the criminal justice system and affirm their human rights in such situations. The most important among these are the following:

- *Standard Minimum Rules for the Administration of Juvenile Justice* 1986 (Beijing Rules)
- *Rules for the Protection of Juveniles Deprived of their Liberty* 1990 (Havana Rules)

ACCG STATEMENT ON YOUTH JUSTICE DETENTION  
NOVEMBER 2017

- *Guidelines for the Prevention of Juvenile Delinquency* 1990 (Riyadh Guidelines)
- *Guidelines for Action on Children in the Criminal Justice System* (1997) (Vienna Guidelines)
- *Standard Minimum Rules for the Treatment of Prisoners* 1955
- *Body of Principles for the Protection of all Persons under Any Form of Detention* (1988).

There are also interpretive documents provided by UN human rights treaty committees that provide clarification on the scope and meaning of the standards in these treaties. Relevant General Comments of these committees include:

- UN Committee on the Rights of the Child: General Comment 10 — Children's Rights in Juvenile Justice (set out in detail in Appendix 2)
- UN Committee Against Torture: General Comment 2 — Implementation of Article 2
- UN Human Rights Committee: General Comment 21 — Humane treatment of people deprived of their liberty
- UN Human Rights Committee: General Comment 20 — Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment, Article 7.<sup>49</sup>

These instruments apply to *all* children and young people, including those who have not been convicted or sentenced. Children and young people who have not been convicted should generally be detained separately from children and young people who have been convicted and sentenced.<sup>50</sup>

### **Australian instruments**

In Australia, minimum standards for youth justice facilities are set by the Australasian Juvenile Justice Administrators Standards (AJJA Standards). These standards, which are based on the international instruments listed above, set out the minimum requirements for youth justice facilities.<sup>51</sup> The AJJA Standards were extended with the development of the Principles of Youth Justice in Australia (AJJA Principles) endorsed in October 2014.<sup>52</sup> The Principles are that:

- offending behaviour is prevented and young people are diverted from the justice system
- the youth justice system holds young people accountable for their behaviour
- there is effective support to victims of youth offending
- there are effective policy and service responses to address the overrepresentation of Aboriginal and Torres Strait Islander children and young people in the justice system
- there is authentic collaboration across the service systems
- service responses are evidence-based
- the developmental needs of young people are addressed
- interventions are informed by drivers of offending and the assessed risk of future offending
- support to young people is individualised and reflects the diversity of culture and communities in which they live
- the health and mental health needs of young people are addressed.

The positions articulated in this position statement are consistent with both international human rights and standards, and the Australian standards and principles referenced above. The relevant standards and principles are referenced throughout this statement.

## Position statements

### **1 Children and young people in youth justice detention should have their rights respected and supported, including their rights to participate in decisions that affect them.**

Children and young people in youth justice detention, like all children and young people, have human rights that must be recognised, respected and promoted.

They also have specific rights that must be respected while they are in detention, including rights to:

- have their views sought and taken into account and to participate in decisions that affect them
- be treated equally and without discrimination, regardless of their gender, sexual identity, race, ethnicity, religion, disability or other status
- access a lawyer and speak to them privately
- have contact with family and friends
- be informed, in a way they understand, about the rules of the youth justice centre
- be disciplined fairly and only in accordance with the rules of the youth detention centre and the law
- complain about their treatment to an independent person and with the support of an advocate if they want one
- be treated with respect and dignity by staff
- be kept safe
- not be subject to cruel, inhuman or degrading treatment or torture
- access healthcare, including mental healthcare
- receive an education
- participate in activities to support their rehabilitation
- good food, clean clothes and get exercise, in open air whenever weather permits.<sup>53</sup>

Aboriginal and Torres Strait Islander children and young people in youth justice detention have the right to connection with their culture and to participate in cultural activities, with other Aboriginal and Torres Strait Islander people.<sup>54</sup>

Governments should commit to adopting a charter of rights and responsibilities for children and young people in youth justice detention that affirms and promotes their human rights and applies to the operation of all youth justice centres.

### **2 The approach to working with children and young people in youth justice detention should be trauma-responsive.**

Many children and young people in youth justice detention have experienced abuse, neglect and trauma. This impacts on their physiological, emotional, cognitive and social development in many ways.<sup>55</sup> Children and young people in detention may have limited capacity to regulate their emotions, and may perceive everyday situations as threats, triggering feelings of anger, shame and fear.<sup>56</sup> The extent to which children and young people have experienced violence also influences how they respond to perceived threats in custody – they may rely on and use physical force to meet their needs.

The behaviour of children and young people in detention needs to be understood in the context of their past trauma and its effect on their cognitive development and responses. It requires an approach to youth justice detention that is trauma-responsive and rehabilitative.

Governments should implement an approach to youth justice that is trauma-responsive, and includes:<sup>57</sup>

- each child or young person getting an individualised assessment and treatment plan that responds to their behaviour in a way that recognises their trauma
- individualised therapeutic support for all children and young people in detention
- the involvement of family, community and cultural connections so that the detention environment is not overwhelming
- recognition that a punitive approach can re-traumatise children and young people, heighten their perception of threat and lead to more problem behaviours
- the development of respectful relationships between children and young people and frontline staff to create an environment that assists children and young people to feel safe and learn self-regulation skills
- coordination with services that prepare for a return to community
- a commitment to the safety of staff, children and young people, and the community.

For youth justice detention centres to be genuinely trauma-responsive and to achieve the goal of rehabilitation, institutions should have physical environments that are child and young person-friendly, be sufficiently small, and employ qualified staff, so that they can cater for particular needs of the children and young people in their care and custody.<sup>58</sup>

Trauma-responsive approaches should be supported by measures to capture and record information about whether the elements of a trauma-responsive model are being delivered, and report that information to the relevant oversight agency in their jurisdiction.

### **3 Children and young people in youth justice detention should be provided with supports and services that respond to the drivers of their offending, promote their development and meet their other needs.**

Children and young people entering youth detention have the right to be assessed to determine whether they have a physical or intellectual disability, mental health issues, learning difficulties or experience other forms of vulnerability and to have those needs met.<sup>59</sup>

Governments should provide children and young people in youth justice detention with coordinated care and support, and where necessary, with medical and therapeutic treatment.<sup>60</sup>

Governments should ensure that all services and programs provided to Aboriginal and Torres Strait Islander children and young people are culturally appropriate and safe. Particular attention should be given to promoting the cultural connections for Aboriginal and Torres Strait Islander children and young people.

Girls and young women, children and young people who are from culturally and linguistically diverse communities, or children and young people who are lesbian, gay, bisexual, queer or gender non-binary should also be provided with services and supports that meet their particular needs.

Research demonstrates the most effective means of addressing offending behaviour in children and young people is by using a therapeutic approach involving counselling and other services to meet the needs of children and young people in youth justice detention.<sup>61</sup>

Children and young people in detention have the right to maintain connections and contact with their family, community and other supportive people outside youth detention. Governments should ensure that all efforts are made to support this contact: it is essential to their rehabilitation and reintegration, and is critical to their psychological and emotional wellbeing.<sup>62</sup>

Children and young people in youth justice detention have the right to be provided with an education and/or training.<sup>63</sup> This is a vital part of their rehabilitation and is a key component of trauma-responsive approaches to youth justice detention.<sup>64</sup> It is also necessary for governments to meet their obligations to children and young people of compulsory school age.

Children and young people should be provided with a physical environment and accommodations which are in keeping with the aim of rehabilitation. Due regard should be given to their needs for privacy, sensory stimuli, opportunities to associate with their peers, and to participate in sports, physical exercise, arts, leisure time activities,<sup>65</sup> and any other programs or activities that promote and support their physical, mental, spiritual, moral and social development.

