



Human rights standards in youth detention facilities in Australia: the use of restraint, disciplinary regimes and other specified practices.

Every effort has been made to ensure that the information provided in this paper in relation to cited current practice is correct, however, it is acknowledged that youth justice practice is subject to ongoing, and at times, substantial reform at a jurisdictional level. As such this paper presents a 'snapshot in time' aimed at informing practice to achieve a consistent approach to youth justice in Australia in accordance with human rights standards.

April 2016

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Foreword

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

- promote the rights of children and young people, including the right to participation, as articulated in the United Nations Convention on the Rights of the Child
- ensure the best interests of children are considered in public policy and program development
- give voice to the views of, and encourage direct consultation with, children and young people on matters that affect them, and
- encourage systemic improvement, and a robust evidence base, in areas that impact on the rights, interests and wellbeing of children and young people.

Attention to human rights standards in detention centres is an issue of significant importance to the safety and wellbeing of detained young people. Due to the particular vulnerability of children, international human rights standards for their detention require a higher duty of care than those for adult offenders.

The UN Convention on the Rights of the Child (the Convention) states that every child deprived of their liberty must be treated with humanity taking into account the needs of a person of that age. In 2012, a report from the UN Committee on the Rights of the Child (the UN Committee), expressed regret that despite its previous recommendations “the juvenile justice system of Australia still requires substantial reforms for it to conform to international standards”.¹ It identified a number of practices, such as solitary confinement regimes, mandatory sentencing of young people, and imposing life sentences without parole, as inconsistent with human rights standards and called for changes in policies within Australian jurisdictions.

While the report from the UN Committee identified a broad range of practices of concern, this paper focuses on specific practices, namely, the use of disciplinary regimes, restraint, force, searches, seclusion and segregation within youth justice detention facilities with the aim to:

- improve understanding of the use of such practices in youth justice detention facilities in different jurisdictions in Australia including any differences in the levels of transparency, accountability and external oversight
- examine the human rights standards applicable to the use of such practices in youth justice detention facilities

¹ Committee on the Rights of the Child 2012, *Concluding Observations – Australia* (28 August 2012) CRC/C/AUS/CO/4, [82], p. 21.

- inform systemic review consistent with human rights standards and evidence of what is effective.

It is important that the children and young people who spend time in youth justice detention facilities are provided every opportunity to address their offending behaviour and successfully reintegrate into the community. Providing a consistent, just and effective approach within such facilities will be a significant step to achieving this.

Australian Children's Commissioners and Guardians

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Colin Pettit, Commissioner for Children and Young People, Western Australia

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Liana Buchanan, Principal Commissioner for Children and Young People, Victoria

Andrew Jackomos, Commissioner for Aboriginal Children and Young People, Victoria

Cheryl Vardon, Principal Commissioner, Queensland Family and Child Commission

Youth justice in Australia

Very few young people actually have contact with the justice system. Around 96 per cent of children and young people have little or no formal contact with the justice system.² Much offending by young people is impulsive and transient – this is not to diminish the impact of this offending, but to illustrate the need for a proportionate response for offending by children and young people.

Where children and young people do have persistent and ongoing contact with the justice system, it is rarely in isolation from other factors. The factors that can lead a child or young person into the justice system are largely the same as those that can lead them into state care – that is, dysfunction at home and in the community, alcohol and drugs, violence, disadvantage and poverty. These issues are covered in detail in the Joint Australian Children's Commissioners and Guardians submission to the Australian House of Representatives Inquiry into the over representation of Aboriginal and Torres Strait Islander young people in the justice system.³

In 2014–15 \$438 million dollars⁴ was spent on youth justice detention facilities across Australia. On an average night, 885 people⁵ are held in these facilities nationwide.⁶ This has decreased slightly from 1,027 over the four year period from June 2011. Around half of these children and young people were Aboriginal⁷ and approximately 90 per cent were male.⁸ Between the June quarter 2011 and the June quarter 2015 there was a decrease in the number of children in detention in New South Wales (375 to 314), Victoria (187 to 146), Western Australia (196 to 159), South Australia (59 to 43), the ACT (21 to 10) and Tasmania (27 to 10), while Queensland (130 to 168) and the Northern Territory (32 to 44) experienced steady increases in detention numbers.⁹

Over the four year period the rate of children in detention increased in Queensland and Victoria and decreased in New South Wales, WA, Tasmania and the ACT.¹⁰ In

² Office of the Auditor General for Western Australia 2008, *The Juvenile Justice System: Dealing with Young People under the Young Offenders Act 1994: Performance Examination*, Office of the Auditor General for Western Australia, Perth, Australia, p.17.

³ 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>

⁴ Steering Committee for the Review of Government Service Provision (SCRGSP) 2016, *Report on Government Services 2016: Community services*, vol. F, Productivity Commission, Canberra, Australia, p. 16.8.

⁵ Note: some jurisdictions allow young people between 18 and 20 years in Youth Detention facilities.

⁶ Australian Institute of Health and Welfare 2015, *Youth detention population in Australia 2015*, Bulletin 131, Cat no. AUS 196, Australian Institute of Health and Welfare, Canberra, Australia, p. 5.

⁷ Ibid, p. 9.

⁸ Ibid, p. 6.

⁹ Ibid, p. 15.

¹⁰ Ibid, p. 15.

spite of this decrease Western Australia and the Northern Territory still have considerably higher rates of youth detention than all other jurisdictions.¹¹

Table 1: Detention of children and young people 10 to 17 years: average daily rate per 10,000 population, and number in detention on an average night, all states and territories, June Quarter 2015. Note that averages may not sum due to rounding

	Aboriginal and Torres Strait Islander	Non-Aboriginal	Total	Rate per 10,000
NSW	143	92	238	3.28
VIC	13	69	83	1.51
QLD	113	54	167	3.44
WA	94	40	134	5.37
SA	23	16	38	2.42
TAS	2	5	8	1.50
NT	41	3	44	16.68
ACT	1	7	8	2.21
Australia	430	286	720	3.16

The Northern Territory has the highest number of Aboriginal and Torres Strait Islander young people in detention as a percentage of the overall detention population however WA's rate of youth detention is the highest in terms of Aboriginal and Torres Strait Islander over representation.¹² Nationally, Aboriginal and Torres Strait Islander children were 26 times more likely than non-Aboriginal and Torres Strait Islander children to be in detention on a given night during the June 2015 quarter.¹³ In 2011 this figure was 19 times more likely. This increase was primarily due to the decrease in the number of non-Aboriginal and Torres Strait Islander children and young people in sentenced detention while the number of Aboriginal and Torres Strait Islander young people in detention has remained steady.¹⁴

On an average night in 2014–15 there were 480 Aboriginal and Torres Strait Islander young people in detention in Australia.¹⁵ Despite making up only 5.5 per cent of the overall population of 10 to 17 year olds, they made up over half of all young people in detention on any one night.

¹¹ Ibid, p. 9.

¹² Australian Institute of Health and Welfare 2015, *Youth detention population in Australia 2015*, Bulletin 131, Cat. No. AUS 196, Supplementary Table S10, Australian Institute of Health and Welfare, Canberra, Australia.

¹³ Australian Institute of Health and Welfare 2015, *Youth detention population in Australia 2015*, Bulletin 131, Cat no. AUS 196, Australian Institute of Health and Welfare, Canberra, Australia, p. 11.

¹⁴ Ibid, p. 12.

¹⁵ Ibid, p. 9.

Approximately half of all children and young people in detention nationwide in the June quarter 2015 were yet to be sentenced. This rate has remained relatively steady over the four year period.¹⁶ There are however marked differences between jurisdictions. Young people held on remand made up 41 per cent of the detention population in Western Australia but 84 per cent in Queensland. Until 2015, Victoria had consistently had the lowest proportion of young people who were unsentenced on a given night.¹⁷ This is in part due to the State's dual track system that allows 18-20 year olds to serve their sentence in a youth facility rather than an adult prison, provided a court deems it appropriate, increasing the proportion of sentenced prisoners.

The number of young people held in custody in NSW dropped by 34 per cent from a daily average of 434 in 2009-10 to 286 in 2014–15. Juvenile Justice NSW credit this decline to funding received in 2011 to place support staff in the courts to facilitate the provision of bail. Since then, the numbers of young people who have been granted bail but held in custody because they could not meet their conditions have dropped from 150 per year to 52. The new bail laws also require increased co-operation between Family and Community Services and Juvenile Justice to find accommodation for young people. Family and Community Services must report back to the court about their efforts to find suitable accommodation for young people.

¹⁶ Ibid, p. 7.

¹⁷ Ibid, p. 12.

Youth detention facilities in Australian states and territories

There are 17 youth detention facilities in Australia. This includes seven in New South Wales, two each in the Northern Territory, Queensland and Victoria and one each in Western Australia, South Australia, Tasmania and the ACT. The Western Australian facility at Banksia Hill in Perth is the largest single youth detention facility in the country with a general purpose bed capacity of 227.

The Juniperina Juvenile Justice Centre in western Sydney is the only Australian facility to exclusively accommodate young female detainees. In most facilities detainees held on remand are housed together with those already sentenced. Victoria's dual track system allows for 18-20 year olds, who have been sentenced by an adult court, to be detained at the youth custodial facility at Malmsbury.

Youth detention facilities

Jurisdiction	Detention Centres	Authority	Legislation
ACT	Bimberi Youth Justice Centre <ul style="list-style-type: none"> • 10 – 20¹⁸ male and female (remand and sentenced) 	Office for Children, Youth and Family Support, Community Services Directorate, ACT Govt	<i>Children and Young People Act 2008 (ACT)</i>
NT	Alice Springs Youth Detention Centre <ul style="list-style-type: none"> • 10 – 18 male (remand and sentenced) 	Department of Correctional Services, Northern Territory	<i>Youth Justice Act (NT)</i>
	Don Dale Youth Detention Centre <ul style="list-style-type: none"> • 10 – 18 male and female (remand and sentenced) 		

¹⁸ Under the legislation young people under the age of 21 years can be held in Bimberi if the relevant offence was committed when they were under 18 years.

NSW ¹⁹	Reiby Juvenile Justice Centre, Airds	Juvenile Justice, NSW	<i>Children (Detention Centres) Act 1987 (NSW)</i>
	Acmena Juvenile Justice Centre, Grafton		
	Riverina Juvenile Justice Centre, Wagga Wagga		
	Orana Juvenile Justice Centre, Dubbo		
	Frank Baxter Juvenile Justice Centre, Kariong		
	Cobham Juvenile Justice Centre, St Marys		
	Juniperina Juvenile Justice Centre, Lidcombe		
QLD	Brisbane Youth Detention Centre, Wacol <ul style="list-style-type: none"> • 10 – 17 male and female (remand and sentenced) 	Department of Justice and Attorney General, QLD	<i>Youth Justice Act 1992 (QLD)</i> <i>Youth Justice Regulation 2003 (QLD)</i>
	Cleveland Youth Detention Centre, Townsville <ul style="list-style-type: none"> • 10 – 17 male and female (remand and sentenced) 		
SA	Adelaide Youth Training Centre <ul style="list-style-type: none"> • Campus 1 Male and female (remand and sentenced) • Campus 2 10 – 14 male and female (remand and sentenced) 	Youth Justice Directorate, Department of Communities and Social Inclusion	<i>Young Offenders Act 1993 (SA)</i> <i>Family and Community Services Act 1972 (SA)</i> <i>Family and Community Services Regulations 2009 (SA)</i>

¹⁹ In NSW people up to 21 years can be held in juvenile detention centres if their offence was committed before they were 18. Juniperina is for females only.

TAS	Ashley Youth Detention Centre 10 – 17 male and female (remand and sentenced) ²⁰	Children and Youth Services, Department of Health and Human Services	<i>Youth Justice Act 1997 (TAS)</i>
VIC	Parkville Youth Justice Precinct <ul style="list-style-type: none"> • 10 – 18 male and female (remand and sentenced) • 18 – 20 female (sentenced) 	Department of Health and Human Services, Secure Services Division, VIC	<i>Children, Youth and Families Act 2005 (VIC)</i>
	Malmsbury Youth Justice Precinct <ul style="list-style-type: none"> • 18 – 20 male (sentenced) • 15 – 18 male (sentenced or remand) 		
WA	Banksia Hill Detention Centre, Perth <ul style="list-style-type: none"> • 10 – 18 male and female (remand and sentenced) 	Department of Corrective Services, WA	<i>Young Offenders Act 1994 (WA)</i>

Australian Capital Territory

In the ACT the child protection authority and the youth justice authority are co-located within the Office for Children, Youth and Family Support (OCYFS), in the Community Services Directorate of the ACT Government.

The ACT has one youth justice detention centre – the Bimberi Youth Justice Centre, a 40 bed facility opened in 2008.²¹ Bimberi houses both young men and young women, on remand and sentenced. The operation of the detention centre must comply with human rights standards under the *Human Rights Act 2004 (ACT)*.

The ACT has a comprehensive system of external oversight for the youth justice system. Four independent authorities (ACT Children and Young People Commissioner, Public Advocate of the ACT Official Visitor, and Aboriginal and Torres Strait Islander and Torres Strait Islander Official Visitor) have statutory powers to enter Bimberi to speak with young people about their experiences (in confidence and with protections against retribution), inspect the use of force register and segregation register, and investigate complaints about Bimberi.

