



# BRIEFING

To the United Nations Subcommittee on the Prevention against  
Torture

February 2020

**National Aboriginal and Torres Strait Islander Legal Services**



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## Background - About NATSILS

This briefing has been prepared by the National Aboriginal and Torres Strait Islander Legal Services (**NATSILS**) for the United Nations Subcommittee for the Prevention of Torture. NATSILS is the peak national body for Aboriginal and Torres Strait Islander Legal Services (**ATSILS**) in Australia.

NATSILS was established as the peak body for ATSILS in 2007. Initially we operated as a body to share best practice in the provision of legal assistance services to Aboriginal and Torres Strait Islander people. Over time we have evolved and grown into a highly coordinated body with an expanded sphere of influence to also include broader systemic issues of injustice.

We are the experts on the delivery of effective and culturally responsive legal assistance services to Aboriginal and Torres Strait Islander peoples. This role also gives us a unique insight into access to justice issues affecting Aboriginal and Torres Strait Islander people.

We bring together over 40 years' experience in the provision of legal advice, assistance, representation, community legal education, advocacy, law reform activities and prisoner through-care to Aboriginal and Torres Strait Islander peoples in contact with the legal system.

We represent the following ATSILS around Australia:

- Aboriginal and Torres Strait Islander Legal Service Ltd (ATSILS Qld);
- Aboriginal Legal Rights Movement Inc. in South Australia (ALRM);
- Aboriginal Legal Service (NSW/ACT) (ALS NSW/ACT);
- Aboriginal Legal Service of Western Australia Ltd (ALSWA);
- North Australian Aboriginal Justice Agency (NAAJA);
- Tasmanian Aboriginal Community Legal Service (TACLS); and
- Victorian Aboriginal Legal Service Co-operative Limited (VALS).



## Introduction

We welcome the opportunity to present this report to the United Nations Subcommittee Prevention of Torture informed by our experience and knowledge of the treatment of Aboriginal and Torres Strait Islander people in places of detention around Australia.

Based on all the available data, Aboriginal and Torres Strait Islander people are the most imprisoned people in the world.

We are deeply concerned about this disproportionate imprisonment of Aboriginal and Torres Strait Islander people in every state and territory in Australia.

There is substantial evidence indicating both willful and intentional harm and abuse caused to imprisoned Aboriginal and Torres Strait Islander people in numerous places of detention.

This report does not intend to provide a definitive or exhaustive list of the many, entrenched and systematic disadvantages Aboriginal and Torres Strait Islander people face in places of detention or the broader Australian legal system.

## Human rights issues relating to prisons and places of detention in Australia

### Youth detention

Due to over-policing, systemic racism, intergenerational trauma and forced family separation, Aboriginal and Torres Strait Islander children and young people are overrepresented in the national prison population.

Aboriginal and Torres Strait Islander children and young people are imprisoned at 28 times the rate of non-Indigenous young people.<sup>1</sup> Young Aboriginal and Torres Strait Islander people made up more than half (56%) of all imprisoned young people in 2018.

Due to community concerns of torture and cruel and inhuman or degrading treatment in prisons and youth detention facilities across the country all Australian jurisdictions have launched inquiries into their respective youth justice facilities. Including a Royal Commission, Australia's highest level of public inquiry, in the self-governing Northern Territory.<sup>2</sup>

The Royal Commission into Child Protection and Youth Detention in the Northern Territory was instituted after shocking abuses of human rights were uncovered at the Don Dale Juvenile Detention Centre in the Northern Territory.

The Royal Commission found systemic and shocking failures in the Northern Territory's youth detention regime. These findings included regular, repeated and distressing mistreatment of children and young people that was ignored at the highest levels of government.

*In delivering its final report, the Royal Commission found that the Northern Territory's youth detention centres were not fit for rehabilitating young people, let alone housing them.*<sup>3</sup>

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<sup>1</sup> Australian Productivity Commission, *Report on Government Services 2020*, Report 23 January 2020, 17.1

<sup>2</sup> These include the *Royal Commission into Child Protection and Youth Detention in the Northern Territory*, the *Queensland Independent Review of Youth Detention Centres*, Victorian Children's Commissioner *Inquiry into the use of isolation, separation and lockdown at places of youth detention in Victoria*, Western Australia's Office of the Inspector of Custodial Services' examination of *Behaviour Management Practices at Banksia Hill*, New South Wales' Inspector of Custodial Services' *Inquiry Into Use of Force Against Detainees in Juvenile Justice Centres in NSW*. In Tasmania a police investigation resulted in charges of common assault being laid against a guard from Ashley Youth Detention Centre. In the ACT an incident at Bimberi Youth Justice Centre on 6 May 2016 is according to the ACT Human Rights Commission: "subject to three separate external enquiries, including an investigation by the AFP."