#### **4 Planning and support for community reintegration should start when a child or young person enters youth justice detention and continue after their release into the community.**

Children and young people in youth justice detention are most likely to be rehabilitated and to successfully reintegrate into the community if their time in youth justice detention has a strong emphasis on supports, services and programs that will help them transition back into the community ('through-care').<sup>66</sup>

Governments should ensure that children and young people in youth detention are provided with intensive and targeted services and programs during their time in detention, and resource community-based initiatives that help children and young people reintegrate into the community.<sup>67</sup> Through-care should be provided to all children and young people in detention, including those on remand.

These supports should be developmentally appropriate and assist children and young people to further their education, find employment and housing, develop their life skills and meet their physical and mental health needs.<sup>68</sup> A necessary component of effective through-care is that children and young people in youth justice detention have access to activities in the community during their time in youth justice detention.<sup>69</sup>

Planning for children and young people to be reintegrated into the community should begin as soon as they enter youth justice detention. It should involve their families, who should be supported while the child or young person is in detention and on their return to the community. Where children and young people cannot be safely cared for by their parents, youth justice services should work with child protection services to ensure those children and young people are supported to reintegrate into the community.

#### **5 Additional measures should be adopted to address the overrepresentation of Aboriginal and Torres Strait Islander children and young people in youth justice detention, ensure cultural appropriateness in the detention environment, and ensure the right of the child or young person to exercise their culture.**

Addressing the overrepresentation of Aboriginal and Torres Strait Islander children and young people in youth justice detention across Australia must be a priority for governments across Australia. Governments in all jurisdictions should implement a national Close the Gap youth justice target to focus on reducing overrepresentation. They should also take advantage of the significant opportunities that exist to better divert Aboriginal and Torres Strait Islander children and young people from custody in ways that respect local cultural knowledge and values.<sup>70</sup>

Where custody cannot be avoided, governments should recognise, respect and promote the rights of Aboriginal and Torres Strait Islander children and young people in youth justice detention to practise their culture, and to remain connected to their family and community.<sup>71</sup> Connection to culture and familial connections are an intrinsic element of Aboriginal and Torres Strait Islander children and young people's sense of identity. Connection to culture, land and spirituality is foundational to building resilience and can reduce the impact of stress on Aboriginal and Torres Strait Islander people.<sup>72</sup> Active and enduring connections also have a positive impact on their sense of social and emotional health and wellbeing, and their safety.<sup>73</sup> Damaging these connections and relationships risks undermining norms of appropriate social and cultural behaviour.<sup>74</sup>

Past government practices and policies have created trauma that in many cases continues to significantly affect the social and emotional wellbeing of Aboriginal and Torres Strait Islander children and young people. Addressing this trauma can improve the wellbeing of the child or young person and their community, as well as preventing the trauma manifesting itself in dysfunctional behaviours.<sup>75</sup> In the spirit of self-determination, governments should develop joint approaches with Aboriginal and Torres Strait Islander communities to develop culturally safe and community-based responses. The Aboriginal Justice Agreement in Victoria is an example of government and communities working together to reduce overrepresentation.

Governments should ensure that all Aboriginal and Torres Strait Islander children and young people in detention are supported to access cultural healing programs and culturally appropriate mental health support as a suitable means of addressing trauma.<sup>76</sup> Governments should also ensure Aboriginal and Torres Strait Islander children and young people in youth justice detention are supported to connect with culture and community through cultural programs, visits with Elders, other community visits, group family visits, language classes or visits on Country. Aboriginal and Torres Strait Islander children and young people in youth justice detention must also be given regular opportunities to spend time with other Aboriginal and Torres Strait Islander detainees.

Governments should employ staff in youth justice centres who are demographically representative of the children and young people being detained.<sup>77</sup> Aboriginal and Torres Strait Islander people should be employed in all roles and at all levels of the youth justice system, including in policy and programmatic roles. At a minimum, Aboriginal and Torres Strait Islander cultural support workers should be employed to assist youth justice staff to provide culturally appropriate care for Aboriginal and Torres Strait Islander children and young people.

## **6 Behaviour management and support in youth justice detention should be developmentally appropriate and promote the safety, wellbeing and rights of children and young people.**

The ACCG acknowledges that behaviour management and support in youth justice detention centres occurs in a complex environment, where children and young people exhibit difficult and sometimes violent behaviour. However, there is considerable evidence that punitive approaches are not effective in managing the behaviour of children and young people in youth justice detention, and can be counterproductive.<sup>78</sup>

Governments should ensure that youth justice detention centres adopt an approach to the management of behaviour that protects the safety, wellbeing and rights of children and young people in youth justice detention, and is developmentally appropriate.<sup>79</sup>

Governments should ensure that behaviour management and support regimes in youth justice detention rely on incentives to manage behaviour, as well as warnings or cautions. Children



and young people in youth justice detention should have their behaviour managed using techniques that de-escalate heightened or problematic behaviour and, as much as possible, without resort to restrictive practices, such as isolation, lockdowns, or the use of force or restraints.

Children and young people in youth justice detention have the right not to be subject to cruel, inhuman or degrading treatment or physical, psychological or emotional abuse.<sup>80</sup> In accordance with the human rights of children and young people, governments should legislate, and establish policies and procedures, to prohibit the following as behaviour management tools:

- corporal punishment
- confiscation of food or clothing
- restrictions on contact with friends or family.<sup>81</sup>

Governments should establish transparent rules that clearly state what conduct constitutes a disciplinary offence or infraction, the type and duration of sanction that may be imposed and who can determine it, and the agency or person who can consider reviews or appeals of that decision. Children and young people have a right to know the rules they must follow and not to be disciplined except in accordance with them.<sup>82</sup>

Reports of misconduct by children and young people in youth justice detention should be properly examined by a person with an appropriately senior person (such as a line manager), and a decision should be made about the necessary sanction (if any) without undue delay.<sup>83</sup> All children and young people are entitled to be told, in a way that they can understand, what they have done wrong, and be given an opportunity to argue their case, which includes seeking a review or appeal of the decision to impose sanctions on them.<sup>84</sup>

The application of disciplinary measures should be recorded in a way that allows the use of behavioural management tools in youth justice detention facilities to be reported on and monitored. If a child's conduct could amount to a criminal offence inside a youth justice detention facility, the decision to deal with the child within the centre or refer the matter to police, and the basis for that decision, should be made by an appropriately senior person, and should be properly recorded and monitored.

**7 The use of restraints on a child or young person should be prohibited, except when necessary to prevent an imminent and serious threat of injury to the child or others, and only when all other means of control have been exhausted. The use of restraints should not cause humiliation or degradation, should be used restrictively and only for the shortest possible period of time, and should be publicly reported to an independent oversight mechanism. The use of restraints as punishment should be prohibited.**

Restraint is the use of physical force, a mechanical device or a chemical to render a child immobile or restrict their freedom of movement. This position statement refers to physical restraint, including holding, as the 'use of force', while 'restraints' will refer specifically to instruments of restraint, or mechanical restraints, such as handcuffs and straitjackets.

The ACCG acknowledges that all jurisdictions currently permit the use of restraints in limited circumstances, such as when being escorted to and from the detention facility. However,

physical restraints rarely lead to behavioural change,<sup>85</sup> and can be counterproductive in managing behaviour.<sup>86</sup> The use of restraints can retraumatise already vulnerable children and young people,<sup>87</sup> and can cause physical and psychological harm.<sup>88</sup>

Governments should prohibit the use of restraints on a child or young person in detention, except:

- when necessary to prevent an imminent and serious threat of injury to the child or others
- in exceptional cases, when all other means of control have been exhausted
- as explicitly authorised and specified by law and regulation.<sup>89</sup>

The use of restraints should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time.<sup>90</sup>

In all other circumstances, the use of restraints will be inappropriate and will infringe the rights of children and young people.