²⁰ Tasmania also accommodates some young people aged over 18 years.

²¹ Australian Capital Territory Government (ACT Government) Community Services Directorate 2016, *Bimberi Youth Justice Centre and Residential Services*, <<http://www.dhcs.act.gov.au/ocyfs/bimberi>>

In 2010 Bimberi experienced media publicity following a negative cycle of high population numbers, challenging behaviour, high rates of use of force, and high staff turnover/absenteeism. The ACT Legislative Assembly asked the Children and Young People Commissioner and the Human Rights and Discrimination Commissioner to conduct an Inquiry into the youth justice system in the ACT, including a human rights audit of conditions of detention at Bimberi. The 2011 report contained 225 recommendations which were directed to improving evidence-based policy and programs, effective rehabilitation and therapeutic interventions, individualised responses to young people in the youth justice system, greater support for the youth justice workforce, and supported accommodation options for young people with challenging behaviours and complex needs.²²

Following the 2011 review, the ACT government established an Implementation Taskforce, which produced the *Blueprint for Youth Justice in the ACT 2012–22*.²³ The Blueprint declares six goals in relation to youth justice:

- Youth offending and re-offending is reduced
- The over-representation of Aboriginal and Torres Strait Islander and Torres Strait Islander children and young people in the youth justice system is reduced
- Children and young people are diverted from the formal youth justice system
- Detention rates are reduced
- Children, young people and their families are helped early and provided with the supports and services they need
- Children and young people are given every possible chance to be successfully reintegrated into the community upon leaving detention.²⁴

Initiatives in recent years by the ACT Government to improve youth justice services, some of which originated in recommendations in the Commissioners' review of 2011:

- A Youth Justice Advisory Panel to advise OCYFS in the development of policies and programs, comprised of experts in the fields of child and adolescent psychology, trauma and abuse, Aboriginal and Torres Strait Islander and Torres Strait Islander engagement, vulnerable families, youth justice, education, and health²⁵

²² Roy A, Watchirs H, Costello S, Graham K, McGill B, McKinnon G & Moore T 2011, *The ACT Youth Justice System 2011: A Report to the ACT Legislative Assembly by the ACT Human Rights Commission*, ACT Human Rights Commission, Canberra, Australia.

²³ ACT Government Community Services Directorate 2012, *Blueprint for youth justice in the ACT 2012-22*, ACT Government, Canberra, Australia.

²⁴ Ibid, pp. 6-7.

²⁵ ACT Government Community Services Directorate 2013, *Youth Justice Advisory Panel*, <http://www.communityservices.act.gov.au/ocyfs/the_blueprint_for_youth_justice_in_the_act/youth-justice-advisory-panel>

- Consistent youth justice case management for young people whether they are in Bimberi or the community (young people no longer change case managers each time they move in or out of detention)
- Two additional beds in Narrabundah House to accommodate young people who would otherwise be remanded on bail
- An after-hours support service to divert young people from police custody and reduce episodes of short term remand²⁶
- An emphasis on trauma recovery services, including a trauma recovery centre for young children at risk of involvement in child protection or youth justice²⁷
- Annual progress reports against the Blueprint for Youth Justice, measuring outcomes and reporting against indicators in the youth justice system²⁸
- OCYFS is working towards the integration of statutory services (youth justice and child protection)
- A Justice Reinvestment Strategy across ACT Government.²⁹

Northern Territory

The Northern Territory Department of Correctional Services manages the youth justice facilities in the NT.

There are two youth detention centres – Alice Springs, a 16 bed facility for males and females from the area who are on remand or sentenced, and the Don Dale Juvenile Detention Centre in Darwin, which has 56 beds and holds male and female young people on detention or in remand.

The youth justice system in the NT was reviewed in 2011 and a report presented to government. The report noted that there was considerable fragmentation and discontinuity in delivery of services, and that government departments tended to focus only on their areas of responsibility. Further, the report stated that therapeutic interventions for young people can be successful, but that success can be limited if the young person returns to a dysfunctional environment. Any intervention needs to include the families as well as the young person to maximise the possibility of successful outcomes.

²⁶ ACT Government Community Services Directorate 2013, *Evaluation Report: After Hours Bail Support Service*, <http://www.communityservices.act.gov.au/ocyfs/the_blueprint_for_youth_justice_in_the_act/youth-justice/after-hours-bail-support-service>

²⁷ ACT Government Community Services Directorate 2014, *Developing a Trauma-Informed Therapeutic Service in the Australian Capital Territory for Children and Young People Affected by Abuse and Neglect*, <http://www.communityservices.act.gov.au/__data/assets/word_doc/0005/642830/Discussion-Paper-Trauma-Recovery-Centre-September-2014.doc>

²⁸ ACT Government Community Services Directorate, *Blueprint for youth justice in the ACT 2012-22*, ACT Government, Canberra, Australia.

²⁹ ACT Government Justice and Community Safety Directorate, *Justice Reinvestment Strategy*, <<http://www.justice.act.gov.au/page/view/3829/title/justice-reinvestment-strategy>>

New South Wales

Management of juvenile justice in New South Wales is under the Department of Justice, which includes Juvenile Justice. Adult prisons are managed by Corrective Services NSW which is also an agency of the Department of Justice.

NSW has seven detention centres, one for girls and six for boys. Four of the centres are located in greater metropolitan Sydney, with others in South Grafton, Gosford, Dubbo and Wagga Wagga.³⁰ The largest, Frank Baxter Detention Centre in Gosford, has a capacity of 120 people.

NSW is the only state in which girls have an entirely separate facility. All girls are held at the Juniperina Juvenile Justice Centre in western Sydney. Young males on remand are held at Cobham in western Sydney. Boys under 16 on 'control orders' (sentenced) are usually held at the Reiby Juvenile Justice Centre.³¹ Males 16 to 21 can be accommodated at the other centres – in NSW people up to 21 can be held in juvenile detention centres if their offence was committed when they were under 18.

Reports on the youth justice facilities are provided through the Official Visitor Scheme, which presents formal written reports every six months on standards of care related to detainees' security, welfare and rehabilitation.³²

The NSW Ombudsman also has an oversight role of juvenile detention as does the NSW Inspector of Custodial Services.

A strategic review of the youth justice system in NSW was published in 2010. Key issues raised in this report were:

- The need for coordination of services by departments and agencies under a broad strategic framework to ensure better outcomes for young people;³³
- The need for a bipartisan approach to youth justice, rather than the 'law and order auction' approach;³⁴
- The need for evidence-based policies and legislation;³⁵

³⁰ New South Wales Government Department of Justice 2013, *Juvenile Justice: Information about centres*, <http://www.juvenile.justice.nsw.gov.au/Pages/Juvenile%20Justice/aboutdjj/centres_information/centres_information.aspx>

³¹ New South Wales Government Department of Justice 2013, *Juvenile Justice: Information for families: My child has been sent to a juvenile justice centre*, <http://www.juvenile.justice.nsw.gov.au/Pages/Juvenile%20Justice/aboutdjj/family_info_kit/family_info_kit_jjc.aspx>

³² Noetic Solutions Pty Ltd 2010, *A Strategic Review of the New South Wales Juvenile Justice System: Report for the Minister for Juvenile Justice*, Noetic Solutions Pty Ltd, Canberra, Australia, p. 122.

³³ *Ibid*, p. vii.

³⁴ *Ibid*, p. 43.

³⁵ *Ibid*, pp. 44-46.

- The significant disadvantage and risk factors to which some young people are subject, and how these should be addressed to prevent children entering the justice system;³⁶ and
- The increasing use of bail as a welfare measure, rather than in regard to the severity of the offence.³⁷

The report includes the recommendation that the NSW Government consider a Justice Reinvestment approach to youth justice, to address underlying causes of crime and offending.³⁸

There have been substantial changes, including a change of government in NSW, since this review was undertaken. There is bipartisan support for justice reinvestment in NSW, with initiatives in Bourke (including a trial of service delivery) and Cowra. A focus on early intervention is reflected in changes to bail laws favouring bail unless risk is demonstrated. A Koori Court has been introduced and there is significant work underway to improve the focus of delivery of early intervention services in NSW, with a focus on 9-14 year olds.

In February 2013 the NSW Government announced the implementation of the Youth on Track program. The Youth on Track program is designed around early intervention for young people who have had some formal contact with police, although had not at the time committed a serious offence. The program engages with the appropriate agencies, including Department of Education, Department of Family and Community Services, Department of Health, and non-government organisations, to address underlying issues for the young person which may pose risk factors for their future offending behaviour. Young people can be referred by Police and schools if they are considered to be at risk of offending. The program involves case management of the young person and provision of services to address the underlying causes of their offending behaviour.³⁹

The Inspector of Custodial Services undertook a Review of the ways in which family and community support is provided to young people in custody at Reiby and Juniperina centres. The report, published in June 2015, makes 17 recommendations, 'most of which apply across the juvenile justice estate and some of which are specific to individual centres.'

Recommendations cover review of the phone contact policy to ensure behaviour does not impact family contact, quality of handsets and the need for acoustic protection to promote privacy, physical environment, maintenance of mother-child

³⁶ Ibid, p. 87.

³⁷ Ibid, pp.71 and 74.

³⁸ Ibid, p. ix.

³⁹ New South Wales Government Department of Justice 2013, *Youth on Track Referrer Fact Sheet*, <<http://www.youthontrack.justice.nsw.gov.au/Pages/yot/publications.aspx>>

relationships, equitable access to apprenticeships and traineeships and equal opportunities to engage with media, technology and to access transition programs.

The report also notes the over-securitisation of visits and recommends that Juvenile Justice NSW halt the practice of using overalls for non-contact visits and that strip-searching not be carried out on a routine basis but should be replaced with a rigorous, risk-based assessment process to target trafficking of contraband.

The full Juvenile Justice response to the Inspector's report is at:

<http://www.custodialinspector.justice.nsw.gov.au/Documents/Juvenile%20Justice%20Response%20to%20Making%20Connections%20Family%20and%20Community%20Support%20to%20Young%20People%20in%20Custody%20Report.pdf>

Ten recommendations were fully supported. The practice of using overalls for non-contact visits has been discontinued at the two centres that used it and a directive given to all centres. The recommendation on strip searching was partially supported. Routine strip searches will continue for new admissions from community settings and following leave. A risk-based approach to searches for after centre visits and outings is supported.

Queensland

The Department of Justice and Attorney General (DJAG) has responsibility for the delivery of statutory youth justice services, youth justice conferencing and youth detention services in Queensland.

Under the Queensland *Youth Justice Act 1992*, a 'juvenile' is considered to be 10 to 16 years old (at the time of offence), with 17 year olds incarcerated in the adult prison system.

Queensland has two operating youth justice detention centres – the Brisbane Youth Detention Centre (BYDC) in Wacol and the Cleveland Youth Detention Centre (CYDC) in Townsville. Following recent expansion of the CYDC facility, both male and female young people are accommodated at each of the facilities.

The safety and management of Queensland's youth detention centres has continued to be a priority for the Department of Justice the Attorney General and since 2012–13 actions have been taken to ensure the facilities are managed using a best practice framework approach. This includes the development and implementation of the *Youth Justice Intervention Framework* to support departmental staff and service delivery partners to develop and deliver consistent, evidence based interventions in accordance with the assessed risk/needs of young people.⁴⁰ Additionally,

⁴⁰ Queensland Government Department of Justice and the Attorney General 2010, *Youth Justice Intervention Framework Summary*, <http://www.justice.qld.gov.au/__data/assets/pdf_file/0020/154172/summary-yj-intervention-framework.pdf>

collaborative case management panels have been implemented across the state which enable the delivery of coordinated interventions and support packages to young people with complex needs and their families⁴¹. Trauma informed practice is also currently being embedded into all youth justice service delivery in recognition and support of young people who have experienced trauma.

The Youth Detention Inspection Team completes quarterly inspections and monitoring of both Queensland youth detention centres under direction of the *Youth Justice Act 1992* (QLD).⁴² The Community Visitor Program, Office of the Public Guardian, also makes regular visits to both the CYDC and BYDC. The regular visit provides the young person with access to an officer, independent of a Government Department or community organisation, who can listen to and assist with working through any concerns, views and wishes.⁴³ The Queensland Ombudsman also conducts visits of Queensland youth detention centres, evaluating service delivery and making recommendations as necessary. This occurs in conjunction with a number of internal oversight mechanisms, including an embedded compliance monitoring role within the youth detention centres, an arms-length service review team, quarterly performance reviews, and a proactive monitoring and review process by the youth detention centres.

South Australia

The South Australian Youth Justice system is comprised of several agencies with distinct but interrelated functions. SA Police is the primary gatekeeper while the Courts Administration Authority provides administrative support to the Courts and operates diversionary family conferences, with the Courts responsible for the administration of justice and imposition of sentences. The Department for Communities and Social Inclusion is responsible for administering community and custodial mandates issued by the Courts.

The Adelaide Youth Training Centre is the one centre for the state, with two campuses near each other in the northern metropolitan area of Adelaide. One campus has boys and girls on remand and sentenced to detention, the other smaller campus has younger boys (10-14) on remand and detention, and the police custody facility.