<sup>3</sup> Royal Commission into the Protection and Detention of Children in the Northern Territory, *Report Overview*, Report November 2017, 4

The Royal Commission also found that Children in the Northern Territory were subjected to abuse and humiliation like the use of tear gas, solitary confinement, physical restraints, the use of spit-hoods and “hogtying”. Hogtying being the practice where prison guards tie or cuff children’s hands and ankles, behind their back, joined together.<sup>4</sup>

*Girls in particular suffered at the Don Dale Detention Centre. With many subjected to unjustified solitary confinement to separate them from boys; personal hygiene restrictions; sexual abuse and inappropriate touching by guards.*<sup>5</sup>

One of the Royal Commission’s recommendations was to close the Don Dale facility immediately due to its repeated breaches of the human rights of children and young people.<sup>6</sup> The centre remains open, and in fact has since been expanded.<sup>7</sup>

The Royal Commission also found that imprisoned children and young people in the Northern Territory were denied access to basic needs like food, water and the use of toilets. In some cases, children were bribed to carry out degrading and humiliating acts or to commit acts of violence on each other.<sup>8</sup>

In the state of Queensland investigative journalists have uncovered young people also being improperly restrained or locked down in solitary confinement which is likely to cause significant sensory deprivation and subjected to aggressive security dogs.<sup>9</sup>

These investigations led to independent reviews being commissioned into the Queensland youth detention system. These reviews found that children as young as ten are being imprisoned in adult watch houses, often in solitary confinement, and some for weeks because youth detention facilities are at capacity.<sup>10</sup>

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<sup>4</sup> Royal Commission into the Protection and Detention of Children in the Northern Territory, *Report Overview*, Report November 2017, 4

<sup>5</sup> Roxanne Moore, ‘The Abuse of Children in Don Dale and Other Prisons is a National Shame’, *The Guardian*, (online at 23 January 2020) <<https://www.theguardian.com/commentisfree/2017/nov/20/the-abuse-of-children-in-don-dale-and-other-prisons-is-a-national-shame>>

<sup>6</sup> Royal Commission into the Protection and Detention of Children in the Northern Territory, *Report Overview*, Report November 2017, 5

<sup>7</sup> Northern Territory Government, *Safe, Thriving and Connected | First Progress Report* (Web Page, 16 November 2018) <<https://rmo.nt.gov.au/updates/royal-commission-into-the-protection-and-detention-of-children-in-the-nt-first-progress-report>>.

<sup>8</sup> Royal Commission into the Protection and Detention of Children in the Northern Territory, *Report Overview*, Report November 2017, 4

<sup>9</sup> Queensland Ombudsman, *The Brisbane Youth Detention Centre Report*, Report March 2019, x, xi, xii

<sup>10</sup> Australian Broadcasting Corporation, *The Watch House Files* (Web Page, 13 May 2019) <<https://www.abc.net.au/news/2019-05-13/hold-the-watch-house-files/11046190>>

Adult watch houses in the state of Queensland are just bare concrete pens. They are designed to only hold adults that are in an acute or dangerous state and only for up to 48 hours. However, some children are imprisoned in these pens for weeks.

*Children in watch houses have no access to the outdoors and often their only exercise is 15 minutes in a four-walled pen with a mesh roof obscuring the sky.*<sup>11</sup>

Worryingly, solitary confinement is common in all Australian jurisdictions. However, because solitary confinement across Australia may be called isolation, segregation, seclusion or separation, there is no consistency in the governing legislation that regulates or prohibits solitary confinement.

For example, in the state of Western Australia, two young people were held in solitary confinement at the Banksia Hill Detention Centre for 10 days in 2017. An independent investigation by the Western Australian Office of Custodial Services found that their solitary confinement did not satisfy the protections due to imprisoned young people that are outlined in *The Young Offenders Act 1994 (WA)*. However, the provisions in the Act did not protect young people if they were placed in solitary confinement subject to a 'Personal Support Plan'.<sup>12</sup>

In one instance a teenager was held in solitary confinement for 328 days at Banksia Hill in a cell no bigger than a car parking space. He claims to also have been subjected to degrading treatment, the refusal of basic hygiene, of having to 'earn' bedding materials and having to kneel for his food or being fed through a grill in the door.<sup>13</sup>

Children and young people, particularly Aboriginal and Torres Strait Islander young people are also subject to excessive strip searching when imprisoned. In the state of New South Wales, Aboriginal and Torres Strait Islander young people accounted for 22 percent of all recorded strip searches in custody.<sup>14</sup> A report found that there are imprecise legal thresholds to enable strip searches in New South Wales and that unlawful strip searches are potentially widespread.<sup>15</sup>