Governments should legislate to prohibit the use of mechanical restraints, including handcuffs, for children and young people in detention as routine centre management practice. This is not a reasonable, proportionate or appropriate use of mechanical restraints. Chemical restraints should be entirely prohibited.

The use of restraints should be under close and direct control of a medical and/or psychological professional. It must never be used as a means of punishment.<sup>91</sup>

Ensuring the appropriate use of restraints in youth detention centres requires practical training and clear policies for youth detention staff. Staff should consider and attempt de-escalation techniques and other alternatives to physical interventions wherever possible

Governments should ensure that decisions to apply restraints to a child or young person are made by more than one staff member, and are reported to senior detention centre staff as soon as practicable. When restraints are used against a child or young person in youth justice detention, the nature of the restraints used and the basis for their use should be properly recorded and reported for external, independent review.

**8 The use of force on a child or young person should be prohibited, except when necessary to prevent an imminent and serious threat of injury to the child or others, and only when all other means of control have been exhausted. The use of force should not cause humiliation or degradation, should be used restrictively and only for the shortest possible period of time, and should be publicly reported to an independent oversight mechanism. The use of force as punishment should be prohibited.**

Force, particularly when used inappropriately, can exacerbate rather than ameliorate challenging behaviour, and can impact on the health and wellbeing of a child or young person. Children and young people in youth justice detention frequently experience the use of force as painful and distressing. The use of force has been linked to the deaths of children and young people in custodial settings.<sup>92</sup> There is no entirely safe way to use force to restrain children and young people in youth justice detention.<sup>93</sup> The use of force in youth justice detention is prohibited in New Zealand, which uses non-violent approaches to de-escalate crises as a way to avoid the use of force.<sup>94</sup>

Governments should prohibit the use of force on a child or young person in detention, except:

- when necessary to prevent an imminent and serious threat of injury to the child or others
- in exceptional cases, when all other means of control have been exhausted
- as explicitly authorised and specified by law and regulation.<sup>95</sup>

The use of force should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time.<sup>96</sup>

In all other circumstances, the use of force will be inappropriate and will infringe the rights of children and young people.

When the use of force is necessary, this must occur in the safest way possible for all people involved. Force should not be used against a child or young person in youth justice detention in order to facilitate compliance with an order or direction from detention centre staff. Force used in such circumstances will be unreasonable, disproportionate and contrary to the requirement that force is only used as a measure of last resort.

The use of force should be under close and direct control of a medical and/or psychological professional.<sup>97</sup> It must never be used as a means of punishment.<sup>98</sup>

Ensuring the appropriate use of force in youth detention centres requires practical training and clear policies for youth detention staff.<sup>99</sup> Staff should consider and attempt de-escalation techniques and other alternatives to physical interventions wherever possible, and be trained in the use of these techniques.

Governments should ensure that decisions to use force are reported to senior detention centre staff as soon as practicable. When force is used against a child in youth justice detention, the nature of the force and the reason for its use must be properly recorded and reported for independent review and monitored.

## **9 Searches of a child or young person should be conducted only when reasonable, necessary and proportionate to a legitimate aim. Searches should be publicly reported to an independent oversight mechanism.**

In general, there are three different types of searches that take place inside most youth justice facilities across Australia: 'pat/frisk searches', 'strip/unclothed searches' and 'cell searches'.<sup>100</sup> Strip/unclothed searching involves a person being required to remove some or all their clothing. Strip/unclothed searching is more intrusive than 'pat' or 'frisk' searching. A small number of jurisdictions allow children and young people in youth justice detention to be subject to internal body/cavity searches.<sup>101</sup>

Children and young people in youth justice detention have the right not to be subjected to arbitrary or unlawful interferences with their privacy, and to be treated with humanity and respect for their inherent dignity, and in a manner that takes into account their age.<sup>102</sup> All searches, and particularly internal body searches and strip/unclothed searches, interfere with the privacy of children and young people. Where a search is permitted, it must be lawful, reasonable and proportionate to a legitimate aim. Governments should take steps to ensure that, when a search must occur, less intrusive search methods are preferred, such as electronic wand or other types of screening.

ACCG STATEMENT ON YOUTH JUSTICE DETENTION  
NOVEMBER 2017

Subjecting children in youth detention to strip searches is often demeaning and humiliating. For children with experiences of physical and sexual abuse, these practices can be highly traumatising.

Governments should legislate to prohibit strip/unclothed searching as part of a general compliance regime in youth detention centres. Strip/unclothed searching should only be permitted when there is a reasonable, well-founded suspicion that a child or young person is concealing items that threaten the safety or security of the youth detention centre (such as weapons), and which cannot be found using a 'pat/frisk' search.

If a strip/unclothed search is necessary, it must be carried out in a manner that is consistent with the dignity of the child or young person being searched and reflects the unique vulnerability of children and young people in youth justice detention. Strip/unclothed searches should be conducted by two people of the same gender as the child or young person, and if the child or young person identifies as transgender they should be able to choose the gender of the staff members conducting the search. At no time during a strip/unclothed search should a child or young person be completely naked.

Internal body/cavity searches are an extremely invasive and distressing procedure for children and young people. Governments should legislate to ensure that internal body searches are clearly distinguished from strip/unclothed searches, and are prohibited.<sup>103</sup>

Ensuring the appropriate use of searches in youth detention centres requires practical training and clear policies for youth detention staff.

Governments should ensure that decisions to conduct any type of search are reported to senior detention centre staff as soon as practicable. When a child in youth justice detention is subjected to a search, the type of search conducted and the reason for its conduct must also be properly recorded and reported for independent review.

**10 The use of isolation on a child or young person should be prohibited, except when necessary to prevent an imminent and serious threat of injury to the child or others, and only when all other means of control have been exhausted. Isolation should be used restrictively and only for the shortest appropriate period of time, and be publicly reported to an independent oversight mechanism. The use of isolation as punishment, or on a vulnerable child or young person, should be prohibited.**

The terms isolation, seclusion and segregation are not used uniformly across Australian jurisdictions. Generally, isolation, seclusion and confinement ('isolation' is used for the purposes of this position statement) involve involuntarily placing a child or young person in a room from which they are not able to leave.<sup>104</sup> Segregation tends to involve restricting the child or young person's contact with other detainees and participation in the youth justice detention centre's ordinary routines.<sup>105</sup> Isolation and segregation will be referred to together in this section as isolation practices.

Isolation practices are likely to be counterproductive as a behaviour management tool.<sup>106</sup> Isolation practices have no recognised therapeutic value and often retraumatise children and young people in youth justice detention and exacerbate medical, psychological and social

ACCG STATEMENT ON YOUTH JUSTICE DETENTION  
NOVEMBER 2017

problems.<sup>107</sup> Children are particularly vulnerable because they are still in crucial stages of development – socially, psychologically, and neurologically. The experience of isolation can interfere with and damage these developmental processes.<sup>108</sup> For children and young people with mental health problems or past experiences of trauma, isolation practices can have severely damaging psychological effects. Where children and young people are at risk of suicide or self-harm, isolation is likely to increase their distress and suicidal ideation and rumination.<sup>109</sup> Isolation also negatively impacts on the child's education, rehabilitation, physical health, and family involvement.<sup>110</sup>

Isolation practices can constitute cruel, inhuman or degrading treatment and breach the human rights of children and young people.<sup>111</sup> Governments should prohibit the use of isolation practices as punishment, and should legislate to ensure that isolation plays a very limited role in managing the behaviour of children and young people in youth justice detention.

Governments should legislate to provide that isolation shall be used only as a measure of last resort and for the shortest appropriate period of time.<sup>112</sup> Legislation should expressly prohibit the use of isolation on a child in detention, except:

- when necessary to prevent an imminent and serious threat of injury to the child or others
- in exceptional cases, when all other means of control have been exhausted
- as explicitly authorised and specified by law and regulation.