The daily occupancy rate has been on a steady decline for some years. In 2014–15 it was 48. Over the year, a total of 426 individuals were detained in the training centre.

⁴¹ Australian Institute of Health and Welfare 2016, *Youth Justice Supervision in Queensland*, <<http://www.aihw.gov.au/youth-justice/states-territories/qld/>>

⁴² Queensland Government Department of Communities 2015, *Youth detention evaluating and reporting*, <<http://www.justice.qld.gov.au/youth-justice/youth-justice-in-detention>>

⁴³ Office of the Public Guardian 2015, *Community Visitors*, <<http://www.publicguardian.qld.gov.au/child-advocate/child-community-visiting>>

The only independent active monitoring of conditions is conducted by the Guardian through an administrative arrangement between Ministers.⁴⁴ Advocates from the Office of the Guardian visit once every two months, but at other times residents can call the Office to request advocacy. The Guardian and Senior Advocate visit twice a year to view the records and prepare a report on conditions.

Tasmania

In Tasmania, Community and Custodial Youth Justice Services are the responsibility of Children and Youth Services in the Department of Health and Human Services (DHHS). Community and Custodial Youth Justice Services is responsible for:

- coordinating diversionary community conferencing;
- providing statutory community based supervision of young people on court orders;
- supporting the court process by providing reports to Magistrates;
- providing safe and secure custodial services and pre- and post-release support;
- providing integrated case management of young people on legal orders; and
- managing the community service order program.

The Department manages the Ashley Youth Detention Centre (AYDC), which houses young people (10-17 years as well as selected 18+ year olds) of both genders who are either sentenced to detention or on remand. The current capacity of the facility is for a maximum of 24 young people, although current usage is much less than that. AYDC is in the north of the state, located in Deloraine, which is approximately a 30 minute drive from Launceston.

Tasmania has recorded the largest decline (46 per cent) in the rate of young people aged 10-17 under youth justice supervision across all Australian jurisdictions over the five year period from 2009–10 to 2013–14.

The average daily number of young people in AYDC has declined significantly, primarily due to a drop in the numbers of young people being placed in AYDC on remand. In the period 2009–10 to 2014–15 YTD March 31, the average number of young people in AYDC per night dropped from 27.6 to 10.3. Over this same period, the number of young people placed in AYDC on remand dropped from an average of 18.6 per night to just 4.2 per night, and the number of young people placed in AYDC on detention dropped from an average of 9.0 per night to 6.1 per night.

It is likely that the adoption of 'problem solving' approaches through the Specialist Youth Magistrates Court, and the introduction of bail support and transition from detention programs, have contributed to these declining custodial numbers.

⁴⁴ A Youth Justice Administration Bill (2015), if enacted, will provide for a training centre visitor and the associated powers, which may be the Guardian.

A restructure of Children and Youth Services has been announced that will see the creation of a designated 'youth' portfolio that will consist of Community and Custodial Youth Justice and a new 'Youth at Risk' program area. The establishment of this new youth portfolio will re-align the delivery of youth services across Tasmania by integrating funding, strengthening partnerships and targeting responses to those young people in our community that are the most vulnerable.

One of the key functions of the Commissioner for Children is to provide advocacy to young people who are detained in AYDC. The Commissioner makes regular visits to AYDC to ensure that policies and practices are not operating in a manner that amounts to an unjustified limitation on the enjoyment by these young people of rights that they are entitled to enjoy notwithstanding their status as detainees.

Young people detained at AYDC can also contact the Commissioner or the Ombudsman by telephone to raise issues of concern.

The adult justice system in Tasmania is managed separately by the Department of Justice.

Victoria

Youth justice matters in Victoria are managed by the Department of Health and Human Services. Victoria has the lowest rate of young people in detention in Australia, in part due to the strong emphasis on non-custodial interventions. Victoria has a 'dual track' system, which allows young people up to the age of 21 who have been deemed suitable by the courts to serve their custodial sentence in a youth facility rather than an adult prison.

There are two youth justice facilities in the state. Malmsbury Youth Justice Precinct is around 100km north of Melbourne. The precinct is comprised of two centres. The Senior Youth Justice Centre which accommodates young men 18 to 21 years old who have been sentenced by an adult court and the Secure Youth Justice Centre which accommodates young men aged between 15 to 20 on remand or sentenced. Similarly, the Parkville Youth Justice Precinct combines two custodial centres – the Parkville Youth Residential Centre, housing young men 10 to 14 years old on remand and sentenced and young women 10 to 17 years old on remand or 10 to 20 years old serving a custodial sentence; and the separate Melbourne Youth Justice Centre which houses young men 15 to 17 years old on remand or serving a custodial sentence.⁴⁵

Victoria's youth justice system shifted to its current model following the release of *A Balanced Approach to Juvenile Justice in Victoria* in 2000. This strategy emphasised diversion for young offenders; better rehabilitation of high-risk offenders; and

⁴⁵ Victorian Government Department of Human Services 2013, *Youth Justice*, <www.dhs.vic.gov.au/for-individuals/children,-families-and-young-people/youth-justice>

expanded pre-release, transition and post-release support programs for young people in custody.⁴⁶

The Victorian model has been cited as an example of overall best practice in providing youth justice services. In 2008 the Victorian Auditor-General conducted an audit of services to young offenders in Victoria.⁴⁷

This audit noted that the model included:

- A clearly articulated strategic plan including: clear aims and objectives; effective engagement of key agencies and other stakeholders; processes to review trends and identify emerging needs; and assignment of key outcomes and milestones;⁴⁸
- Effective coordination of services across multiple agencies;⁴⁹
- An assessment tool for young people (Victorian Offender Needs Indicator for Youth) which examined underlying risk factors and engaged the young person in the assessment process. VONIY is considered best practice as a needs and assessment tool; and⁵⁰
- Good practice in case management and case planning for the young person.⁵¹

On 18 April 2012, the Commission for Children and Young People commenced operation of the Independent Visitor Program for Youth Justice Centres at the Parkville Youth Justice Precinct, and in September 2013 it was extended to the Malmsbury Youth Justice Precinct.

Independent Visitors are a group of carefully recruited volunteers from a range of backgrounds who have personal and professional skills that support appropriate interaction with young people in custody.

The role of the Independent Visitor is to provide information and assistance to help young people's experience of being in custody, to monitor their safety and wellbeing and to promote their rights and interests.

Independent Visitors attend both youth justice precincts on a monthly basis and are able to enter and inspect the centres and talk to any young person in custody. They can observe the general routines of the centre and talk to staff about services being provided to the young people. Where possible, the unit management meet with Independent Visitors to resolve any immediate issues.

After each visit, the Independent Visitors meet with the General Manager of the Precinct to discuss their observations and any issues raised by staff and young

⁴⁶ Victorian Government Auditor-General's Office 2008, *Services to Young Offenders*, Victorian Auditor-General's Office, Melbourne, Australia, p. 9.

⁴⁷ Ibid.

⁴⁸ Ibid, p. 18.

⁴⁹ Ibid, pp. 22-23.

⁵⁰ Ibid, p. 25.

⁵¹ Ibid, pp. 31-33.

people. Within seven days of each visit they are required to provide a written report to the Principal Commissioner.⁵²

Western Australia

In WA, youth justice is the responsibility of the Department of Corrective Services which also administers adult custodial and community correctional facilities.

All children and young people (boys and girls) on remand or sentenced to detention are held at the Banksia Hill Detention Centre (Banksia Hill). Banksia Hill is the largest single facility in Australia, with 227 beds.

Formal external oversight of the youth detention facility in WA is undertaken by the Office of the Inspector of Custodial Services who regularly inspect all justice facilities including Banksia Hill and report directly to the WA Parliament. The Inspector has published inspection standards for young people in detention⁵³ to guide his work.

Following the serious incident at Banksia Hill on the evening of 20 January 2013, the Office of the Inspector of Custodial Services conducted an inquiry into the facility and the events that may have contributed to the incident. The review recommended that the number of scheduled and unscheduled lockdowns be substantially reduced, the use of mechanical restraints and strip searching not be used as routine measures but only where it is assessed as required to reduce risk.⁵⁴

In 2014, the Department of Corrective Services embarked on a program of reform in the area of youth justice including the appointment of an independent Youth Justice Board.⁵⁵

The Youth Justice Board oversees the work of the new, consolidated youth justice division within the Department of Corrective Services and seeks to facilitate direct contact between the community, the non-government sector and the public sector while also aiming to promote stronger engagement with Aboriginal and Torres Strait Islander families and communities.

The work of the Youth Justice Board will be supported by the planned Youth Justice Steering Committee. The Youth Justice Steering Committee will implement the

⁵² Commission for Children and Young People 2015, *Independent Visitor Programs*, <<http://www.ccyp.vic.gov.au/independentvisitors.htm>>

⁵³ Western Australian Government Office of the Inspector of Custodial Services 2010, *Code of Inspection Standards for Young People in Detention*, <http://www.oics.wa.gov.au/wp-content/uploads/2013/11/Juvenile_Code_of_Inspection_Standards_V1.pdf>

⁵⁴ Western Australian Government Office of the Inspector of Custodial Services 2013, *Directed Review into an Incident at Banksia Hill Detention Centre on 20 January 2013*, pp. xiv–xv, <<http://www.oics.wa.gov.au/reports/banksia-hill-inquiry-post-incident-management-review-paper/>>

⁵⁵ Western Australian Government Department of Corrective Services 2015, *Youth Justice Board*, <<https://www.correctiveservices.wa.gov.au/youth-justice/youth-justice-board.aspx>>

directions established by the Youth Justice Board and will evaluate the provision of services to children and young people in detention.

It is hoped that the Steering Committee will result in improved outcomes in terms of diversion, rehabilitation and recidivism and consequently a concomitant reduction in offending, particularly by Aboriginal and Torres Strait Islander young people.

Australia's human rights obligations

Australia is a signatory to the United Nations *Convention on the Rights of the Child* and the United Nations *International Covenant on Civil and Political Rights*. Both conventions contain provisions relevant to the treatment of children and young people deprived of their liberty. Notably, Article 10 of the ICCPR states that:

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

(...)

Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

The Convention on the Rights of the Child acknowledges the need to afford children special protection in the criminal justice system due to their vulnerability to abuse and exploitation as well as their relative immaturity. Relevantly the Convention holds that:

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and education measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have 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.

There are several other international instruments that set out minimum standards for the treatment of children involved in the criminal justice system as well as affirming their human rights in such situations. The most important among these are the *Standard Minimum Rules for the Administration of Juvenile Justice* 1986 ('Beijing Rules'), the *Guidelines for the Prevention of Juvenile Delinquency* 1990 ('Riyadh Guidelines'), the *Rules for the Protection of Juveniles Deprived of their Liberty* 1990 ('Havana Rules') and certain, generally applicable principles contained in the *Standard Minimum Rules for the Treatment of Prisoners* 1955.

Nationally, minimum standards for youth justice facilities are set by the Australasian Juvenile Justice Administrators ('AJJA Standards'). These standards use the aforementioned United Nations' instruments as a foundation upon which they establish appropriate minimum requirements for youth justice facilities⁵⁶

⁵⁶ Australasian Juvenile Justice Administrators 2009, *Juvenile Justice Standards 2009*, <www.ajja.org.au/>

Practices utilised in detention facilities

A number of practices utilised in detention centres throughout Australia⁵⁷ to manage detainees behaviour, respond to incidents, and maintain security are particularly relevant to the consideration of human rights standards.

Discipline

Human rights frameworks regulating the implementation of disciplinary regimes in youth justice facilities are established domestically in the *Standards for Youth justice facilities* and internationally in the Havana Rules.

The Havana Rules set out strict minimum standards for permissible disciplinary measures for children. These standards are intended to guide disciplinary regimes in youth justice facilities and should form the foundation of every centre's disciplinary policy. Disciplinary measures and procedures should maintain the interest of safety and an ordered community life while also upholding the inherent dignity of the child and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.⁵⁸

The rules also explicitly prohibit all measures that constitute cruel, inhuman or degrading treatment, this includes corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the child.⁵⁹ Further, the reduction of diet and restriction or denial of contact with family members is strictly prohibited for any purpose.⁶⁰ Labour can never be used as a disciplinary measure and a child should never be punished more than once for the same infraction.⁶¹ The rules also forbid collective punishment.⁶² Moreover, the *Standard Minimum Rules for the Treatment of Prisoners* sets forth that instruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as punishment.⁶³

The AJJA Standards do not set out an exhaustive right but allude heavily to international standards that indicate how disciplinary measures are to be established:

ensure that environments in which children and young people are lawfully detained are safe, secure and developmentally appropriate.

⁵⁷ Note: The ACCG acknowledge that many jurisdictions are currently implementing reform within their youth justice systems and while every effort has been made to ensure the following information is accurate practices, policies and processes may have changed.

⁵⁸ United Nations General Assembly 1990, *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, Rule 66, p. 8, <<http://www.un.org/documents/ga/res/45/a45r113.htm>>

⁵⁹ Ibid, Rule 67, p. 8.

⁶⁰ Ibid, Rule 67, p. 8.