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<sup>11</sup> Australian Broadcasting Corporation, *The Watch House Files* (Web Page, 13 May 2019) <<https://www.abc.net.au/news/2019-05-13/hold-the-watch-house-files/11046190>>

<sup>12</sup> Office of Custodial Services Western Australia, *Directed Review of Allegations made by Amnesty International Australia about ill-treatment at Banksia Hill Detention Centre*, Report, June 2018, vi

<sup>13</sup> Amnesty International Australia, *Teenager in Banksia Hill Asking to go to Adult Prison After 328 Days in Isolation*, (Web Page, 20 March 2018) <https://www.amnesty.org.au/teenager-in-banksia-hill-asking-to-go-to-adult-prison-after-328-days-in-isolation/>

<sup>14</sup> Grewcock, M and Sentas, V. *Rethinking Strip Searches by NSW Police*, Report, August 2019, 4

<sup>15</sup> Grewcock, M and Sentas, V. *Rethinking Strip Searches by NSW Police*, Report, August 2019, 4

The New South Wales Inspector of Custodial Services found that: "...the practice of searching young people by asking them to partially remove their clothes may be humiliating and distressing for young people. This is particularly the case given that many young people in detention have experienced abuse."<sup>16</sup>

In the Australian Capital Territory (ACT), a self-governing internal territory of Australia, the ACT Human Rights Commission found that a young person in handcuffs was punched by a staff member in a youth detention centre, in retaliation for being attacked by three detainees during a violent assault.

*The ACT Human Rights Commission also substantiated claims of racism among youth detention centre staff and that staff had encouraged detained young people to fight with each other.*<sup>17</sup>

In the Australian Capital Territory, there have been allegations of unauthorised physical force by workers in responding to violence or misbehaviour by imprisoned young people. Including, disturbing allegations of use of force intended to hurt or punish young people, such as pushing young people hard against a wall, choking them, dragging them along the ground and punching or kneeling them while restrained. There are allegations that in some cases youth workers offered imprisoned young people physical punishment as an alternative to proper behaviour management techniques.<sup>18</sup>

In the state of South Australia, an investigation into the Adelaide Youth Training Centre detention facility found that the repeated use mechanical restraints on children, unnecessary application of force and the use of spit hoods is unreasonable and unjust.<sup>19</sup> Particularly concerning is the fact that South Australia is the only jurisdiction in Australia that authorises the use of spit hoods on children or young people in youth detention.

The South Australian Ombudsman has recommended that the use of spit hoods in youth detention be ended in South Australia by 5 September 2020.<sup>20</sup>

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<sup>16</sup> New South Wales Inspector of Custodial Services, *Report on the Use of Force, Segregation and Confinement in NSW Juvenile Justice Centre*, Report 2018, <<http://www.custodialinspector.justice.nsw.gov.au/Documents/use-of-force-separation-segregation-confinement-nsw-juvenile-justice-centre.pdf>

<sup>17</sup> Toohey, K, Watchirs, H, McKinnon, S, de Fatima Vieira, M., *Commission Initiated Review of Allegations Regarding Bimberi Youth Justice Centre*, Report March 2019

<sup>18</sup> Toohey, K, Watchirs, H, McKinnon, S, de Fatima Vieira, M., *Commission Initiated Review of Allegations Regarding Bimberi Youth Justice Centre*, Report March 2019, 16

<sup>19</sup> South Australian Ombudsman, *Investigation concerning the use of spit hoods in the Adelaide Youth Training Centre*, Report September 2019, 35

<sup>20</sup> South Australian Ombudsman, *Investigation concerning the use of spit hoods in the Adelaide Youth Training Centre*, Report September 2019, 35



## People with disability in prison

*Almost 50% of all people imprisoned in Australia report having either a physical, psychosocial or cognitive disability.*<sup>21</sup>

The figures are more concerning for Aboriginal and Torres Strait Islander people, with 73% of imprisoned men and 86% of imprisoned women reporting at least one diagnosed psychosocial disability, like mental illness.<sup>22</sup>

Imprisoned Aboriginal and Torres Strait Islander people with disabilities experience added challenges as the disability is often undetected in childhood, particularly for those with cognitive or psychosocial disabilities.<sup>23</sup> Even when disability is detected early, support services can be difficult to access which can leave people isolated and unsupported which can compound their vulnerability.

Problems for imprisoned people with disabilities begin with a lack of proper assessments or identification of a disability, if they receive one whatsoever.<sup>24</sup> Without proper identification of disabilities it's not possible to provide appropriate and adequate services and accommodation that is responsive to the needs of imprisoned Aboriginal and Torres Strait Islander people.