Legislation regulating the use of isolation practices should state clearly the maximum duration for which isolation practices can be used, and prohibit the use of isolation practices if they will adversely impact a child or young person because of their physical and mental health or any other known vulnerabilities.

Governments should put in place legislation and policies to prohibit the use of isolation for children and young people who are at risk of suicide or self-harm. Isolation practices should never interfere with the education and recreation activities of children in youth justice detention or their contact with family.

If a child or young person in youth justice detention has been isolated, youth justice centre staff must maintain regular contact during the period of their isolation. This includes increased observations (and sometimes constant observations in appropriate circumstances) for children and young people demonstrating suicidal or behavioural issues.<sup>113</sup> The use of isolation should be under close and direct control of a medical and/or psychological professional. Children and young people placed in isolation should be provided with resources and support to help them calm down and must be released as soon as it is safe to do so.

Ensuring the appropriate use of isolation in youth detention centres requires practical training and clear policies for youth detention staff. Staff should consider and attempt de-escalation techniques and other alternatives to physical interventions wherever possible.

When a child or young person in youth justice detention is placed in isolation, the duration of isolation and the reason for it being imposed must be properly recorded and reported for independent review.

**11 Lockdowns should only be used as a last resort and in strictly limited circumstances.**

Lockdowns, like isolation practices, involve the involuntary placement of a child or young person (usually in their room), at times when they would otherwise be engaged in routine activities. Lockdowns tend to be within units at youth justice detention centres but can be across an entire centre. Lockdowns may occur due to staff shortages or to manage the behaviour of groups of children and young people.

Children and young people in youth justice detention experience lockdowns as a form of isolation and as a form of punishment. Lockdowns can be counterproductive as a behaviour management tool, and may lead to unrest, and children and young people feeling frustrated and behaving poorly. Unscheduled lockdowns contribute to emotional instability in children and young people with histories of trauma, and are contrary to trauma-informed approaches to youth justice practices. Lockdowns can reduce children and young people's access to education and health services in youth detention centres, and can lead to visits with family being cancelled.

Staffing in youth justice detention centres should be adequate so that lockdowns do not occur. Lockdowns should only be used as a tool for behaviour management as a last resort and in strictly limited circumstances, such as where it is necessary to prevent harm and ensure the safety of children, young people and staff in the youth detention centre.

When a lockdown occurs, the duration of the lockdown and the reason it was imposed must be properly recorded and reported for independent review.

**12 Youth justice centres should have adequate, skilled staff who are demographically representative of the children and young people in detention, including Aboriginal and Torres Strait Islander staff.**

Governments should ensure that youth justice detention centres are adequately staffed, with high ratios of appropriately skilled staff to children and young people. This is a necessary pre-requisite to:

- delivering trauma-informed and rehabilitative youth justice services to children and young people in detention<sup>114</sup>
- protecting the human rights of children and young people in detention, and ensuring the safety of both children and young people and staff in youth justice detention centres.

Governments should ensure that staff in youth justice detention centres are trained in working with children and young people with complex needs, including histories of trauma, mental health issues, drug and alcohol misuse, physical and intellectual disabilities and developmental disorders. Staff should also have expertise in child psychology, child welfare and international child and human rights principles.<sup>115</sup>

In addition to training and expertise, it is important that staff have appropriate personal qualities and attitudes, including a caring attitude, an empathetic approach, professional and patience and the ability to relate well to children and young people and treat them with respect.

Staff in youth justice detention centres should be demographically representative of the children detained; this includes recruitment of women and staff from minority groups.<sup>116</sup>

Given the overrepresentation of Aboriginal and Torres Strait Islander children in detention, this is specifically applicable to the recruitment of Aboriginal and Torres Strait Islander custodial and support staff. Aboriginal and Torres Strait Islander people need to be employed at all levels and sites in the youth justice system from policy development through to program delivery. Appropriate recruitment should be supported by the provision of effective management and support, which must achieve the safety of children and staff.

Staff should also receive cross-cultural training and have access to expertise on specific cultural backgrounds so they can provide individualised support to children and young people from diverse communities.

Staff should receive ongoing professional development and be appropriately remunerated.

### **13 Youth justice detention centres should be subject to external and independent oversight.**

Independent oversight and review ensures children and young people in youth justice detention are treated in a manner consistent with their age, stage of development and best interests, and promotes good practice and respect for their human rights.

Every child and young person has the right to make a request or complaint, both to the youth justice facility and to an independent authority, and to be informed of the response without unreasonable delay.<sup>117</sup> Children and young people in youth justice detention should be made aware that they have this right and have easy access to child-friendly complaints mechanisms.<sup>118</sup> They should be provided with support and assistance and, where necessary, legal advice in making their request or complaint. They should be able to appeal any decision regarding their request or complaint to an external, independent authority.

To ensure compliance with the relevant laws, regulations and human rights standards applicable to children in youth justice detention, youth detention facilities should:

- provide reports to and be subject to oversight by an authority that is independent of the administration of the facility
- allow regular and unannounced visits from qualified people who have been appointed by, and who are responsible to that authority
- provide access to an independent advocate.<sup>119</sup>

The authority should be properly resourced, and have comprehensive powers to obtain and use information to review and report on detention conditions including systemic issues. All those involved in oversight and review should have expertise in youth justice, including monitoring youth justice facilities, child rights and the needs of children within the youth justice system.

Youth detention facilities should record and make publicly available disaggregated data on critical incidents, uses of restraint, force and isolation, searches and complaints.

## Appendix 1: Recent and current reviews of youth justice in Australia

<p><b>Commonwealth</b></p> <p><b><i>National Children's Commissioner's review of the oversight of youth justice in Australia: implementing OPCAT</i></b></p> <p>(completed)</p>	<p>In 2016, the National Children's Commissioner conducted an investigation into the oversight of youth justice in Australia and the readiness of youth justice processes for the implementation of OPCAT.</p> <p>The findings of that investigation were presented in the National Children's Commissioner's 2016 Children's Rights Report. The National Children's Commissioner made several recommendations, including that all jurisdictions commence stocktakes of how their existing systems of monitoring and inspection meet the criteria laid out in OPCAT, and amend their legislative frameworks accordingly.</p>
<p><b>Northern Territory</b></p> <p><b><i>Royal Commission into the protection and detention of children in the Northern Territory.</i></b></p> <p>(interim report completed)</p>	<p>In July 2016, in response to media reporting about the mistreatment of a number of young people detained in youth justice detention centres in the Northern Territory,<sup>120</sup> the Australian Government established the Royal Commission into the Protection and Detention of Children in the Northern Territory.</p> <p>The Royal Commission is examining the child protection and youth justice detention systems in the Northern Territory. Beginning on 1 August 2016, the Royal Commission delivered its interim report on 31 March 2017 and is due to deliver its final report on 17 November 2017.<sup>121</sup> The interim report makes a number of observations about youth detention, including that the evidence raises serious concerns about inappropriate and unlawful practices in detention and inappropriate methods of dealing with detainees in youth detention centres.<sup>122</sup></p>
<p><b>Queensland</b></p> <p><b><i>Independent review of youth detention.</i></b></p> <p>(completed)</p>	<p>In August 2016, Queensland's Attorney-General and Minister for Justice announced an independent review into Queensland's youth detention centres.<sup>123</sup> The review delivered its report on 14 December 2016.<sup>124</sup></p> <p>The report made 83 recommendations, including about improving the availability of mental health services and education programs, the management of incidents and de-escalation techniques, the use of force and restraints, the use of isolation and separation, the process for managing complaints and the need for an independent inspector of custodial services.</p>
<p><b>New South Wales</b></p> <p><b><i>Inquiry into adequacy of youth diversionary programs in NSW</i></b></p> <p>(underway)</p> <p><b><i>Inquiry into behaviour management in youth detention centres</i></b></p> <p>(underway)</p> <p><b><i>How use of force against detainees in juvenile justice centres in NSW is managed</i></b></p> <p>(underway)</p>	<p>In September 2017, the Parliament of New South Wales Legislative Assembly on Law and Safety self-referred an inquiry into the adequacy of youth diversionary programs in New South Wales. The inquiry is to have particular regard to certain matters, including the overrepresentation of Aboriginal children, staff capacity and training requirements, bail issues and the experiences of other jurisdictions. Submissions close January 2018.</p> <p>In October 2016, the New South Wales Government announced a review into behaviour management practices in New South Wales youth justice detention centres.<sup>125</sup></p> <p>In June 2016, the New South Wales Inspector of Custodial Services published the terms of reference for a review about how the use of force against detainees in Juvenile Justice Centres is managed. In November 2016, the terms of reference were amended to include issues of separation, segregation and confinement.<sup>126</sup></p>