⁶¹ Ibid, Rule 67, p. 8.

⁶² Ibid, Rule 67, p. 8.

⁶³ Ibid, Rule 33, p. 4.

provide juvenile justice services in ways that optimise the health and wellbeing of children and young people.⁶⁴

Regulatory frameworks for discipline in Australia

All Australian jurisdictions detail prescribed conduct that constitutes a disciplinary infraction and corresponding disciplinary measures for those infractions.

Generally, discipline is enforced through the use of a system of warnings or cautions, restrictions on sport and recreational activities or an increase in chores and related duties. All Australian detention centres prohibit the use of corporal punishment.⁶⁵ Most jurisdictions do not have exhaustive lists of prohibited punishments and punishments vary between jurisdictions. In certain jurisdictions the withdrawal of food or confiscation of clothing as a form of punishment is expressly forbidden, others forbid the use of psychological or emotional abuse.⁶⁶ The Northern Territory is the only jurisdiction that permits placing restrictions on a child's contact with friends and family as a form of punishment for a disciplinary infraction.

Scope exists for greater regulation of the discretion granted to custodial officers for dealing with disciplinary infractions committed by children in detention. Many detention centres lack accountability mechanisms that can frustrate attempts to monitor the exercise of discretion.

Some Australian jurisdictions do not grant children in detention access to legal representation in a formal disciplinary hearing and as a general rule there is very little formal regulation of disciplinary proceedings in youth justice facilities.⁶⁷ However, in jurisdictions such as Queensland, the Detention Centres do not have formal disciplinary hearings. In cases where a person has been involved in serious misbehaviour constituting a criminal offence, such as committing significant property damage to the Centre or assaulting another person, this is referred to Police to investigate the appropriateness of criminal charges. Lower level misbehaviour is managed by the Centre with tailored behaviour development plans.

In other jurisdictions, if a child commits what could amount to a criminal offence inside a detention facility they can be dealt with formally or informally within the centre or be charged with a criminal offence. Clearly the decision to treat an infraction as a disciplinary or criminal matter can have very severe consequences for a child.

⁶⁴ Australasian Juvenile Justice Administrators 2009, *Juvenile Justice Standards 2009*, p. 4, <www.ajja.org.au/>

⁶⁵ *Children (Detention Centres) Act 1987* (NSW), section 22; *Youth Justice Act* (NT), section 153.

⁶⁶ See in this document *Table 2: Comparison of the disciplinary frameworks operating in each jurisdiction, including whether matters are governed by legislation and/or policy, and how each matter operates in practice.*

⁶⁷ Australian Law Reform Commission 1997, *Seen and heard: priority for children in the legal process*, ALRC Report 84, <<http://www.alrc.gov.au/publications/report-84>>

Human rights guidance for the use of discipline

1. The juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles.
2. Legislation or regulations adopted by the competent administrative authority should establish norms concerning the following, taking full account of the fundamental characteristics, needs and rights of juveniles:
 - a. Conduct constituting a disciplinary offence;
 - b. Type and duration of disciplinary sanctions that may be inflicted;
 - c. The authority competent to impose such sanctions;
 - d. The authority competent to consider appeals.
3. A report of misconduct should be presented promptly to the competent authority, which should decide on it without undue delay. The competent authority should conduct a thorough examination of the case.
4. No juvenile should be disciplinarily sanctioned except in strict accordance with the terms of the law and regulations in force. No juvenile should be sanctioned unless he or she has been informed of the alleged infraction in a manner appropriate to the full understanding of the juvenile, and given a proper opportunity of presenting his or her defence, including the right of appeal to a competent impartial authority. Complete records should be kept of all disciplinary proceedings.
5. No juveniles should be responsible for disciplinary functions except in the supervision of specified social, educational or sports activities or in self-government programmes.

Table 2: Comparison of regulatory frameworks for discipline

A comparison of the disciplinary frameworks operating in each jurisdiction, including whether matters are governed by legislation and/or policy, and how each matter operates in practice.

Jurisdiction	Matter	Legislation	Policy	Practice
ACT	Disciplinary philosophy	Chapter 8.1, <i>Children and Young People Act 2008</i> (ACT)	Yes	The legislation requires Bimberi to establish a behaviour management framework for managing minor behaviour breaches. Bimberi policies and procedures govern the creation and use of behaviour management plans.
	Rules about procedures	Chapter 8.1, <i>Children and Young People Act 2008</i> (ACT)	Yes	The legislation defines a 'behaviour breach' and establishes procedures for investigating the allegation and deciding how to respond e.g. warning, withdrawal of privileges, charging young people with a behaviour breach or criminal charges.
	Procedural fairness	Chapter 8.1 <i>Children and Young People Act 2008</i> (ACT)	Yes	The legislation requires procedural fairness, and provides for internal review and external review if a young person wishes to appeal a decision.
	Prohibited measures	s.141 and Chpt 8.1 <i>Children and Young People Act 2008</i> (ACT)	Yes	Disciplinary proceedings cannot result in removing access to basic living conditions.
	Denial of contact	s.141 and Chpt 8.1 <i>Children and Young People Act 2008</i> (ACT)	Yes	Contact is guaranteed under the legislation.
	Denial of food	141 and Chpt 8.1, <i>Children and Young People Act 2008</i> (ACT)	Yes	Food is guaranteed under the legislation.
NT	Disciplinary philosophy	s.153, <i>Youth Justice Act</i> (NT)	Yes	Token system is used to reward positive behaviour and punish poor behaviour. There is some use of individual management plans. Intensive behavioural plans can be used. This can include security review, restricted privileges and segregation.
	Rules about procedures	No	Yes	There is a classification system that provided for different levels of benefits and restrictions.

Jurisdiction	Matter	Legislation	Policy	Practice
NT (cont.)	Procedural fairness	No	Yes	Classification committee determines the levels of benefits/restrictions. However it is unused, instead decisions are made by caseworkers of the superintendent.
	Prohibited measures	s. 153(3), <i>Youth Justice Act</i> (NT)	No	Prohibited by legislation- striking, shaking, any physical violence, enforced dosing of medicine or drugs, compulsion to remain fatigued or constraining position of handcuffing.
	Denial of contact	No	Yes	Contact can be restricted up to one phone call a week to immediate family.
	Denial of food	-	-	-
NSW	Prohibited measures	s. 22, <i>Children (Detention Centres) Act</i> (NSW) 1987	-	Children shall not be punished by being: struck, cuffed, shaken, or subjected to any other form of physical violence; dosed with medicine or any other substance; compelled to hold their self in a constrained or fatiguing position; deprived of food or drink; denied the right to read or write letters or to make or receive telephone calls; subjected to treatment of a kind that could reasonably be expected to be detrimental to their physical, psychological or emotional well-being; subjected to treatment of a kind that is cruel, inhuman or degrading; segregated in a manner contrary to the legislation; or subjected to treatment forbidden by the regulations.
	Denial of contact	s. 22, <i>Children (Detention Centres) Act</i> (NSW) 1987	-	Prohibited.
	Denial of food	s. 22, <i>Children (Detention Centres) Act</i> (NSW) 1987	-	Prohibited.
QLD	Disciplinary philosophy	Part 4 Division 3, <i>Youth Justice Regulation</i> 2003 (QLD)	Yes	Chief Executive must establish behaviour management practices. On entry to the facility young person is provided with written notice of acceptable standards of behaviour. This information must also be explained orally.
	Rules about	Part 4 Division 3, <i>Youth Justice</i>	Yes	Legislation states Chief Executive must manage behaviour in a way that

Jurisdiction	Matter	Legislation	Policy	Practice
QLD (cont.)	procedures	<i>Regulation 2003 (QLD)</i>		respects the child's dignity and has regard to the nature of the misbehaviour and the child's age and maturity and the child's cultural background or beliefs.
	Procedural fairness	<i>Youth Justice Regulation 2003 (QLD)</i>	Yes	Obligations and requirements within the legislation allow a variety of provisions to ensure procedural fairness.
	Prohibited measures	Part 4 Division 3, <i>Youth Justice Regulation 2003 (QLD)</i>	Yes	Under legislation the following are prohibited: corporal punishment, physical contact, an act that involves humiliation, physical abuse, emotional abuse or sustained verbal abuse, or deprivation of sleep, food, or visitors, or withholding letters or other mail, withholding access to a telephone, exclusion from cultural, educational or vocational programs or deprivation of medication.
	Denial of contact	Part 4 Division 3, <i>Youth Justice Regulation 2003 (QLD)</i>	No	Prohibited under legislation.
	Denial of food	Part 4 Division 3, <i>Youth Justice Regulation 2003 (QLD)</i>	No	Prohibited under legislation.
SA	Prohibited measures	<i>Regulation 7, Family and Community Services Regulations 2009 (SA)</i>	-	The following punishments are prohibited in SA detention centres: corporal punishment of any form, isolation, psychological pressure or emotional abuse, deprivation of medical attention, basic food or drink, clothing or any other essential item, deprivation of sleep, unjustified deprivation of contact with persons outside the centre or any other treatment that is cruel, inhuman or degrading.
	Denial of contact	<i>Regulation 7, Family and Community Services Regulations 2009 (SA)</i>	-	Prohibited.
	Denial of food	<i>Regulation 7, Family and Community Services Regulations 2009 (SA)</i>	-	Prohibited.

Jurisdiction	Matter	Legislation	Policy	Practice
TAS	Disciplinary philosophy	Detention Offences Division 5 Part 6, <i>Youth Justices Act 1997</i> (TAS)	Yes	The Secretary is responsible for dealing with behaviour. There is a Behaviour Development System to encourage positive behaviours through incentives.
	Rules about procedures	Division 5 Part 6, <i>Youth Justice Act 1997</i> (TAS)	Yes	The legislation sets out what will amount to a 'detention offence' and the options available to the Secretary.
	Procedural fairness	s. 137, <i>Youth Justice Act 1997</i> (TAS) s. 79(1), <i>Children Young Persons and Their Families Act 1997</i> (TAS)	Yes	An appeal against a Behavioural Development System assessment may be made; complaints on any matter can be made to the Secretary or to the Ombudsman. Legislation provides that a detainee, or a family member may complain to the Secretary about a matter that affects a detainee and that the Commissioner for Children may act as an advocate for a detained young person.
	Prohibited measures	S. 132, <i>Youth Justice Act 1997</i> (TAS)	Yes	Isolation may not be used as a punishment; other behaviour is prohibited e.g. corporal punishment, discriminatory treatment, psychological pressure intended to intimidate etc.
	Denial of contact	s. 129 and 135, <i>Youth Justice Act 1997</i> (TAS)	Yes	Denial of contact is not used as a punishment.
	Denial of food	s. 129, <i>Youth Justice Act 1997</i> (TAS)	No	Denial of food is not used as a punishment. The young person can make a complaint under s. 137, or can complaint under s. 129(d) <i>Youth Justice Act 1997</i> (TAS), about the standard of care, accommodation or treatment he or she is receiving in the detention centre.
VIC	Behaviour management philosophy	No	Yes	Promoting Positive Behaviour' (PPB) is an evidence based behaviour change model to help staff respond effectively to young people's behaviour in custody. Strategies to promote positive behaviour range from providing support to individual young people, to applying broader initiatives in the unit and precinct. Staff consider factors related to a young person's past experiences which may contribute to their negative behaviours and provide daily individual feedback to young people. The PPB model emphasises the need for early intervention to prevent an escalation of behaviours and the

Jurisdiction	Matter	Legislation	Policy	Practice
VIC (cont.)				importance of sending clear and consistent messages about what is, and what is not, allowed in the unit.
	Rules about procedures	No	Yes	<p>The Youth Justice Custodial Practice manual chapter, Responding to challenging behaviour, contains a number of procedures which govern the manner in which staff may respond to negative and dangerous behaviours from young people.</p> <p>When implementing disciplinary actions, staff are guided by the Promoting Positive Behaviour framework which provides that punitive or reactive responses to problematic behaviours does not produce long term behavioural change and may in fact have unintended consequences, such as escalating an incident or reinforcing unwanted behaviours.</p> <p>Any interventions in response to negative behaviours must be immediate and time limited, recorded clearly in case notes and communicated to other staff.</p> <p>Consequences for negative behaviours may include time out, completing a thinking report and a negative impact on the young person's daily grade (PPB).</p> <p>Fining young people for poor behaviour does not contribute to behaviour change, is only to be a consequence of last resort and can only be used in response to serious property damage.</p> <p>Any disciplinary action taken cannot infringe on young people's basic entitlements and the use of restrictive practices as a punishment is strictly prohibited under the <i>Children Youth and Families Act 2005 (Vic)</i>.</p>
	Procedural fairness	s. 482(2)(e), <i>Children, Youth and Families Act 2005 (VIC)</i>	Yes	Young people in custodial precincts in Victoria are entitled to complain to the Secretary of the Department of Health and Human Services or the Ombudsman about the standard of care, accommodation or treatment which they are receiving. Young people are advised of their rights during the admission process and all young people receive a booklet, <i>What I need to know</i> , which contains relevant contact details. The phone number for the Ombudsman is clearly displayed in each unit. In addition, young people can