Currently, disability identification relies heavily on the individual person with a disability self-reporting. This is particularly inadequate for Aboriginal and Torres Strait Islander people as they may not identify as having a disability, they may be unaware they have a disability, they may be fearful of ill-treatment, or there not being words in traditional languages to describe their disabilities.

The lack of available supports and services in the community for Aboriginal and Torres Strait Islander people with a disability is placing an increasing over-reliance on the criminal legal system to act as a defacto disability support system.<sup>25</sup>

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<sup>21</sup> Human Rights Watch, *"I Needed Help, Instead I Was Punished" Abuse and Neglect of Prisoners with Disabilities in Australia*, Report 6 February 2018, Summary

<sup>22</sup> Human Rights Watch, *"I Needed Help, Instead I Was Punished" Abuse and Neglect of Prisoners with Disabilities in Australia*, Report 6 February 2018, Over-Imprisonment of Aboriginal and Torres Strait Islander Peoples

<sup>23</sup> Human Rights Watch, *"I Needed Help, Instead I Was Punished" Abuse and Neglect of Prisoners with Disabilities in Australia*, Report 6 February 2018, Over-Imprisonment of Aboriginal and Torres Strait Islander Peoples

<sup>24</sup> Human Rights Watch, *"I Needed Help, Instead I Was Punished" Abuse and Neglect of Prisoners with Disabilities in Australia*, Report 6 February 2018, Summary

<sup>25</sup> National Aboriginal and Torres Strait Islander Legal Services, *'Submission to the Australian Law Reform Commission's Inquiry into the Incarceration Rates of Aboriginal and Torres Strait Islander peoples'* Submission September 2017, 8

Services are required to support Aboriginal and Torres Strait Islander persons living with a disability in the community to avoid them being imprisoned. Aboriginal and Torres Strait Islander people may have a history of offending related to their disability or poverty and are less likely to live in secure accommodation. This puts them at a greater risk of being denied bail, even for very low-level offending.<sup>26</sup>

It can also be difficult for a person with psychosocial disability to understand and comply with increasingly onerous bail conditions, particularly where bail conditions are imposed without the provision of additional psychosocial support.

*This increases the chance that the person will breach the conditions of their bail and be imprisoned.*<sup>27</sup>

Aboriginal and Torres Strait Islander women with disabilities face multiple and compounding forms of disadvantage, discrimination, and abuse.<sup>28</sup>

Research has found that Aboriginal and Torres Strait Islander women with disabilities are more likely to be forced into poverty, homelessness and are subjected to more domestic and sexual violence than their non-Indigenous peers.<sup>29</sup> Prison systems often provide women prisoners with less access to intensive mental health care than their male counterparts.<sup>30</sup>

Research in Australia has focused on the barriers people with disabilities have in accessing justice, little information exists across all Australian jurisdictions on the experiences of imprisoned people with disabilities.

A recent Human Rights Watch report investigated abuse and neglect of imprisoned people with disabilities between September 2016 and January 2018. Their report found that Australia is

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<sup>26</sup> National Aboriginal and Torres Strait Islander Legal Services, ‘Submission to the Australian Law Reform Commission’s Inquiry into the Incarceration Rates of Aboriginal and Torres Strait Islander peoples’ Submission September 2017, 8

<sup>27</sup> National Aboriginal and Torres Strait Islander Legal Services, ‘Submission to the Australian Law Reform Commission’s Inquiry into the Incarceration Rates of Aboriginal and Torres Strait Islander peoples’ Submission September 2017, 8

<sup>28</sup> Human Rights Watch, “I Needed Help, Instead I Was Punished” Abuse and Neglect of Prisoners with Disabilities in Australia, Report 6 February 2018, Context

<sup>29</sup> Human Rights Watch, “I Needed Help, Instead I Was Punished” Abuse and Neglect of Prisoners with Disabilities in Australia, Report 6 February 2018, Context

<sup>30</sup> Human Rights Watch, “I Needed Help, Instead I Was Punished” Abuse and Neglect of Prisoners with Disabilities in Australia, Report 6 February 2018, Over-Imprisonment of Aboriginal and Torres Strait Islander Peoples

likely restricting and violating the rights of imprisoned people with disabilities, particularly Aboriginal and Torres Strait Islander people with disabilities.<sup>31</sup>

Human Rights Watch visited 14 places of detention around Australia and conducted interviews with imprisoned people with disability. They found that at all the places of detention they visited imprisoned people with disability are viewed as easy targets and are at serious risk of violence, abuse, bullying, harassment, verbal, physical, and sexual violence.<sup>32</sup>

Human Rights Watch documented 32 cases of sexual violence on imprisoned people with disabilities, perpetrated by either fellow prisoners or staff.