ACCG STATEMENT ON YOUTH JUSTICE DETENTION  
NOVEMBER 2017

<p><b>South Australia</b></p> <p><b><i>Go to your room! The use of seclusion in youth detention</i></b></p> <p>(completed)</p>	<p>In April 2016, the South Australian Guardian for Children and Young People commented on the use of seclusion in youth detention.<sup>127</sup> The brief paper explored the potential impacts of seclusion on a child's rehabilitation and called for strict protocols, diligent monitoring and careful recording.</p>
<p><b>Western Australia</b></p> <p><b><i>Young people in the justice system: A review of the Young Offenders Act 1994.</i></b></p> <p>(underway)</p>	<p>In December 2016, the Western Australian Government announced a review of the state's <i>Young Offenders Act 1994</i> (WA).<sup>128</sup> The review is to consider whether the legislation is achieving its objectives. It will also examine issues associated with the overrepresentation of Aboriginal and Torres Strait Islander children and young people in the youth justice system, rates of recidivism, and the high levels of children and young people in detention on remand.<sup>129</sup></p>
<p><b>Victoria</b></p> <p><b><i>The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system.</i></b></p> <p>(completed)</p> <p><b><i>Inquiry into allegations of assault at Grevillea Youth Justice Precinct</i></b></p> <p>(underway)</p> <p><b><i>DHHS review of youth support, youth diversion and youth justice services.</i></b></p> <p>(completed)</p> <p><b><i>Parliamentary inquiry into youth justice centres in Victoria.</i></b></p> <p>(underway)</p>	<p>In February 2017, the Victorian Commission for Children and Young People tabled the report of its inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system.<sup>130</sup> The Inquiry made 21 recommendations aimed at ensuring that isolation, separations and lockdowns are used minimally, are appropriately targeted, and promote the safety, wellbeing and rehabilitation of children and young people in youth justice detention.</p> <p>In February 2017, the Victorian Commission for Children and Young People commenced an inquiry into allegations that staff had assaulted children and young people detained in the Grevillea Youth Justice Precinct of Barwon Prison. The inquiry is expected to be completed in mid-2017.</p> <p>In October 2016, the Victorian Department of Health and Human Services (DHHS) commissioned a review of youth support, diversion and youth justice services. The review was led by Penny Armytage, Partner KPMG, and Professor James Ogloff AM, Director, Centre for Forensic Behavioural Science and Foundation Professor of Clinical Forensic Psychology, Swinburne University. The primary objective of the review was to create an overarching policy framework for the development of a contemporary youth justice program and accompanying service delivery mode.<sup>131</sup> The report of the review was released on 5 August 2017.</p> <p>In November 2016, the Victorian Parliament announced a wide-ranging inquiry into the youth justice system in Victoria, due to be tabled in February 2018. The terms of reference direct examination of incidents in security and safety of detainees and staff, remand numbers, the implications of incarcerating young people with specific vulnerabilities, and the culture, policies, practices and reporting of management at the centres. It will also examine the role of DHHS in overseeing practices at youth justice centres.</p>
<p><b>Tasmania</b></p> <p><b><i>Youth at Risk Strategy</i></b></p> <p>(completed)</p>	<p>In June 2017, the Tasmanian Government launched its Youth at Risk Strategy. This strategy contains a number of actions directly relevant to the operation of the Ashley Youth Detention Centre (AYDC) including investigating an integrated and flexible therapeutic custodial youth justice system.</p>

ACCG STATEMENT ON YOUTH JUSTICE DETENTION  
NOVEMBER 2017

<p><b>Tasmania (cont)</b></p> <p><b><i>Options paper on custodial youth justice models</i></b></p> <p>(completed)</p>	<p>In 2016, the Tasmanian Department of Health and Human Services commissioned Noetic Solutions Pty Ltd to prepare an options paper on custodial youth justice models. The options paper was provided to the Tasmanian Government in mid-2017, but has not been released publicly.<sup>132</sup></p>
<p><b><i>A Therapeutic Approach to Youth Justice Detention</i></b></p> <p>(completed)</p>	<p>In February 2016, the Tasmanian Commissioner for Children and Young People provided Government with a memorandum on what a therapeutic approach to detention entails. In April 2016 the Government announced support for a therapeutic approach to youth detention and the commissioning of a Youth at Risk Strategy and implementation plan, which would have as its main component a redevelopment plan for custodial youth detention in Tasmania. This resulted in the commissioning of the options paper prepared by Noetic Solutions Pty Ltd (described above).</p>
<p><b><i>Independent Review of Ashley Youth Detention Centre ('Harker Report')</i></b></p> <p>(completed)</p>	<p>In 2015, the Harker Report was commissioned by the Tasmanian Department of Health and Human Services primarily to review financial and human resource management and the extent to which these matters impacted on the operation of the Ashley Youth Detention Centre (AYDC).<sup>133</sup> The Harker Report was presented to the Department of Health and Human Services in June 2015.</p>

## **Appendix 2: Relevant principles and rules from General Comment 10, Committee on the Rights of the Child**

- Children should be provided with a physical environment and accommodations which are in keeping with the rehabilitative aims of residential placement, and due regard must be given to their needs for privacy, sensory stimuli, opportunities to associate with their peers, and to participate in sports, physical exercise, in arts, and leisure time activities.
- Every child of compulsory school age has the right to education suited to their needs and abilities, and designed to prepare them for return to society; in addition, every child should, when appropriate, receive vocational training in occupations likely to prepare them for future employment.
- Every child has the right to be examined by a physician upon admission to a detention/correctional facility and shall receive adequate medical care throughout their stay in the facility, which should be provided, where possible, by health facilities and services of the community.
- The staff of the facility should promote and facilitate the frequent contact with the wider community, including communications with their family, friends and other persons or representatives of reputable outside organisations, and the opportunity to visit his/her home and family.
- Restraint or force can be used only when the child poses an imminent threat of injury to themselves or others, and only when all other means of control have been exhausted. The use of restraint or force, including physical, mechanical and medical restraints, should be under close and direct control of a medical and/or psychological professional. It must never be used as a means of punishment. Staff of the facility should receive training on the applicable standards and members of the staff who use restraint or force in violation of the rules and standards should be punished appropriately.
- Any disciplinary measure must be consistent with upholding the inherent dignity of the juvenile and the fundamental objectives of institutional care; disciplinary measures in violation of article 37 of the CRC must be strictly forbidden, including corporal punishment, placement in a dark cell, closed or solitary confinement, or any other punishment that may compromise the physical or mental health or well-being of the child concerned.
- Every child should have the right to make requests or complaints, without censorship as to the substance, to the central administration, the judicial authority or other proper independent authority, and to be informed of the response without delay; children need to know about and have easy access to these mechanisms.
- Independent and qualified inspectors should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative; they should place special emphasis on holding conversations with children in the facilities, in a confidential setting.<sup>134</sup>

ACCG STATEMENT ON YOUTH JUSTICE DETENTION  
NOVEMBER 2017

<sup>1</sup> Australian Institute of Family Studies, *Trauma-informed care in child/family welfare services* (CFCA Paper No 37, February 2016).