Jurisdiction	Matter	Legislation	Policy	Practice
VIC (cont.)				make a complaint to precinct staff or management and can speak with Independent Visitors when they visit the precinct.
	Prohibited measures	s. 487, <i>Children, Youth and Families Act 2005</i> (VIC)	Yes	<p>Strategies for responding to difficult behaviour focus on a preventative approach with natural consequences for actions. The Youth Justice Custodial Practice manual provides staff with examples of appropriate responses to behaviours such as repeated graffiti or property damage.</p> <p>Young people who repeatedly engage in problematic behaviours are placed on individual behaviour management plans which explore the triggers for that young person's behaviour and provide staff with strategies for interventions.</p> <p>Any response to difficult behaviour must not impact on young people's basic entitlements.</p> <p>Staff must not use any form of intervention as a punishment and policy regarding restrictive practices such as isolation or separation includes clear direction to staff that these interventions must only be used to ensure the immediate safety of young people and staff. Safeguards are in place to ensure there is appropriate documentation and oversight around the use of these practices.</p>
	Denial of contact	-	Yes	<p>Contact with the key people in young people's lives is an important part of supporting them in custody and easing their transition back to the community.</p> <p>In particular having regular visits allows young people to maintain their connections with family and other significant people, and maximises the support they have available to them, both while in custody, and following release.</p> <p>In the days after admission, each young person and their Key Worker develops a visitor, phone and mail list.</p> <p>Staff must confirm the identity of each person on the lists and their relationship to the young person.</p>

Jurisdiction	Matter	Legislation	Policy	Practice
VIC (cont.)				<p>If a young person is under 18, their parents or guardian must be consulted when developing the visitor list.</p> <p>The young person's child protection and community youth justice workers must also be consulted.</p> <p>Co-offenders of the young person and current clients of youth justice are not allowed as visitors unless the Unit Coordinator has given written permission for this to occur.</p> <p>This may be considered if, for example, the co-offender is a sibling or partner of the young person.</p> <p>Young people are not permitted to have visits with victims of crimes they have been convicted of unless the victim of crime is also a family member or other significant person connected to that young person and there is no legal restriction preventing contact.</p> <p>Young people on remand may receive daily visitors and visits are held each weekend for those young people serving a custodial sentence.</p> <p>Young people have daily access to the arunta phone system outside of school hours and send and receive mail from approved members of the community.</p>
	Denial of food	-	Yes	<p>Young people's basic entitlements include the requirement that precincts provide food that is nutritionally adequate, is of consistently high quality, includes options for special dietary needs, and accommodates social and cultural food preferences.</p> <p>Professional kitchen services deliver well balanced meals twice a day at both youth justice precincts. These meals are prepared on site and the menu changes seasonally.</p> <p>Self-catering facilities are provided – including daily breakfast and occasional special meals – and young people have access to basic foods that enable them to select nutritionally balanced meals.</p> <p>Program, unit and education staff also regularly run meal planning or</p>

Jurisdiction	Matter	Legislation	Policy	Practice
VIC (cont.)				<p>cooking activities with young people.</p> <p>During admission, admitting staff ask young people if they have any special dietary requirements, including cultural needs or food allergies. This information is recorded on their file, and notification of special dietary requirements is forwarded to Unit Coordinators, who must ensure these needs are met.</p> <p>Health staff conducting the initial health assessment on admission will enquire about food allergies and other special dietary requirements, and a health alert is raised if required.</p> <p>Any identified changes to the eating practices of a young person (for example, vomiting, under eating or overeating) must be reported to health staff.</p>
WA	Disciplinary philosophy	Part 9, <i>Young Offenders Act 1994</i> (WA)	Yes	The underlying principle of behaviour management techniques is that detainees have a fundamental right to manage their own behaviour. Behaviour management is based on a hierarchical accommodation model of progression and regression. Certain privileges are linked to where the detainee is accommodated, including: social phone calls, recreational equipment, canteen purchases, televisions, radios, computer games etc. Punishment includes: cautions, counselling, loss of privileges, additional work, cell confinement etc.
	Rules about procedures	Part 9, <i>Young Offenders Act 1994</i> (WA) <i>Young Offenders Regulations 1995</i> (WA)	Yes	Detention offences must be recorded in writing and must contain details such as date, time, and place, circumstances of alleged offence and description of consequences. The detainee must be provided with a copy and notice of the hearing.
	Procedural fairness	Part 9, <i>Young Offenders Act 1994</i> (WA) <i>Young Offenders Regulations 1995</i> (WA)	Yes	At a hearing for a detention offence a young person is not permitted to be represented by a legal practitioner but can be represented by another suitable person as well as a responsible adult.

Jurisdiction	Matter	Legislation	Policy	Practice
WA (cont.)	Prohibited measures	No	Yes	The following disciplinary measures are prohibited: Corporal punishment; physical contact involving undue physical force; physical restraint holds and the use of pressure points; pain compliance; undue psychological pressure, verbal abuse, denigration; sparring, threats.
	Denial of contact	No	Yes	Denial of contact with family is permitted. Contact visits can be removed by the Superintendent, the Assistant Superintendent or the Shift Manager. Visits can be removed due to unacceptable behaviour, contraband, drug possession etc. Bans are typically for 2 weeks but can be 4 weeks if drugs are found.
	Denial of food	No	Yes	Food is guaranteed if the young person is placed in compliance. While denial of food is not specifically prohibited as a punishment, the Department of Corrective Services advised that Banksia Hill does not restrict food to young people under any circumstances.

Use of restraint

Restraint is the use of physical force, a mechanical device or a chemical to render a child immobile in order to restrict their freedom of movement. Certain researchers define “physical” restraint as including “holding” to restrict movement⁶⁸ while others consider that holding will only become “restraint” after a certain period of time has elapsed.⁶⁹

Most Australian jurisdictions do not provide a clear legislative definition of restraint however policy and procedure documents provide some guidance. For example, policy in Queensland defines mechanical restraints as “actual restraint equipment such as handcuffs”⁷⁰ while the Northern Territory refers to “handcuffs or similar devices”.⁷¹ The ACT provides a broad definition of restraint by stating that it “may include body contact, handcuffs, restraint jackets and other restraining devices”.⁷² For the purposes of this paper physical restraint of this type will be discussed as a “use of force”, including holding, while “restraints” will refer specifically to instruments of restraint, or mechanical restraints, such as handcuffs and straitjackets.

The merits of using restraint on children at all are contested. Opponents of the use of restraint on children in any circumstance argue that it is counter-productive to the extent that it reinforces aggressive behaviour and is too often used inappropriately as a measure of convenience.⁷³ However others maintain that restraint is a legitimate tool necessary to protect staff and other detainees from aggressive or destructive behaviour.⁷⁴ It is also argued that while physically restraining children may cause anxiety and discomfort it is in some instances more dangerous for the child not to be restrained.⁷⁵

⁶⁸ Davidson J, McCullough D, Steckley L & Warren T 2005, *Holding Safely: A Guide for Residential Child Care Practitioners and Managers about Physically Restraining Children and Young People*, Scottish Institute for Residential Care, Glasgow, Scotland.

⁶⁹ Swett C, Michaels A S & Cole J O 1989, Effects of a state law on rates of restraint on a child and adolescent unit, *Bulletin of American Academy of Psychiatric Law*, 17, 165-169.

⁷⁰ Queensland Government Department of Justice and Attorney-General 2013, *Policy: Youth detention – Use of mechanical restraints YD-3-7*, Department of Justice and Attorney General, Brisbane, Australia, p. 3.

⁷¹ *Youth Justice Act* (NT), section 155.

⁷² *Children and Young People Act 2008* (ACT), section 226.

⁷³ Kennedy S S & Mohr W K 2001, A Prolegomenon on Restraint of Children: Implicating Constitutional Rights. *American Journal of Orthopsychiatry*, 77 (1), 26-37.

⁷⁴ Day A & Daffern M 2009, *Inquiry into the Policy and Practice in the Use of Physical Restraint in South Australian Residential Facilities for Children and Young People*, Guardian for Children and Young People, Adelaide, Australia.

⁷⁵ Davidson J, McCullough D, Steckley L & Warren T 2005, *Holding Safely: A Guide for Residential Child Care Practitioners and Managers about Physically Restraining Children and Young People*, Scottish Institute of Residential Child Care, Glasgow, Scotland.

The types of situations that warrant a use of force or restraint vary between jurisdictions however there is a general consensus that restraint should be avoided if possible. Rates of restraint can be reduced with the adoption of preventive strategies. For example, in some jurisdictions training for detention centre staff includes modules on youth work, trauma informed practice, mental health issues, and conflict de-escalation strategies.

All jurisdictions permit the use of mechanical restraints in limited circumstances; generally this includes restraining children when being escorted to and from the detention facility. In certain jurisdictions the practice is also to use handcuffs or flexicuffs when escorting a child within a facility.⁷⁶ While the phrase “last resort” is employed in a range of policy documents and legislative instruments to restrict the use of force it is not always clear when this applies to mechanical restraints and it does not appear to be a uniformly understood phrase. However, Victorian practice, for example, dictates that handcuffs are only to be used in situations where there is an immediate and serious threat to safety or security and can only be used by staff specifically trained in their use.⁷⁷ Further, they are to be used for the shortest conceivable time and removed at the earliest point possible.⁷⁸ This is similar to Queensland’s practice which authorises the use of restraints within a detention facility only if it is reasonably likely the child will attempt to escape, seriously harm themselves or others or seriously disrupt the order and security of the centre. Queensland legislation clearly stipulates that all reasonable steps must be taken to use restraints in a way that respects the child’s dignity and for a period no longer than reasonably necessary.⁷⁹

International standards strongly discourage the use of instruments of restraint in youth justice facilities. The Havana Rules hold that they can “only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time.”⁸⁰ The AJJA Standards draw on this provision to set out a minimum requirement in very similar terms.⁸¹

This rule can be found in various forms in domestic legislation regulating the administration of youth justice facilities. Section 11D of the *Young Offenders Act 1994* (WA) provides that restraints may be used in circumstances where they are

⁷⁶ See below for a discussion of this practice in Western Australia and the Australian Capital Territory.

⁷⁷ Victorian Youth Justice Custodial Practice Manual, Department of Health and Human Services, Victoria. (Intranet access only)

⁷⁸ Ibid.

⁷⁹ *Youth Justice Regulation 2003* (Qld), Part 4, Division 4.

⁸⁰ United Nations General Assembly 1990, *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, Rule 64, p. 8, <<http://www.un.org/documents/ga/res/45/a45r113.htm>>

⁸¹ Australasian Juvenile Justice Administrators 2009, *Juvenile Justice Standards 2009*, Standard 9.4, p. 10, <www.ajja.org.au/>

deemed necessary “to prevent the young offender injuring himself or herself, or any other person” or on advice from a medical practitioner or to prevent escape during “his or her movement to or from a facility or detention centre”. Section 226 of the *Children and Young People Act 2008* (ACT) mandates that “the use of force involving restraint [must be] proportionate to the circumstances”.

The consequences of using instruments of restraint on children can be serious. Detention centre staff must have regard to the unique vulnerability of incarcerated children. Evidence indicates that the use of mechanical restraints can ‘re-traumatise’ already vulnerable children.⁸² The WA Inspector of Custodial Services estimates that at any given time up to 50 per cent of the children and young people in youth detention experience mental health issues.⁸³ A 2005 study from New South Wales found that 88 per cent of children and young people in custody reported symptoms consistent with a mild, moderate or severe psychiatric disorder.⁸⁴ Further, children and young people in detention are significantly more likely to have experienced physical or sexual abuse.⁸⁵ To this end, physical restraints can serve to compound pre-existing trauma and exacerbate mental shock and suffering. While logical connections can be made between the use of physical restraint and psychological harm the extent of such harm is yet to be definitively established. Research however suggests that physical restraints do not improve behaviour but can in fact lead to more serious acts of aggression.⁸⁶

Inappropriate use of restraint

Inappropriate or unlawful use of restraint occurs where restraint is used for reasons other than those provided for under international human rights instruments or a State’s domestic legal framework. Even in instances where restraint is employed lawfully, it may be deemed inappropriate due to the availability of alternative measures. Inappropriate use can be inferred by assessing the nature and frequency of the implementation of restraint practices. As a general rule if restraint is not absolutely necessary for the safety of any person, to prevent serious damage to detention centre property or to prevent escape from the facility then it can assumed to be either inappropriate or unlawful.

⁸² Day A & Daffern M 2009, *Inquiry into the Policy and Practice in the Use of Physical Restraint in South Australian Residential Facilities for Children and Young People*, Guardian for Children and Young People, Adelaide, Australia, p. 7.

⁸³ Commissioner for Children and Young People 2011, *Report of the Inquiry into the mental health and wellbeing of children and young people in Western Australia*, Commissioner for Children and Young People WA, Perth, Australia, p. 80.

⁸⁴ Richards K 2011, *What makes juvenile offenders different from adult offenders?*, Trends and issues in crime and criminal justice, No. 409, Australian Institute of Criminology, Canberra, Australia, p. 4.

⁸⁵ D Indig, Vecchiato C, Haysom L, Beilby R, Carter J, Champion U . . . Whitton G 2011, *2009 NSW Young People in Custody Health Survey: Full Report*, Justice Health and Juvenile Justice, Sydney, Australia, pp. 157-159.