There were also 41 cases physical violence reported by imprisoned people, perpetrated by fellow prisoners or staff.<sup>33</sup>

Imprisoned people with psychosocial or cognitive disabilities can spend weeks or months in solitary confinement. Human Rights Watch found that imprisoned people with disabilities can spend years in prolonged solitary confinement.

*In one instance, a man with a psychosocial disability has spent more than 19 years in a solitary confinement unit.*<sup>34</sup>

Numerous inquiries and reports have shown that people with disability are more likely to experience violence, abuse, neglect and exploitation than people without disability in all aspects of life.<sup>35</sup>

To investigate the causes of this abuse, violence and neglect and to inform the implementation of solutions, the Prime Minister of the Commonwealth of Australia, the Hon Scott Morrison MP announced the establishment of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

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<sup>31</sup> Human Rights Watch, *"I Needed Help, Instead I Was Punished" Abuse and Neglect of Prisoners with Disabilities in Australia*, Report 6 February 2018, Summary

<sup>32</sup> Human Rights Watch, *"I Needed Help, Instead I Was Punished" Abuse and Neglect of Prisoners with Disabilities in Australia*, Report 6 February 2018, Summary

<sup>33</sup> Human Rights Watch, *"I Needed Help, Instead I Was Punished" Abuse and Neglect of Prisoners with Disabilities in Australia*, Report 6 February 2018, Summary

<sup>34</sup> Human Rights Watch, *"I Needed Help, Instead I Was Punished" Abuse and Neglect of Prisoners with Disabilities in Australia*, Report 6 February 2018, Summary

<sup>35</sup> Australian Government, *'Factsheet'*, (online at 24 January 2020)  
<<https://disability.royalcommission.gov.au/Documents/fact-sheet.pdf>>



The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability is expected to issue an interim report of its investigations in October 2020 and a final report no later than 29 April 2022.

*NATSILS is coordinating the provision of legal assistance to Aboriginal and Torres Strait Islander people who wish to make submissions, representations or give evidence to the Royal Commission.*

We are also advocating to the Royal Commissioners on how best to engage Aboriginal and Torres Strait Islander people as it carries out its investigations.

## Legal services funding

ATSILS are Aboriginal and Torres Strait Islander community-owned and operated organisations that have operated across Australia for over 40 years. The Australian Government has funded ATSILS since the 1970s under various funding programs and arrangements.

Since 2004, funding for ATSILS has been administered by the Commonwealth Attorney General's Department (**AGD**). AGD also administers Commonwealth funding to mainstream legal assistance providers, like Legal Aid Commissions.

ATSILS have been primarily funded through an Indigenous stand-alone funding mechanism called the Indigenous Legal Assistance Program (**ILAP**). Legal assistance providers that are not Aboriginal and Torres Strait Islander community owned are funded through a mechanism called the National Partnership Agreement (**NPA**).

The ILAP gives effect to the self-determination of Aboriginal and Torres Strait Islander people by funding ATSILS as the community-controlled preferred providers of legal services for Aboriginal and Torres Strait Islander people.

The ATSILS provide a unique legal service that recognises and responds to cultural factors that influence and/or affect Aboriginal and Torres Strait Islander people who come into contact with the legal system.

*It is important to note that Aboriginal and Torres Strait Islander people don't just need access to more legal services; they need greater access to culturally safe legal services.*

Cultural safety being an environment that is spiritually, socially and emotionally safe, as well as physically safe for Aboriginal and Torres Strait Islander people. In culturally safe places there is no assault challenge or denial of the identity of Aboriginal and Torres Strait Islander people and what they may need.<sup>36</sup>

In 2018, a review of the Indigenous Legal Assistance Program assessed the effectiveness, efficiency and appropriateness of the program as a mechanism for achieving its objectives and outcomes. The review recommended retaining the ILAP as a separate funding arrangement for the provision of legal assistance to Aboriginal and Torres Strait Islander communities.

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<sup>36</sup> Williams, R. , Cultural safety – what does it mean for our work practice?, *Australian and New Zealand Journal of Public Health* (1999) 23(2), 213-214.



Despite this recommendation, the ILAP is being wound up and funding for legal assistance to Aboriginal and Torres Strait Islander communities will be incorporated into one common legal assistance fund. This move has the potential to seriously undermine the right of Aboriginal and Torres Strait Islander people to self-determination.