<sup>2</sup> Australian Institute of Health and Welfare, *Youth justice system in Australia* <https://www.aihw.gov.au/getmedia/b85be60c-9fef-436d-85df-82d8e5c5f566/20705.pdf.aspx?inline=true> (accessed 20 October 2017).

<sup>3</sup> This definition is adapted from the definition of detention contained in the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature 4 February 2003, 2375 UNTS 237 (entered into force 22 June 2006), art 4.

<sup>4</sup> The ACCG notes that this position statement is intended to apply to state and territory governments, as well as private bodies associated with youth justice detention centres, including private operators, contractors, management and staff.

<sup>5</sup> Committee on the Rights of the Child, *General Comment No 10: Children's rights in juvenile justice*, 44<sup>th</sup> sess, UN Doc CRC/C/GC/10 (25 April 2007) [32].

<sup>6</sup> *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 4 February 2003, 2375 UNTS 237 (entered into force 22 June 2006).

<sup>7</sup> Australian Institute of Health and Welfare, *Youth justice in Australia 2015-16*, Youth justice in Australia 2015-16 (Bulletin 139, March 2017) 1.

<sup>8</sup> Australian Institute of Health and Welfare, *Youth justice in Australia 2015-16*, supplementary table S11a.

<sup>9</sup> Children and young people refers to all children and young people in youth justice detention, some of whom are over the age of 18.

<sup>10</sup> Australian Institute of Health and Welfare, *Youth justice in Australia 2015-16*, supplementary table S74a.

<sup>11</sup> Australian Institute of Health and Welfare, *Youth justice in Australia 2015-16*, supplementary table S84a. Note however that the number of young people in detention on an average day fell to 879 in 2014-15.

<sup>12</sup> Australian Institute of Health and Welfare, *Youth justice in Australia 2015-16*, supplementary table S74b.

<sup>13</sup> Australian Institute of Health and Welfare, *Youth justice in Australia 2015-16*, supplementary table S81b.

<sup>14</sup> Australian Institute of Health and Welfare, *Youth justice in Australia 2015-16*, supplementary table S115a. The number fluctuated between 5016 in 2011-12 and 521 in 2015-16. It was lowest in 2014-15 at 472 children and young people.

<sup>15</sup> Australian Institute of Health and Welfare, *Youth justice in Australia 2015-16*, supplementary table S114a (recording 521 children and young people in youth justice detention); Australian Institute of Health and Welfare, *Youth justice in Australia 2015-16*, supplementary table S74a (recording 921 children and young people in youth justice detention).

<sup>16</sup> Australian Institute of Health and Welfare, *Youth justice in Australia 2015-16*, supplementary table S110a; see also Australian Institute of Health and Welfare, *Youth Justice in Australia 2015-16* (Bulletin 139, March 2017) 12.

<sup>17</sup> Australian Children's Commissioners and Guardians 2010, Submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs: Inquiry into the high levels of involvement of Indigenous juveniles and young adults in the justice system.

<[www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=atsia/sentencing/subs/sub059.pdf](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=atsia/sentencing/subs/sub059.pdf)>

<sup>18</sup> Australian Institute of Health and Welfare, *Youth justice in Australia 2015-16*, supplementary table 75a.

<sup>19</sup> Australian Institute of Health and Welfare, *Youth justice in Australia 2015-16*, supplementary table 76a.

<sup>20</sup> Carly B. Dierkhising, 'Trauma histories among justice-involved youth: findings from the National Child Traumatic Stress Network' (2013) 4 *European Journal of Psychotraumatology*, 36; Australian Institute of Health and Welfare, *Vulnerable Young People: Interactions across homelessness, youth justice and child protection: 1 July 2011 – 20 June 2015* (2016) chs 3, 4.

<sup>21</sup> See for e.g. Australian Institute of Health and Welfare, *Vulnerable Young People: Interactions across homelessness, youth justice and child protection: 1 July 2011 – 20 June 2015* (2016) chs 3, 4. See also Department of Health and Human Services, *Youth Parole Board Annual Report 2015–16* (Melbourne: Victorian Government, 2016) (this 2015 survey of children in youth detention in Victoria found that 30 per cent presented with mental health issues, 18 per cent had a history of self-harm and suicidal ideation and 24 per cent presented with issues concerning their intellectual functioning); Chris Cuneen, Barry Goldson and Sophie Russell, 'Juvenile Justice, Young People and Human Rights in Australia' (2016) 28 *Current Issues in Criminal Justice*, 173, 175-6 (reporting that New South Wales health surveys conducted in 2003, 2009 and 2015 have consistently shown that 83 – 88 per cent of young people in custody have a psychological disorder and 14 – 18 per cent have an intellectual disability); Commissioner for Children and Young People, *Report of the Inquiry into the mental health and wellbeing of children and young people in Western Australia* (2011).

<sup>22</sup> Australian Childhood Foundation, *Discussion Paper 14: Trauma in the contexts of war and relocation – addressing the needs of refugee students* (Australian Childhood Foundation, 2011).

<sup>23</sup> *Convention on the Rights of the Child*, opened for signature 20 December 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 3(1) (*Convention on the Rights of the Child*).

<sup>24</sup> *Convention on the Rights of the Child*, art 2.

<sup>25</sup> *Convention on the Rights of the Child*, art 6.

<sup>26</sup> *Convention on the Rights of the Child*, art 12.

<sup>27</sup> *Convention on the Rights of the Child*, art 37(a).

<sup>28</sup> *Convention on the Rights of the Child*, art 37(b).

<sup>29</sup> *Convention on the Rights of the Child*, art 37(c).

<sup>30</sup> *Convention on the Rights of the Child*, art 37(c).

<sup>31</sup> *Convention on the Rights of the Child*, art 37(d).

<sup>32</sup> *Convention on the Rights of the Child*, art 40. Article 40(2) provides for a number of minimum guarantees for children in conflict with the law.

<sup>33</sup> *Convention on the Rights of the Child*, art 20.

<sup>34</sup> *Convention on the Rights of the Child*, art 19(1).

<sup>35</sup> *Convention on the Rights of the Child*, art 39.

<sup>36</sup> *Convention on the Rights of the Child*, art 16.

<sup>37</sup> *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) (ICCPR).

<sup>38</sup> ICCPR, art 2.

<sup>39</sup> ICCPR, arts 6-8.

<sup>40</sup> ICCPR, art 7.

<sup>41</sup> ICCPR, art 10(1).

<sup>42</sup> ICCPR, art 10(2)(b).

ACCG STATEMENT ON YOUTH JUSTICE DETENTION  
NOVEMBER 2017

<sup>43</sup> ICCPR, art 10(3).

<sup>44</sup> *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987) (*Convention Against Torture*).

<sup>45</sup> *Convention Against Torture*, arts 2, 4, 16.

<sup>46</sup> *Convention Against Torture*, arts 10-11.

<sup>47</sup> *Convention Against Torture*, arts 12-14.

<sup>48</sup> *Convention on the Rights of Persons with Disabilities*, opened for signature 13 December 2006, 2515 UNTS 3 (entered into force 3 May 2008).

<sup>49</sup> Committee on the Rights of the Child, *General Comment No 10*, 45<sup>th</sup> sess, UN Doc CRC/C/GC/10 (25 April 2007) [89] (General Comment No 10).

<sup>50</sup> *Havana Rules*, r 17.

<sup>51</sup> Australasian Juvenile Justice Administrators, *Juvenile Justice Standards 2009*, <[www.ajja.org.au/](http://www.ajja.org.au/)>.

<sup>52</sup> Australian Juvenile Justice Administrators, *Principles of Youth Justice in Australia* (2014).

<sup>53</sup> See in particular CRC, arts 2, 12, 37; General Comment No 10 [89].