⁸⁶ Day A & Daffern M 2009, *Inquiry into the Policy and Practice in the Use of Physical Restraint in South Australian Residential Facilities for Children and Young People*, Guardian for Children and Young People, Adelaide, Australia, p. 21.

Human rights guidance for the use of restraint

1. Evidence indicates that the use of mechanical restraints can 're-traumatise' already vulnerable children. Given the unique vulnerability of children in detention mechanical restraints should be used infrequently and only as a measure of last resort.
2. The appropriateness of the use of mechanical restraints can be inferred by assessing the nature and frequency of their implementation. If mechanical restraints are not absolutely necessary for the safety or security of the child or another person or to limit an unacceptable risk of escape then their use is inappropriate.
3. Handcuffing children in detention as part of a routine centre management regime is not a reasonable, proportionate or appropriate use of mechanical restraints.
4. External monitoring is important, and therefore detention centres should be required to record and report use of restraint for scrutiny of an independent oversight agency.

Table 3: Comparison of domestic legislative and policy frameworks regarding use of restraint

The following table provides a comparison of the use of restraint in each jurisdiction, including whether matters are governed by legislation and/or policy, and how each matter operates in practice.

Jurisdiction	Matter	Legislation	Policy	Practice
ACT	Instruments of restraint	s. 226, <i>Children and Young People Act 2008</i> (ACT)	Yes	Instruments of restraint are permitted and used in certain circumstances. This area is governed at a policy level and under operating procedures. Use of restraint must be proportionate, justified and appropriate in the circumstances. Restraint can include body contact, handcuffs, and 'anything else prescribed by regulation'. The approval of the Bimberi Manager must be sought for use of instruments of restraint where time permits.
	Consultation with medical staff in relation to use of force or restraint	s. 223, <i>Children and Young People Act 2008</i> (ACT)	Yes	Bimberi must give notice to a treating doctor or a nurse if force is used in relation to a young detainee. Bimberi must ensure that a young detainee injured by the use of force under this division is examined as soon as practicable by a treating doctor.
	Training for officers in de-escalation techniques	No	Yes	Youth workers receive training in de-escalation techniques as a part of their induction and further training on a regular basis.
NT	Instruments of restraint	ss. 153 and 155, <i>Youth Justice Act</i> (NT)	Yes	Handcuffs or other similar devices can be used in limited circumstances. The use of handcuffs should be approved where possible by the on call manager prior to the use. The Youth Justice Act also allows the restraint of movement via handcuffs or similar devices when escorting a detainee outside of a detention centre. This area is addressed by legislation and procedures however the procedures covering restraint are not detailed. The general direction is that young people are handcuffed during transit outside of the detention centres.

Jurisdiction	Matter	Legislation	Policy	Practice
NT (cont.)	Consultation with medical staff in relation to use of force or restraint	No	No	There is no defined legislation or procedure in place which requires this.
	Training for officers in de-escalation techniques	No	No	In the past use of training such as Predict Assess and Respond To (PART) training has been utilised for some staff. This encompassed some de-escalation. There have been issues about all staff receiving this training and staff remaining current on that training.
NSW	Instruments of restraint	Yes <i>s. 22(2) Children (Detention Centres) Act 1987 (NSW)</i>	No	A detainee cannot, without reasonable excuse, be handcuffed or restrained.
	Consultation with medical staff in relation to use of force or restraint	-	-	-
	Training for officers in de-escalation techniques	-	-	-
QLD	Instruments of restraint	Yes Part 4, Division 4, <i>Youth Justice Regulation 2003 (QLD)</i>	Yes	Instruments of restraint are permitted for use in particular circumstances. This area is addressed in policy documents and operational guidelines. Restraints can be used if the child is outside a detention centre or about to leave under escort, to prevent escape, to prevent the child harming himself, herself or someone else, or if the child could seriously disrupt order and security at the detention centre. Can only be used as last resort and use must respect the child's dignity. Use must be for as short a time as is necessary.
	Consultation with medical staff in relation to use of force or restraint	No	Yes	The Chief Executive must approve the restraint types used within the detention facility. Following an incident where force or restraints are used by an officer, the young person must be seen by a healthcare professional, from the onsite medical centre, as soon as is possible. The minimum standard is for

Jurisdiction	Matter	Legislation	Policy	Practice
QLD (cont.)				a young person to be seen by a medical professional following the use of force or restraint.
	Training for officers in de-escalation techniques	No	Yes	The Detention Centre Executive Director has responsibility for ensuring that staff receive annual training in the Youth Detention Protective Actions Continuum and are assessed as competent prior to being permitted to use the techniques. Completion of this training is a Mandatory Competency for youth detention operational staff in Queensland.
SA	Instruments of restraint	No	Yes	Cuffs are used when escorting residents following an incident. They have also been used while a child is in a detention room. Cuffs are always used on escorted visits outside. Children are cuffed to beds in the psychiatric juvenile ward of the children's hospital. Unless prior permission has been granted all uses must be reported to the supervisor and a written report made. They can only be used when reasonable and justified, never as a punishment, for as long as is necessary for security and safety.
	Consultation with medical staff in relation to use of force or restraint	No	No	Not required and not done.
	Training for officers in de-escalation techniques	No	Yes	Officers are trained by a private provider, Maybo, in conflict management, assault reduction, disengagement and holding, and handcuffing. Induction and annual refresher training is provided to all staff. Reviews use incident recordings.
TAS	Instruments of restraint	No	Yes	Instruments of restraint are permitted for use in particular circumstances. This area is addressed in policy documents and operational guidelines.
	Consultation with medical staff in relation to use of force or restraint	No	Yes	Immediately following any incident involving the use of force the young person involved must be medically assessed by clinical staff.
	Training for officers in de-	No	Yes	Nonviolent Crisis Intervention (NVC) is the approach adopted. NVC is an evidence based framework of techniques and behaviours, including de-

Jurisdiction	Matter	Legislation	Policy	Practice
TAS (cont.)	escalation techniques			escalation, developed by the Crisis Prevention Institution in the USA. Its focus is on prevention and early intervention.
VIC	Instruments of restraint	Yes <i>s. 488, Children, Youth and Families Act 2005 (VIC)</i>	Yes	Handcuffs are only to be used in situations where there is an immediate and serious threat to safety or security and where staff needs additional support to manage an agitated or aggressive client. Handcuffs can only be used by staff specifically trained in their use. Handcuffs should only be used for as short a time as possible and removed at the earliest point assessed as possible. A young person must not be left unattended while in handcuffs. Handcuffs can only be used during temporary leave if approved. Closet chains are used infrequently in hospital beds. This usually occurs to allow an increased range of movement for the young person, thereby improving their comfort level and the ability of hospital staff to carry out clinical observations and procedures. This area is addressed in Youth Justice Custodial Practice Manual.
	Consultation with medical staff in relation to use of force or restraint	No	Yes	Young people who have been injured during the course of restraint must be assessed by the health service. Young people displaying inappropriate, aggressive or violent behaviour who are placed in isolation must be referred to the health service. The health service should be actively involved with unit staff and others in assisting to develop and implement behaviour management strategies for these young people.
	Training for officers in de-escalation techniques	No	Yes	Preventing Occupational Violence (POV) focuses on strategies to defuse and manage potentially aggressive incidents. POV uses a proactive and preventative approach rather than a reactive approach, giving staff access to ongoing skills development. POV is designed to give staff confidence to manage potentially violent or dangerous client situations and help them make better decisions, resulting in fewer, or better managed incidents.

WA	Instruments of restraint	Yes s. 11D, <i>Young Offenders Act 1994</i> (WA)	Yes	Mechanical restraints are no longer used as a routine measure to control the movement of detainees within detention centres and are only used to manage identified risks. Mechanical restraints can be used: when physical restraint is required to restrain a detainee; to maintain the custody of a detainee; to prevent injury to the detainee or another person; to prevent further incident; to ensure a safe escort; and on medical grounds; on external escorts from the YCS facility. Restraints must not cause physical injury.
	Consultation with medical staff in relation to use of force or restraint	Yes ss. 11D(1)(b), 11D(2), <i>Young Offenders Act 1994</i> (WA)	Yes	A detainee must be checked as soon as practicable by a nurse or medical officer when held in restraints. Young people must be continuously supervised when restrained. If force is applied the relevant detainee must be examined by medical staff as soon as practicable after the incident. Legislation provides that restraints can be used on medical grounds after seeking advice from a medical practitioner and that restraint involving the use of medication must not be used on medical grounds unless the approval of a medical practitioner is obtained first.
	Training for officers in de-escalation techniques	No	Yes	Youth Custodial Officers must successfully complete the Youth Custodial Services training program which includes modules related to the use of force and restraint.

Use of force

There is a practical connection between the use of force and subsequent use of restraint therefore the use of physical restraint as an emergency safety measure will be discussed contemporaneously. Generally, state legislation dictates that there are only three acceptable situations that warrant the use of force on a child, they are:

- For the management, control and security of the detention centre including to prevent escape;
- To protect the child or another person; or
- To prevent damage to the detention facility.

The application of physical force to a child is considered a severe measure that should only be carried out as a last resort.⁸⁷ This principle is provided in several human rights instruments that serve to guide best practice in this area. The Havana Rules hold that force can only be used in exceptional cases “where all other control methods have been exhausted and failed”.⁸⁸ The AJJA Standards, drawing on the Standard Minimum Rules for the Treatment of Prisoners, hold that force should only ever be used on a young person “in response to an unacceptable risk of escape or immediate harm to themselves or others, and/or in accordance with the legislation”.⁸⁹

An inquiry into the use of force in the United Kingdom found that young people subjected to physical restraint in youth justice facilities reported feeling violated and abused by the procedure.⁹⁰ Additional research suggests that the restraint of a child in detention can also have a traumatising effect on children and young people who witness the incident.⁹¹

The use of force will be deemed inappropriate if it does not uphold principles of proportionality and reasonableness. Force, when used inappropriately, cannot only severely impact on the health and wellbeing of the young people but it often serves to exacerbate, rather than ameliorate, challenging behaviour. Force should only ever be applied as a last resort to ensure the safety of the young people or another person.

⁸⁷ *Family and Community Service Regulations 2009* (SA), Division 6.6.5 and section 195; *Children and Young People Act 2008* (ACT), Part 4, Division 3; *Youth Justice Regulation 2003* (QLD).

⁸⁸ United Nations General Assembly 1990, *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, Rule 64, p. 8, <<http://www.un.org/documents/ga/res/45/a45r113.htm>>

⁸⁹ Australasian Juvenile Justice Administrators 2009, *Juvenile Justice Standards 2009*, Standard 9.4, p. 10, <www.ajja.org.au/>

⁹⁰ Carlile A 2006, *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 homes*, The Howard League for Penal Reform, London, United Kingdom.

⁹¹ *Ibid*, p. 180.

Incidents requiring the use of force or restraint techniques are by their very nature complex and dynamic situations where risk of intervention must be balanced against the risk of non-intervention requiring an individual assessment weighing these risks and determining the appropriate level of intervention required.

The Queensland Youth Detention Centre Operations Manual stipulates that risk assessment is a critical component of the incident management process and the Youth Detention Protective Actions Continuum. The Youth Justice Regulation 2003 and the department's incident management policy suite require that any intervention used to respond to an incident is proportionate to the level of risk present. When an incident presents itself, youth detention operational staff must use the dynamic risk assessment framework to:

- Conduct an initial risk assessment to inform the decision about the most appropriate intervention
- Continue ongoing risk assessment until the incident has been resolved.

A number of considerations are required when undertaking a risk assessment, including assessing the circumstances and any immediate risks around the situation; personal safety (of the young people involved, staff and other young people); location; contributing factors; and totality of circumstances involved in an incident.

If the application of force is disproportionate with respect to any of the above factors the force can be deemed to be inappropriate. The Queensland Youth Detention Centre Operations Manual and policies clearly articulate that physical interventions will only be used when absolutely necessary. Queensland policies and procedures also stipulate that when physical interventions are required, they must occur in the safest way possible for all people involved. Staff are also required to consider and attempt de-escalation techniques and other alternatives to physical interventions wherever possible.

Human rights guidance on the use of force

1. Using force against a child in detention is only acceptable in specific and limited circumstances provided it is reasonable, proportionate and only used as a last resort. These circumstances include:
 - a. In response to an unacceptable risk of escape;
 - b. To protect the child or another person from immediate harm; or
 - c. To prevent serious damage to the detention facility.
2. The use of force against a child to facilitate compliance with an order or direction from a detention centre staff member is unreasonable and excessive and is contrary to the requirement that force is only used as a measure of last resort.
3. Preventive approaches, such as positive behaviour support, can help reduce rates of use of force in detention centres.

4. External monitoring is important, and therefore detention centres should be required to record and report use of force for scrutiny by an independent oversight agency.

Table 4: Comparison of domestic legislative and policy framework regarding use of force

The following table provides a comparison of the use of force in each jurisdiction, including whether matters are governed by legislation and/or policy, and how each matter operates in practice.