*Well resourced, self-determined ATSILS are critical for providing competent, culturally appropriate assistance to Aboriginal and Torres Strait Islander people in contact with the legal system.*

Without funding certainty from an Indigenous-specific funding mechanism, ATSILS and NATSILS may be severely hampered in advocating for true justice for Aboriginal and Torres Strait Islander people, their families, and their communities.

## Aboriginal and Torres Strait Islander Deaths in Custody

As mentioned above, because of many intersecting factors like over-policing, systemic racism, forced family separation and a systematic attempt to eliminate culture and traditional languages, Aboriginal and Torres Strait Islander people are over-represented in the national prison population.

As of 30 June 2018, the proportion of the total adult prison population that is Aboriginal or Torres Strait Islander compared to non-Indigenous people varies across the Commonwealth. The proportion varies from 9% of all prisoners in Victoria to 84% of all prisoners in the Northern Territory.

In 1991 a Royal Commission was instituted to investigate the over-representation of Aboriginal and Torres Strait Islander people in jails and to investigate the alarming numbers of Aboriginal and Torres Strait Islander people dying in custody.

The Royal Commission into Aboriginal Deaths in Custody delivered numerous recommendations on how to reduce the numbers of Aboriginal and Torres Strait Islander people in prisons and to prevent deaths in custody.

*Governments across the Commonwealth have not fully committed to implementing all recommendations to prevent Aboriginal and Torres Strait Islander deaths in custody and over-incarceration..*

As of January 2020, there have been 424 Aboriginal and Torres Strait Islander people dying in police custody or while imprisoned since the Royal Commission into Aboriginal Deaths in Custody handed down its recommendations.<sup>37</sup>

It's particularly concerning that in a 12-month period between August 2018 and August 2019, the proportion of Aboriginal and Torres Strait Islander deaths in custody where medical care was required but not given increased, from 35.4% to 38.6%. The proportion of Aboriginal and Torres Strait Islander deaths in custody where not all procedures were followed before the death increased from 38.8% to 41.2% in the same period<sup>38</sup>.

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<sup>37</sup> Lorena Allam, Calla Wahlquist, Nick Evershed, 'Indigenous Deaths in Custody Worsen in Year of Tracking byDeaths Inside Project', *The Guardian* (online at 22 January 2020)

<sup>38</sup> Lorena Allam, Calla Wahlquist, Nick Evershed, 'Indigenous Deaths in Custody Worsen in Year of Tracking byDeaths Inside Project', *The Guardian* (online at 22 January 2020)  
<<https://www.theguardian.com/australia-news/2019/aug/23/indigenous-deaths-in-custody-worsen-over-year-of-tracking-by-deaths-inside-project>>

Alarming, Aboriginal and Torres Strait Islander women were less likely to have received all the appropriate medical care they needed prior to their death. Authorities were also less likely to have followed all their own processes and procedures regarding incarcerated women in cases where an Indigenous woman died in custody.<sup>39</sup>

Some of the most recent and egregious deaths of Aboriginal and Torres Strait Islander people are documented below.

### **Ms Dhu**

Ms Dhu died in custody in 2014 after being sentenced to four days imprisonment for \$3,622 in unpaid fines.<sup>40</sup> Western Australia is the only Australian jurisdiction that imprisons people for unpaid fines. Her death was attributed to septicemia caused by an infection in a rib broken by her violent partner weeks before her imprisonment.<sup>41</sup> Despite calling for help numerous times, she was accused of faking her condition.

A coronial inquest found that Ms Dhu endured inhumane treatment from some police officers at the South Hedland police station in Western Australia. Ms Dhu was dropped on the cell floor and due to her condition, she was unable to stand and was dragged along the floor. She was then handcuffed and shackled to a police van.

### **Tanya Day**

Ms Day was a 55 year old mother and grandmother and a highly-respected member of her community. She died in hospital after falling and hitting her head in the cells at the Castlemaine Police Station in the state of Victoria in December 2017. Ms Day was in custody for public drunkenness, a very low-level offence. Aboriginal women are 10 times more likely to be targeted for these offences than non-Indigenous women.<sup>42</sup>

Ms Day's coronial inquest was the first in Australia to explicitly consider the impact of institutionalised racism in her treatment leading to her death. The coronial process is still ongoing.