<sup>54</sup> See in particular *Charter of Rights and Responsibilities Act 2006* (Vic) s 19(2).

<sup>55</sup> Australian Institute of Family Studies, (2014). Effects of child abuse and neglect for children and adolescents. CFCA Resource Sheet. Child Family Community Australia

<sup>56</sup> Philip Mendes, Susan Baidawi and Pamela C. Snow, *Good Practice in Reducing the Overrepresentation of Care Leavers in the Youth Justice System: Phase Three Report* (Monash University, 2014) 34.

<sup>57</sup> For information about the elements of a trauma-informed approach, see: National Child Traumatic Stress Network, *Essential elements of a trauma-informed juvenile justice system*; G Griffin et al., 'Using a Trauma-Informed Approach in Juvenile Justice Institutions'; Murray Robinson, 'To examine trauma-informed models of youth detention – USA, Norway, Netherlands: a report to the Winston Memorial Trust (2015). See also S Bloom, 'The Sanctuary Model of Organizational Change for Children's Residential Treatment', *Therapeutic Community: The International Journal for Therapeutic and Supportive Organizations*, vol. 26, no. 1 (2005), pp. 61–78.

<sup>58</sup> Alex Elwick, et al, *Improving outcomes for young offenders: an international perspective* (CfBT Education Trust, 2013) 23.

<sup>59</sup> See also *Havana Rules*, rr 50-51.

<sup>60</sup> See also *Havana Rules*, rr 49-51, 53-55; *Beijing Rules*, rr 26.1–26.2; *AJJA Standards*, standard 10.1, 10.2, 10.4.

<sup>61</sup> Michelle Evans-Chase and Huiquan Zhou, 'A Systematic Review of the Juvenile Justice Intervention Literature: What It Can (and Cannot) Tell Us About What Works with Delinquent Youth' (2014) 60(3) *Crime & Delinquency*, 451, 465 (reporting that of the articles reviewed, 76 per cent used a therapeutic approach (as opposed to behavioural control) to behavioural change, with the treatment group outperforming the control group in 88 per cent of the therapeutic intervention studies: 451.

<sup>62</sup> New South Wales, Inspector of Custodial Services, *Making connections: providing family and community support to young people in custody* (June 2015) 13; Queensland, Commission of Inquiry into Abuse of Children in Queensland Institutions, Report (1999) 215. See also *Havana Rules*, rr 59 – 61; *Beijing Rules*, r 26.5.

<sup>63</sup> See also *Havana Rules*, rr 38 – 41; *Riyadh Guidelines*, guideline 20; *Beijing Rules*, 26.6; *AJJA Standards*, standard 3.6

<sup>64</sup> Alex Elwick, et al, *Improving outcomes for young offenders: an international perspective* (CfBT Education Trust, 2013) 3, 24.

<sup>65</sup> Committee on the Rights of the Child, *General Comment No 10*, 45<sup>th</sup> sess, UN Doc CRC/C/GC/10 (25 April 2007) [89].

<sup>66</sup> Elizabeth K. Anthony et al, 'Coming back home: The reintegration of formerly incarcerated youth with service implications' (2010) 32 *Children and Youth Services Review* 1271, 1276; Chrissy James, et al., 'Aftercare programs for reducing recidivism among juvenile and young adult offenders: A meta analytic review' (2013) 33(2) *Clinical Psychology Review* 263, 268-9.

<sup>67</sup> See e.g. Australian Capital Territory, *Blueprint for Youth Justice in the ACT 2012-22* (2012) 28.

<sup>68</sup> Elizabeth K. Anthony, 'Coming back home: The reintegration of formerly incarcerated youth with service implications' (2010) 32 *Children and Youth Services Review* 1271, 1276. See also *Beijing Rules*, r 29.1.

<sup>69</sup> Alex Elwick, et al, *Improving outcomes for young offenders: an international perspective* (CfBT Education Trust, 2013) 3, 23.

<sup>70</sup> House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time – Time for Doing: Indigenous Youth in the Criminal Justice System* (2011); Commonwealth, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991). See also *AJJA Principles*.

<sup>71</sup> The United Nations *Declaration on the Rights of Indigenous Peoples* states that "Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures." United Nations *Declaration on the Rights of Indigenous Peoples*, Article 11 (1). The cultural rights of Aboriginal people in Victoria are also protected under the *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 19. See also *AJJA Standards*, standard 39.

<sup>72</sup> Kelly, K., Dudgeon, P., Gee, G., and Glaskin, B., 2009, *Living on the Edge: Social and Emotional Wellbeing Risk and Protective Factors for Serious Psychological Distress among Aboriginal and Torres Strait Islander People*, Discussion Paper Series No. 10, Cooperative Research Centre for Aboriginal Health, Darwin.

<sup>73</sup> M. Chandler and T. Proulx .2006. Changing Selves in Changing Worlds: Youth Suicide on the Fault Lines of Colliding Cultures. Archives of Suicide Research.

<sup>74</sup> Chapter 3 "Doing Time – Time for Doing" Report

<sup>75</sup> Australian Institute of Health and Welfare and Australian Institute of Family Studies 2013, *Strategies and practices for promoting the social and emotional wellbeing of Aboriginal and Torres Strait Islander people*, Resource sheet no. 19 produced for the Closing the Gap Clearinghouse, Canberra, p 3.

<sup>76</sup> Australian Institute of Health and Welfare and Australian Institute of Family Studies 2013, *Strategies and practices for promoting the social and emotional wellbeing of Aboriginal and Torres Strait Islander people*, Resource sheet no. 19 produced for the Closing the Gap Clearinghouse, Canberra, 1-2.

<sup>77</sup> *Beijing Rules*, r 22.

<sup>78</sup> Michelle Evans-Chase and Huiquan Zhou, 'A Systematic Review of the Juvenile Justice Intervention Literature: What It Can (and Cannot) Tell Us About What Works with Delinquent Youth' (2014) 60(3) *Crime & Delinquency*, 451, 465

<sup>79</sup> See also *AJJA Standards*, standard 9.3.

<sup>80</sup> See also *Havana Rules*, r 67.

<sup>81</sup> See also *Havana Rules*, r 67. Note also that the Riyadh Guidelines prohibit subjecting children and young people to harsh or degrading correction or punishment measures in institutions: guideline 54.

ACCG STATEMENT ON YOUTH JUSTICE DETENTION  
NOVEMBER 2017

<sup>82</sup> *Havana Rules*, r 70.

<sup>83</sup> See also *Havana Rules*, r 68.

<sup>84</sup> See also *Havana Rules*, rr 68, 70.

<sup>85</sup> Guardian for Children and Young People, *Inquiry into the Policy and Practice in the Use of Physical Restraint in South Australian Residential Facilities for Children and Young People* (2009) 2. 19, 50; The Lord Carlile of Berri QC, *An independent inquiry into the use of physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children's homes* (The Howard League for Penal Reform, 2008) 42.

<sup>86</sup> The Lord Carlile of Berri QC, *An independent inquiry into the use of physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children's homes* (The Howard League for Penal Reform, 2008) 47.

<sup>87</sup> Guardian for Children and Young People, *Inquiry into the Policy and Practice in the Use of Physical Restraint in South Australian Residential Facilities for Children and Young People* (2009) 7.

<sup>88</sup> Peter Smallridge and Andrew Williamson, *Independent Review of Restraint in Juvenile Secure Settings* (Ministry of Justice, 2008) 5.

<sup>89</sup> General Comment No 10 [89]; *Havana Rules*, r 64.

<sup>90</sup> *Havana Rules*, r 64.

<sup>91</sup> General Comment No 10 [89].

<sup>92</sup> See Guardian for Children and Young People, *Inquiry into the Policy and Practice in the Use of Physical Restraint in South Australian Residential Facilities for Children and Young People* (2009) 6-7 (describing incidents in the United States of America between 2005 and 2008); Peter Smallridge and Andrew Williamson, *Independent Review of Restraint in Juvenile Secure Settings* (London, 2008).