Jurisdiction	Legislation	Policy	Practice
ACT	Division 6.6.5 and s. 195, <i>Children and Young People Act 2008</i> (ACT)	Yes	Reasonable force can be used if it is necessary in the circumstances. It must be a last resort. Before using force staff must give clear warning of their intention and allow time for the warning to be observed. Bimberi must maintain a use of force register. The Use of Force Policy and Procedures set out limited grounds on which force may be used. Youth workers must not use force that deliberately causes harm, pain or is degrading or humiliating, or as a punishment.
NT	s. 153, <i>Youth Justice Act</i> (NT)	Yes	Reasonable force can be used to maintain discipline except: shaking, striking, or other forms of physical violence, enforced medication, compulsion to remain in a constrained or fatiguing position, handcuffing or the use of devices to restrain normal movement. If force is used it must be logged in the 'use of force register' and the manager must be notified.
NSW	s. 22(2), <i>Children (Detention Centres) Act 2006</i> (NSW)	No	A detainee shall not be struck, cuffed, shaken or subjected to any other form of physical violence. This is foremost in a list of prohibited punishments.
QLD	Part 4, Division 3, <i>Youth Justice Regulation 2003</i> (QLD)	Yes	Reasonable force can be used to protect a child or other person. Force can only be used if they reasonably believe the child, person or property in danger cannot be protected in another way. Details of the use of force must be recorded.
SA	<i>Family and Community Service Regulations 2009</i> (SA)	Yes	Reasonable force can be used but must be no more than is necessary in the circumstances. The use of force written records must be provided to the Guardian who monitors incident numbers. This area is governed by an operational order that holds the use of force should be: a last resort, justifiable and proportionate. Only approved methods of force can be applied and incidents must be reported and recorded.

TAS	Division 3, Part 6, <i>Youth Justice Act 1997</i> (TAS)	Yes	Reasonable force can be used if it is necessary for reasons listed in legislation e.g. to prevent damage to property or for the security of the centre.
VIC	s.487, <i>Children, Youth and Families Act 2006</i> (VIC)	Yes	The use of physical force is prohibited unless it is reasonable and is necessary to prevent the person or child from harming himself, herself or anyone else from damaging property or is necessary for the security of the centre. The centre has a Safety and Emergency Response Team who ensure systematic management of safety and emergency incidents. This is a highly qualified and highly trained team.
WA	s. 11C, <i>Young Offenders Act 1994</i> (WA) Regs. 71 and 72, <i>Young Offenders Regulations 1995</i> (WA)	Yes	A custodial officer is authorised to use no more than prescribed force in the management, control and security of a detention centre. Prescribed force is the degree of physical force which is the minimum required to control a detainee's behaviour. Force can only be used if the detainee is imminently presenting a risk of physical injury to himself or herself, other detainees or staff. The detainee must then be examined by medical staff and written reports are to be provided by the staff involved.

Searches

In general, there are three different types of searches that take place inside most youth justice facilities across Australia include "pat", "strip" and "cell".⁹² Searches must be lawful, reasonable and proportionate for a legitimate aim. Illegitimate and invasive searches can constitute breaches of principles of the International Covenant on Civil and Political Rights concerning the humane treatment of people deprived of their liberty.⁹³ These minimum rights are also found in the United Nations *Convention on the Rights of the Child*:

16. *No child shall be subjected to arbitrary or unlawful interference with his or her privacy...*

37(c). *Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.*

Strip searching is more intrusive than "pat" or "frisk" searching and as a result the frequency and nature of its employment should be closely monitored. Strip searching involves a person being required to remove some or all of their clothing and is generally only permitted to take place when a person is suspected of concealing contraband on their body that cannot be found using a simple "pat" search. The United Nations Human Rights Committee has held that strip searches should be "carried out in a manner consistent with the dignity of the person who is being searched."⁹⁴

The interference with a child's privacy dictates that strip searches should only be permissible:

*[In] accordance with the national legal system under non-arbitrary circumstances i.e. primarily when it serves a legitimate purpose and observes the principle of proportionality.*⁹⁵

Subjecting children and young people to strip searching can be demeaning and humiliating. For children and young people with experiences of physical and sexual abuse the experience can be traumatising. Young female detainees have reported that strip searching diminishes their self-esteem as human beings and greatly

⁹² 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.

⁹³ United Nations General Assembly 1966, *International Covenant on Civil and Political Rights*, Article 10(1), <<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>>

⁹⁴ United Nations Human Rights Committee 1988, *CCPR General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation*, <http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/INT_CCPR_GEC_6624_E.doc>

⁹⁵ Nowak M 1993, *UN Covenant on Civil and Political Rights: CCPR Commentary*, N.P. Engel, Arlington, USA, p. 387.

emphasises feelings of vulnerability and worthlessness.⁹⁶ This is particularly concerning in light of research from New South Wales that indicates approximately 60 per cent of young people in detention had experienced childhood abuse or neglect, 35 per cent were the victim of childhood physical abuse and 39 per cent of young women had been sexually abused.⁹⁷

A 2006 independent British inquiry into the use of physical restraint, solitary confinement and forcible strip searching of children in prisons stated that:

*A strip search is more than just the removal of clothes for a visual inspection. It is a manifestation of power relations. A strip search involves adult staff forcing a child to undress in front of them. Forcing a person to strip takes all control away and can be demeaning and dehumanising.*⁹⁸

Consequently, even if conducted in accordance with law or policy, strip searches can be humiliating and embarrassing and create feelings of inferiority and anxiety. This is particularly severe for vulnerable or disadvantaged children and young people. Extensive use of strip-searching in a youth custodial facility is a concerning breach of human rights and undermines a child's inherent dignity and cannot be reconciled with the person-specific care detention centres are mandated to provide.

There are several less intrusive measures that could be employed in place of strip-searching that have experienced success internationally. In Queensland, a partially clothed search can only occur if it is determined that, on reasonable grounds, there is a risk of harm to people (the young person, staff or other young people). Specifically, the Youth Justice Regulation 2003 s26(1) states that a search involving the removal of clothes can only occur "[if] the chief executive considers, on reasonable grounds, that it is necessary for the security of the detention centre employees or children in the detention centre". Accordingly partially clothed searches are used where there is reasonable belief that a young person is concealing restricted items that may present risk of harm.

Certain detention facilities in the United Kingdom request new detainees to remove their outer clothes in a shower room and, leaving their underwear on, cover themselves in a dressing gown. They are then given a pat down search by a custodial worker of the same gender, wand searched for metal and have their clothes examined. This regime does not permit any child to be forcibly strip-searched. An inquiry into this practice found that centres that did not permit strip

⁹⁶ Anti-Discrimination Commission Queensland 2006, *Women in Prison*, Anti-Discrimination Commission Queensland, Brisbane, Australia, Section 7.3.

⁹⁷ D Indig, Vecchiato C, Haysom L, Beilby R, Carter J, Champion U . . . Whitton G 2011, *2009 NSW Young People in Custody Health Survey: Full Report*, Justice Health and Juvenile Justice, Sydney, Australia, pp. 157-159.

⁹⁸ Carlile A 2006, *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 homes*, The Howard League for Penal Reform, London, United Kingdom, p. 180.

searching did not report more issues with security or contraband than centres that did employ strip searching and noted that:

*The inquiry was given no substantial evidence from any of the establishments that strip searching carried out in the young offender institutions or secure training centres was necessary for security reasons.*⁹⁹

As a result of a recent review full strip searches are no longer conducted at Banksia Hill Detention Centre in Perth. Instead young people are subjected to “half-and-half” searches. A half-and-half strip search involves the young person first removing all of their clothing above the waist, as well as socks, jewellery and hair decorations, and being searched by a custodial officer. The young person then replaces their clothes above the waist and removes all of their clothing below the waist. If a custodial officer suspects a young person is concealing contraband internally a health centre staff member will be notified. A half-and-half search, while still being an invasive search, ensures that a young person is never completely naked in front of the youth custodial officer. Half-and-half searches are also conducted in youth justice facilities in New South Wales.

Inappropriate searches

A search will be deemed inappropriate if it does not serve a legitimate purpose, observe principles of proportionality or uphold the dignity of the child being searched. Searches, particularly strip searches, that are conducted as an element of a general compliance regime that does not have specific regard to individual circumstances and risks, are contrary to international human right standards. Strip searching very rarely uncovers contraband.¹⁰⁰

Therefore, it is important that detention centres be required to record and report incidents of searches to an independent oversight agency. Any policy mandating the implementation of a strip-search regime must consider the unique vulnerability of incarcerated children.

Human rights guidance on searches

1. Strip searching should only take place when there is a reasonable, well-founded suspicion that a child is concealing contraband on their body that cannot be found using a simple ‘pat’ search. Searches must be non-arbitrary, serve a legitimate purpose and respect the principle of proportionality.
2. Strip searching that is conducted as an element of a general compliance regime that does not have specific regard to the unique circumstances of the child is contrary to minimum human rights standards.

⁹⁹ Ibid, p. 178.

¹⁰⁰ Bogdanic A 2007, *Strip-searching of Women in Queensland Prisons*, Honours thesis, Monash University, <www.sistersinside.com.au/media/Papers/AnnaBogdanic.doc>

3. Strip searching should always be carried out in a manner that is consistent with the dignity of the child being searched and must consider the unique vulnerability of incarcerated children.
4. External monitoring is important, and therefore detention centres should be required to record and report use of strip searching for scrutiny by an independent oversight agency.

Table 5: Comparison of domestic legislative and policy framework regarding searches

The following table provides a comparison of the use of searches in each jurisdiction, including whether matters are governed by legislation and/or policy, and how each matter operates in practice.

Jurisdiction	Matter	Legislation	Policy	Practice
ACT	General requirements for conduct of searches	Chapter 7, <i>Children and Young People Act 2008</i> (ACT)	Yes	Bimberi detention centre is authorised to conduct a ‘frisk/ordinary search’ or a ‘strip search/body search’ in certain circumstances. All searches must be the least intrusive kind of search that is necessary and reasonable in the circumstances.
	Gender and searches	Chapter 7, <i>Children and Young People Act 2008</i> (ACT)	Yes	A search of a young detainee must be conducted by a youth detention officer of the same sex as the young detainee. A transgender or intersex young person may nominate the gender of the detention officer.
	Cell searches	Part 7.7, <i>Children and Young People Act 2008</i> (ACT)	Yes	Bimberi has legislated procedures for searching premises and property. There are protections for privileged information (correspondence with a solicitor, or with external oversight agencies).
NT	General requirements for conduct of searches	s.161, <i>Youth Justice Act</i> (NT) and Regs. 73 and 74, <i>Youth Justice Regulations</i> (NT)	No	Strip searches can be conducted for a number of reasons including if there is a reasonable belief that they have an item of contraband, if it is considered to be for the good order or security of the detention centre. General searches can be conducted on being admitted, leaving or returning to a detention centre. A search register must record every incidence of a search of a detainee or their personal area.
	Gender and searches	Regulation 73(4), <i>Youth Justice Regulations</i> (NT)	No	If a strip search is conducted it must be by two members of staff of the same gender. It cannot be in front of another detainee.
	Cell searches	Regulation 73, <i>Youth Justice Regulations</i> (NT)	No	It is possible to search a detainee’s cell or room.

Jurisdiction	Matter	Legislation	Policy	Practice
NSW	General requirements for conduct of searches	Yes	Yes	The NSW Juvenile Justice Operations Manual Resource holds that wand and strip searches must be conducted when a young person is first admitted to the a detention centre; returns to a detention centre from a court appearance or medical appointment; returns to a detention centre from day or overnight leave; returns to a centre from an outside activity; prior to returning to their unit after a family visit; and before court appearances where there is a reasonable belief that the detainee may be concealing contraband.
	Gender and searches	-	-	-
	Cell searches	-	-	-
QLD	General requirements for conduct of searches	Part 4, Division 6, <i>Youth Justice Regulation 2003</i> (QLD)	Yes	Young people must be informed of the reason for the search and ask for cooperation. The young people are never forced to comply. Strip searches are not part of a centre's routine search process. They are permitted when a security risk arises based on individual risk assessments. This area is governed by policy. Staff and young people are regularly interviewed to discuss their search experiences as part of the Youth Detention Centre Inspections.
	Gender and searches	s 25 and s25 <i>Youth Justice Regulation 2003</i> (QLD)	Yes	Queensland legislation states that if a search involves touching a child, the search must be conducted by a detention centre employee of the same sex as the child. It also states that the chief executive must not order a child to partly or completely undress in the presence of a person of the opposite sex to the child.
	Cell searches	No	Yes	If there is reasonable suspicion that a cell contains contraband items, staff may conduct searches of a young person's room and personal possessions, in a sensitive manner. The inspecting officer must leave the young person's room in a neat and tidy manner. Cell searches are included as an investigation criterion in the <i>Youth Detention Inspectorate Expectations for Queensland Youth Detention Centres</i> .
SA	General requirements for conduct of	s. 10, <i>Family and Community Service Regulations 2009</i>	-	A manager of a training centre may cause a resident or their belongings to be searched when they return to the centre after a period of absence, when the resident has had a full contact visit with a visitor to the centre or if the manager has