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<sup>39</sup> Lorena Allam, Calla Wahlquist, Nick Evershed, 'Indigenous Deaths in Custody Worsen in Year of Tracking by Deaths Inside Project', *The Guardian* (online at 22 January 2020) <<https://www.theguardian.com/australia-news/2019/aug/23/indigenous-deaths-in-custody-worsen-over-year-of-tracking-by-deaths-inside-project>>

<sup>40</sup> Coroners Court of Western Australia, *Inquest into the death of [Ms] DHU (11020-14)*

<sup>41</sup> The Guardian Australia, 'Deaths inside Indigenous Australian deaths in custody 2019', *The Guardian* (online at 22 January 2020) <<https://www.theguardian.com/australia-news/ng-interactive/2018/aug/28/deaths-inside-indigenous-australian-deaths-in-custody>>

<sup>42</sup> Human Rights Law Centre, *Aboriginal women 10 times more likely to be targeted by police at time of Tanya Day's death in custody*, Report (22 April 2019)



**Wayne Fella Morrison**

Mr Morrison died in hospital three days after an “altercation” with at least 12 guards at the Yatala prison in South Australia in 2016. Mr Morrison was restrained, pinned down on the ground and placed in a van where he stopped breathing.

Mr Morrison was unsentenced at the time of his death. Mr Morrison’s family were not notified of his injuries and were denied access to the hospital for over 10 hours.

**David Dungay**

Mr Dungay died in Long Bay Jail in New South Wales in 2015. He was a type-2 diabetic and had been diagnosed with schizophrenia. He was restrained by prison guards and sedated with 10mg of midazolam after he refused to stop eating a packet of biscuits.

Footage played in the coronial inquest shows he said “I can’t breathe” 12 times just before he died in the prison cell.

**Kumanjayi Walker**

Mr Walker was 19 years old when he was shot in his bed in the town of Yuendumu, 300kms from Alice Springs by a Northern Territory police officer in 2019.

Mr Walker was taken to a local police station after he was shot where he died of his injuries. He was denied medical care and his family were not given the opportunity to see him. The Northern Territory police officer that shot Mr Walker has been charged with murder. The investigation is ongoing.

**Joyce Clarke**

Ms Clarke, a 29-year-old woman with intellectual disabilities was shot by police in Geraldton Western Australia. Just before her death Ms Clarke had been released from prison and there are reports that she was suffering from mental illness while brandishing a knife. She was shot in the abdomen by a Western Australian police officer. The investigation is ongoing.

NATSILS and the ATSILS are willing to facilitate meetings between the Subcommittee for the Prevention of Torture and the families of the Aboriginal and Torres Strait Islander people killed in police custody mentioned in this report.

**Veronica Marie Nelson Walker**

Ms Nelson’s death on 2 January 2020 at Dame Phyllis Frost Centre (**DPFC**) is the most recent death in custody of an Aboriginal person in Australia. An investigation into the circumstances of her death is still underway and will likely be the subject of a coronial inquest.

It has been reported that Ms Nelson was arrested on 30 December 2019, then refused bail for a shoplifting offence and remanded in custody by a Magistrate at Melbourne Magistrates Court on 31 December 2019. She was later found dead at 8am on 2 January 2020 in an observation cell at DPFC, having last been observed at 4am.<sup>43</sup>

It is suspected that she spent one to two nights at the Melbourne Custody Centre (**MCC**), which is below the Melbourne Magistrates Court, prior to being transferred to DPFC, as is the common practice with prisoners who are denied bail.

MCC is the only custody centre in Australia that is managed by a private security company, in this case G4S Security, while Victoria Police is responsible for Health Care at MCC. The reported circumstances of Ms Nelson's death, during a busy holiday period, raise concerns that a lack of medical attention and lack of appropriate support whilst she was withdrawing from drugs, may have lead to her tragic death.

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<sup>43</sup> ABC News, 18 January 2020: ['Veronica Nelson Walker's family laid her to rest not knowing how she died in custody'](#)

## Proposed places of detention to visit

NATSILS recommends that the Subcommittee for the Prevention of Torture visit the following places of detention in Australia. Concerns regarding cruel, inhuman and degrading treatment and torture are noted in the corresponding column.

Place of Detention	OPCAT Issues	Relevant Documents
Don Dale Youth Detention Centre, Darwin, Northern Territory.	<ul style="list-style-type: none"> <li>- Mistreatment of imprisoned children and young people.</li> <li>- Abuse and humiliation of imprisoned children and young people.</li> <li>- Use of tear gas, spit hoods, and physical restraints on children and young people.</li> <li>- Imprisoned children and young people denied water, food, toilets, basic hygiene.</li> <li>- Sexual harassment and assault.</li> <li>- Solitary confinement.</li> </ul>	<ul style="list-style-type: none"> <li>● <i>Royal Commission Into the Protection and Detention of Children in the Northern Territory Final Report (2017)</i></li> <li>● <i>Investigation Report Services provided by the Department of Correctional Services at the Don Dale Youth Detention Centre, NT Children's Commissioner (2015)</i></li> <li>● <i>Northern Territory Review into Youth Detention Centres, Michael Vita (2015)</i></li> </ul>
Cleveland Youth Detention Centre, Belgian Gardens, Queensland.	<ul style="list-style-type: none"> <li>- Excessive use of force on children and young people.</li> <li>- Excessive use of restraints on children and young people.</li> <li>- Lack of or denial of educational materials for children and young people</li> <li>- Solitary confinement.</li> </ul>	<ul style="list-style-type: none"> <li>● <i>The Brisbane Youth Detention Centre Report. An investigation into the management of young people at Brisbane Youth Detention Centre between November 2016 and February 2017, Queensland Ombudsman (2019)</i></li> </ul>