<sup>93</sup> HM Inspectorate of Prisons, *Behaviour management and restraint of children in custody: A review of the early implementation of MPPR by HM Inspectorate of Prisons* (London, 2015) 10.

<sup>94</sup> *Oranga Tamariki (Residential Care) Regulations* 1996, r 22. See also Associate Professor Ian Lambie, *Youth Justice Secure Residences: a report on the international evidence to guide best practice and service delivery* (Ministry of Social Development, May 2016) p 128.

<sup>95</sup> General Comment No 10 [89]; *Havana Rules*, r 64.

<sup>96</sup> *Havana Rules*, r 64.

<sup>97</sup> General Comment No 10 [89].

<sup>98</sup> General Comment No 10 [89].

<sup>99</sup> General Comment No 10 [89].

<sup>100</sup> Please note: terminology varies for describing searches with 'unclothed' used in South Australia instead of strip, and in Queensland searches are referred to as wand, clothed and partially clothed searches. A cell search involves a child or young person's cell being searched.

<sup>101</sup> See for example, *Children and Young People Act 2008* (ACT) part 7.5.

<sup>102</sup> *Convention on the Rights of the Child*, arts 16 and 37(c).

<sup>103</sup> Since 2000, New Zealand has banned the use of 'internal examinations' in youth justice detention environments.

<sup>104</sup> Australian Commissioners and Guardians, *Human rights standards in youth detention facilities in Australia: the use of restraint, disciplinary regimes and other specified practices* (April 2016) 60.

<sup>105</sup> Australian Commissioners and Guardians, *Human rights standards in youth detention facilities in Australia: the use of restraint, disciplinary regimes and other specified practices* (April 2016) 60.

<sup>106</sup> Elizabeth Grant, Rohan Lulham and Bronwyn Naylor, 'The Use of Segregation for Children in Australian Youth Detention Systems: An Argument for Prohibition' (2017) 3 *Advancing Corrections* 117, 122, 129; American Civil Liberties Union, *Alone and Afraid: Children Held in Solitary Confinement and Isolation in Juvenile Detention and Correctional Facilities* (New York: American Civil Liberties Union, 2014); Council of Juvenile Correctional Administrators, *Administrators Toolkit: Reducing the Use of Isolation* (Massachusetts: Center for Coordinated Assistance to States, 2015).

<sup>107</sup> Elizabeth Grant, Rohan Lulham and Bronwyn Naylor, 'The Use of Segregation for Children in Australian Youth Detention Systems: An Argument for Prohibition' (2017) 3 *Advancing Corrections* 117, 124-5; J Howell, M Lipsey and J Wilson, *A handbook for evidence-based juvenile justice systems* (London: Lexington Books, 2014) 95-99; Council of Juvenile Correctional Administrators, *Administrators Toolkit*; American Civil Liberties Union, *Alone and Afraid*

<sup>108</sup> Laura Dimon, 'How solitary confinement hurts the teenage brain' (2014) *The Atlantic* <

<https://www.theatlantic.com/health/archive/2014/06/how-solitary-confinement-hurts-the-teenage-brain/373002/>>.

<sup>109</sup> Elizabeth Grant, Rohan Lulham and Bronwyn Naylor, 'The Use of Segregation for Children in Australian Youth Detention Systems: An Argument for Prohibition' (2017) 3 *Advancing Corrections* 117, 125.

<sup>110</sup> Council of Juvenile Correctional Administrators, 'CJCA Toolkit: Reducing the Use of Isolation' (2015) 4

<<http://cjca.net/index.php/resources/cjca-publications/107-toolkit/751-cjca-toolkit-for-reducing-the-use-of-isolation>>.

<sup>111</sup> General Comment No 10 [89]; *Havana Rules*, r 67.

<sup>112</sup> *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 37(b); UN General Assembly, *UN Rules for the Protection of Juveniles Deprived of their Liberty*, UN Doc A/RES/45/113 (14 December 1990) [2]; *AJJA Standards*, standard 9.5.

<sup>113</sup> See also *AJJA Standards*, standard 10.7

<sup>114</sup> Alex Elwick, CfB Alex Elwick, et al, *Improving outcomes for young offenders: an international perspective* (CfBT Education Trust, 2013) 3, 23.

<sup>115</sup> *Havana Rules*, r 81. See also *AJJA Standards*, standard 8.1 – 8.10.

<sup>116</sup> See also *Beijing Rules*, r 22.2.

<sup>117</sup> General Comment No 10 [89]; *Havana Rules*, r 76.

<sup>118</sup> General Comment No 10 [89].

<sup>119</sup> See also General Comment No 10 [89].

<sup>120</sup> Most notably, 'Australia's Shame', Four Corners, ABC1, 25 July 2016 [television program].

<sup>121</sup> Commonwealth of Australia, *Royal Commission into the Protection and Detention of Children in the Northern Territory* [website] (2017) <<https://childdetentionnt.royalcommission.gov.au/Pages/default.aspx>> accessed 28 December 2016.

ACCG STATEMENT ON YOUTH JUSTICE DETENTION  
NOVEMBER 2017

---

<sup>122</sup> Commonwealth of Australia, Royal Commission into Protection and Detention of Children in the Northern Territory, *Interim Report* (2017) 39.

<sup>123</sup> Queensland Government, 'Terms of reference', *Independent Review of Youth Detention* [website], (Queensland Government, 2016) <<https://www.youthdetentionreview.qld.gov.au/terms-of-reference>>, accessed 28 December 2016.

<sup>124</sup> Kathryn McMillan and Megan Davis, *Independent Review of Youth Detention, December 2016* <<https://www.youthdetentionreview.qld.gov.au/review-of-youth-detention-centres-report.pdf>>, accessed 28 December 2016.

<sup>125</sup> Sarah Gerathy, 'Juvenile Justice: NSW to review youth detention centres amid detainee isolation claims', *ABC News*, 27 October 2016.

<sup>126</sup> New South Wales Government, *Current Inspections: How the use of force against detainees in Juvenile Justice Centres in NSW is managed* (1 December 2016) Inspector of Custodial Services <<http://www.custodialinspector.justice.nsw.gov.au/Pages/current-inspections/current-inspections.aspx>>, accessed 9 May 2017.

<sup>127</sup> Guardians for Children and Young People, *Go to your room! The use of seclusion in youth detention* (2016) <<http://www.gcyp.sa.gov.au/2016/04/go-to-your-room-the-use-of-seclusion-in-youth-detention>>, accessed 11 February 2017.

<sup>128</sup> Department of Corrective Services, Government of Western Australia, *Young people in the justice system: A review of the Young Offenders Act 1994* (2016), <<https://www.correctiveservices.wa.gov.au/youth-justice/young-offenders-act.aspx>>, accessed 28 January 2017.

<sup>129</sup> Department of Corrective Services, Government of Western Australia, *Young People in the Justice System: A Review of the Young Offenders Act 1994*, Green Paper (2016) 3.

<sup>130</sup> Commission for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, February 2017, (Melbourne: Commission for Children and Young People).

<sup>131</sup> Department of Health and Human Services, 'Review of youth support, youth diversion and youth justice services: Terms of reference', Department of Health and Human Services [website], <<http://www.dhs.vic.gov.au/about-the-department/plans.-programs-and-projects/projects-and-initiatives/children,-youth-and-family-services/youth-justice-review>>, accessed 9 May 2017.

<sup>132</sup> Patrick Billings, 'State Government coy on recommendations of youth justice report', *The Mercury* (Tasmania) 4 July 2017.

<sup>133</sup> Jacqui Petrusma, Minister for Human Services, 'Ashley 'Harker Report': Change already underway' (Media Release, 1 September 2016).