<p>Banksia Hill Youth Detention Centre, Perth, Western Australia</p>	<ul style="list-style-type: none"> <li>- Strip searching</li> <li>- Children and young people not provided access to good quality education</li> <li>- Solitary confinement</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Directed review into an incident at Banksia Hill Detention Centre on 20 January 2013, Office of the Inspector of Custodial Services (2013)</i></li> <li>• <i>Directed Review of Allegations made by Amnesty International Australia about ill-treatment at Banksia Hill Detention Centre, Office of the Inspector of Custodial Services (2018)</i></li> </ul>
<p>Queensland Police Watch Houses at Brisbane, Mareeba, Cairns, Rockhampton,</p>	<ul style="list-style-type: none"> <li>- Children detained in adult jails and watch houses</li> <li>- Abuse</li> <li>- Neglect</li> <li>- Overcrowding</li> <li>- Solitary confinement</li> </ul>	<ul style="list-style-type: none"> <li>• Australian Broadcasting Corporation, <i>The Watch House Files</i>, Mark Willacy (2019)</li> </ul>
<p>West Kimberley Regional Prison, Broome Regional Prison, Franklin Centre at Graylands Hospital, Western Australia.</p>	<ul style="list-style-type: none"> <li>- Allegations of abuse, harassment, neglect or assault of imprisoned people with disability</li> <li>- Solitary confinement</li> </ul>	<ul style="list-style-type: none"> <li>• <i>“I Needed Help, Instead I Was Punished” Abuse and Neglect of Prisoners with Disabilities in Australia</i>, Human Rights Watch (2017)</li> </ul>
<p>Brisbane Women’s Correctional Centre Wolston Correctional Centre Southern Queensland Correctional Centre, Lotus Glen Correctional Centre, Queensland.</p>	<ul style="list-style-type: none"> <li>- Allegations of abuse, harassment, neglect or assault of imprisoned people with disability</li> <li>- Solitary confinement</li> </ul>	<ul style="list-style-type: none"> <li>• <i>“I Needed Help, Instead I Was Punished” Abuse and Neglect of Prisoners with Disabilities in Australia</i>, Human Rights Watch (2017)</li> </ul>

<p>Long Bay Jail, New South Wales</p>	<ul style="list-style-type: none"> <li>• Aboriginal death in custody</li> <li>• Indefinite detention of people with disability</li> <li>• Indefinite detention of people with disability who are unfit to plead.</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Inquest Into the Death of David Dungay</i>, Coroners Court of New South Wales (2019)</li> </ul>
<p>Melbourne Custody Centre and Dame Phyllis Frost Centre, Victoria</p>	<ul style="list-style-type: none"> <li>- Suspected lack of appropriate medical attention whilst held at Melbourne Custody Centre, prior to transfer to Dame Phyllis Frost Centre.</li> <li>- Suspected lack of medical attention and supervision at Dame Phyllis Frost Centre</li> <li>- Concerns regarding the use of an observation room to house a remand prisoner withdrawing from drugs and requiring medical attention.</li> </ul>	<ul style="list-style-type: none"> <li>• Media reports into the recent death of Veronica Nelson on 2 January 2020:</li> <li>• ABC News, 18 January 2020: <a href="#">‘Veronica Nelson Walker’s family laid her to rest not knowing how she died in custody’</a></li> <li>• The Age, 11 January 2020: <a href="#">‘Family’s plea for answers as Aboriginal woman dies alone in Melbourne jail’</a></li> </ul>
<p>Surry Hills Police Watch House, Surry Hills, New South Wales</p>	<ul style="list-style-type: none"> <li>- Allegations of people being detained in police watchhouses for over seven days</li> </ul>	
<p>Parklea Correctional Centre, Parklea, New South Wales</p>	<ul style="list-style-type: none"> <li>- Privately operated, maximum security prison in New South Wales.</li> <li>- Human rights abuses, particularly of Aboriginal and Torres Strait Islander people</li> </ul>	<ul style="list-style-type: none"> <li>• SBS, 28 March 2019, <a href="#">International Embarrassment: Government slammed for ignoring Indigenous Incarceration Report.</a></li> </ul>