Jurisdiction	Matter	Legislation	Policy	Practice
SA (cont.)	searches			reasonable cause to suspect that the resident has in his or her possession a prohibited item. At least two staff members must be present during all searches. These requirements are described in security orders.
	Gender and searches	s. 10, <i>Family and Community Service Regulations 2009</i>	-	The residents must be searched by staff members of the same sex. A security order is in place outlining the requirements for the searching of residents and visitors.
	Cell searches	No	-	A security order relating to property and area searches is in place which includes the process for the searching of bedrooms.
TAS	General requirements for conduct of searches	s. 131, <i>Youth Justice Act 1997</i> (TAS)	Yes	Searches may be authorised in specified circumstances detailed in the legislation. Strip searching is only undertaken if two staff are present.
	Gender and searches	No	Yes	When an unclothed search is authorised practice does require that the searching officer must be of the same gender as the person being searched.
	Cell searches	s. 131 and 136, <i>Youth Justice Act 1997</i> (TAS)	Yes	The Centre Manager may cause a search of any part of AYDC to occur in specified circumstances. Staff cannot open, copy or read correspondence between detainees and legal practitioners.
VIC	General requirements for conduct of searches	<i>Children, Youth and Families Act 2005</i> (VIC)	Yes	Search framework: Client searches are one of the key procedures for maintaining the safety and security of the precincts and wellbeing of the young people. Searches are conducted routinely and at other times on suspicion that a young person may be concealing a prohibited item. Three types of searches are conducted. A frisk search is an examination of the person while fully clothed by using hands and fingers to detect any prohibited items. An unclothed search is a search of a person or of things under their control that may require the person to remove all of his or her clothes. Clients may also be subjected to body searches, including searches of their clothes, but not body cavities. Screening searches are also used; these involve using an electronic wand to externally detect prohibited items. Unclothed searches must be conducted routinely as soon as possible after a young person is received into the precinct, has returned from temporary leave, has returned from attending court, following a

Jurisdiction	Matter	Legislation	Policy	Practice
VIC (cont.)				personal visit, before being placed into isolation and before being placed into a room on constant observation. Searches can also be conducted when there is a reasonable belief that this should occur to manage risk and ensure safety of the young person of the security of the centre.
	Gender and searches	<i>s.72E Children Youth and Families Act 2005 (VIC)</i>	Yes	Secure Services requires all staff to act in a manner which is respectful of young people's differences, including those who are gay, lesbian, bisexual or transgender. All searches must be conducted by two staff members. The primary staff member who undertakes the search must be the same gender as the young person being searched. The second staff member must place themselves so that they can observe the staff member conducting the search, but cannot see the young person. When and unclothed search is required, the second staff member must also be of the same gender as the young person being searched, unless the search is (in the opinion of the most senior staff member on duty) urgently required and there is no staff member of the same gender available. If it is known that a young person identifies as transgender the staff member responsible for undertaking an unclothed search should ask them whether they would prefer to be searched by a male or female staff member. In either case, once the young person has stated their preference the staff member should seek advice and endorsement from the Unit Manager or Operations Manager before commencing the search.
	Cell searches	No	Yes	A minimum of two randomly selected bedrooms must be searched every day in each unit. In addition, bedrooms must be searched when a young person vacates a bedroom, either because they are changing rooms or unit or leaving the precinct. If the young person is present in the unit, they are to be informed of what will take place and why the search is being conducted and ask young people if they have any prohibited items in their room. If the search has occurred while the young person is away from the unit they should be advised afterwards of what has occurred. The room should be left in substantially the same condition as it was found, including making the young person's bed. Each search must be recorded in the unit's communication book to ensure all bedrooms receive attention.

WA	General requirements for conduct of searches	Regulations 82, 85, 86, <i>Young Offenders Regulations 1995</i> (WA)	Yes	The Department has recently reviewed practices relating to routine strip-searching. As a result the strip-searching of detainees when travelling between secure facilities is no longer the default position. Social visit strip-searches are only undertaken where there is reasonable suspicion or cause and are endorsed by management. Banksia Hill now employs the half-and-half strip search that means the young person is never completely naked. A detainee should be searched on admission to the centre, immediately before discharge, on leaving or returning to the centre and when being transferred from one centre to another. A detainee may be 'strip' or 'pat' searched. Regulations establish when strip searching is acceptable.
	Gender and searches	Regulation 86, <i>Young Offenders Regulations 1995</i> (WA)	Yes	A detainee must not be strip searched in the sight or immediate presence of a person of the opposite gender. Where practicable a detainee should not be strip searched in the immediate presence of another detainee. Any search must be conducted with due regard to the decency and self-respect of the detainee. Each officer strip searching the detainee must forward a written report to the superintendent. If a superintendent is uncertain as to the gender of a person to be searched they must ask the young person to advise whether they would like to be searched by a male or a female.
	Cell searches	No	Yes	A quarter of all cells are searched randomly each week. Where possible, detainees shall be present during the search.

Seclusion, segregation, and lockdown

There is no uniform use of terms for seclusion and segregation (or separation) across jurisdictions. This makes comparing practice problematic and can also raise practical issues within jurisdictions. In Western Australia the term “confinement” is used in relevant legislation and is synonymous with the use of “isolation” in South Australia. The Northern Territory, like WA and SA, does not define the relevant terms however makes use of the word “separation” to mean “confinement” or “isolation”. Tasmanian legislation defines “isolation” to mean “locking a detainee in a room separate from others and from the normal routine of the detention centre”.¹⁰¹

Queensland use a practice called ‘separation’, the use of which is governed by legislation and policy. Separation is not used as a disciplinary measure in Queensland. Separation means to place a young person in a locked room by themselves for a purpose defined in section 22 of the *Youth Justice Regulation 2003*. That is for reasons including: if the child is ill; at the child’s request; for routine security purposes under directions issued by the chief executive; for the child’s protection or the protection of other persons or property; or, to restore order in the detention centre. Queensland’s policy on the use of separation following an incident states that: Youth detention operational staff can only separate a young person in response to an incident when people or property require protection and/or to restore order in a youth detention centre. If a young person is assessed to be calm and no longer poses a threat to people, property or the security of the centre, then the separation must cease. Further, Queensland policy also states that the use of separation as a punishment for misbehaviour is not lawful.

In the ACT the term “segregation” is used and is defined to mean “the restriction or denial of the young detainee’s opportunity to go into, or be in, a particular part of a detention place; or to associate with other young detainees; and includes separate confinement”.¹⁰² Segregation in this sense is used, but not defined, in other jurisdictions and involves restricting a child’s contact with other detainees without substantially affecting their life in the facility. This can mean changes to education and recreation times so as not to encounter other detainees.

Seclusion, solitary confinement and lockdown all involve the involuntary placement of a young detainee in a room from which they are not able to leave. Segregation involves limiting a detainee’s contact with peers in the facility by changing exercise and education times and generally disrupting a detainee’s schedule so as to limit their contact with other children and young people. Seclusion, confinement and isolation can often be preceded by the use of force or mechanical restraints to isolate an individual detainee while lockdown involves keeping large groups of children in their cells for extended periods of time. Segregation can range from

¹⁰¹ *Youth Justice Act 1997* (TAS), section 133(1).

¹⁰² *Children and Young People Act 2008* (ACT), section 204.

restricting all contact with peers in the facility to prohibiting detainees from participating in detention centre activities.

Seclusion, isolation or confinement for a short period is sometimes referred to as “time-out” and involves the child being prevented from leaving their cell or a designated room for a set period. However when used for longer periods seclusion can constitute “solitary confinement”. Any use of seclusion on a child to the extent that it equates to solitary confinement is a matter of serious concern. Seclusion necessarily involves a very serious interference with the physical and psychological wellbeing of the child. It is almost impossible to reconcile seclusion with the “best interests” of the child as it serves no integrative or rehabilitative objective. Children in detention are particularly susceptible to medical, social and psychological problems which can be seriously exacerbated by the use of seclusion cells or being left alone in their own cells for extended periods of time.¹⁰³

Segregation is less severe and does not necessarily involve placing added restrictions on a child’s movement. However segregation should never involve the loss of access to education and physical activity. Any program designed to restrict a child’s association with their peers should be implemented so as to ensure continued access to the normal rights associated with daily life in the facility, including education, physical activity and reading material.

Lockdowns are frequently used as part of a facility’s safety and security management regime. In Queensland lockdowns occur when a serious incident is occurring or if there are not enough staff to maintain safe ratios. When necessary and appropriate this is permissible under both international human rights instruments and domestic youth justice frameworks.

In Queensland, separation is only permitted to maintain the safety and security of a detention centre. It is not a disciplinary mechanism. Staff should maintain regular contact with young people while they are in separation. This includes increased observations (and sometimes constant contact) for young people demonstrating suicidality or behavioural issues. Young people in separation are provided with stimulus materials to help them de-escalate where this is assessed as safe to do so.

The isolation or confinement of young detainees as a form of punishment that does not constitute a “time-out” is a violation of both international human rights norms and domestic law. The United Nations Havana Rules hold that:

All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark

¹⁰³ Cunneen C & White R 2002, *Juvenile Justice: Youth and Crime in Australia*, Oxford University Press, Melbourne, Australia, p. 311.

*cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned.*¹⁰⁴

The AJJA Standards¹⁰⁵ reflect this rule in similar terms:

9.5 Separation or isolation of a child or young person is used only in response to an unacceptable risk of immediate harm, escape and or in accordance with legislation, and is used for the minimum amount of time necessary.

Mental health effects of isolation

In 2013 the United Nations Special Rapporteur on Torture, Juan Mendez, stated that the effect a prolonged period in isolation can have on a child's mental health is so severe that countries should implement "an absolute ban" on solitary confinement and seclusion of any duration for children as well as people with psychosocial disabilities. It should be noted that no Australian jurisdiction condones this practice.

The American Academy of Child and Adolescent Psychiatry affirmed the position of the Special Rapporteur. In recognition of the serious harm isolation can do to the mental health of children, the Academy posited that any child or young person that is confined for more than 24 hours must be evaluated by a child mental health professional. The Academy also affirmed that seclusion for periods of less than 24 hours needs to be distinguished from solitary confinement and are better defined as brief interventions or "time outs". These were identified as being legitimate components of behavioural management programs provided they were used for the least amount of time possible in situations where other less restrictive interventions had failed.

In cases involving children with indicators of self-harm, mental-illness or related vulnerabilities, isolation should never be used for disciplinary purposes. Further, children with developmental disabilities or psychosocial problems should not be isolated; they may respond in unpredictable ways and be unable to convey how a period in isolation is affecting them.¹⁰⁶

Human rights guidance on the use of isolation

1. Children in detention are particularly susceptible to medical, social and psychological problems. These issues are exacerbated by extended periods in isolation.

¹⁰⁴ United Nations General Assembly 1990, *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, Rule 67, p. 8, <<http://www.un.org/documents/ga/res/45/a45r113.htm>>

¹⁰⁵ Australasian Juvenile Justice Administrators 2009, *Juvenile Justice Standards 2009*, p. 10, <www.ajja.org.au/>

¹⁰⁶ *Herczegfalvy v. Austria* judgment of 24 September 1992, Series A No. 244, 82; the *Aerts v. Belgium* judgment of 30 July 1998, *Reports 1998-V*, p. 1966, 66. This principle is reflected in the UK Code of Practice, which states that: Prisoners at risk of suicide or self-harm must not be routinely held in segregation units.

2. Segregation can be used as a legitimate behaviour management tool or an emergency safety measure provided it does not place restrictions on a child's access to education, physical activity or family contact.
3. Solitary confinement constitutes cruel, inhuman or degrading treatment and is a violation of international human rights norms and standards. Children should never be subjected to solitary confinement.
5. The use of seclusion and segregation must consider the individual circumstances of the affected child and should not be used in any form on children with known psychosocial issues, indicators of self-harm, mental illness or other related vulnerabilities.
6. External monitoring is important, and therefore detention centres should be required to record and report use of seclusion and segregation to an independent oversight agency.

Table 6: Comparison of domestic legislative and policy frameworks regarding seclusion, segregation, and lockdown

Regulation of this practice varies markedly between jurisdictions. Western Australia is the only jurisdiction that expressly permits confinement to be used as a punishment however it appears that confinement and segregation as disciplinary measures are not uncommon in all jurisdictions. Confinement and lockdown are most commonly used as means of restoring order to a centre or enforcing control after an incident. Most States' legislative and policy regimes are cognisant of the deleterious effects segregation can have on a child and as a result generally mandate maximum separation times as well as a raft of supervision and approval procedures that must be complied with.

The following table provides a comparison of the use of confinement, such as seclusion or segregation, in each jurisdiction, including whether matters are governed by legislation and/or policy, and how each matter operates in practice.

Jurisdiction	Legislation	Policy	Practice
ACT	Division 6.6.3, <i>Children and Young People Act 2008</i> (ACT)	Yes	Segregation is permitted under certain circumstances, and with requirements for reporting, external review and oversight. Segregation must not be used for punishment or disciplinary purposes. Segregation is not to affect minimum living conditions.
NT	s. 153(5), <i>Youth Justice Act</i> (NT)	No	Cell isolation cannot occur except where it is to protect the safety of another person or for the good order and security of the detention centre. The Superintendent can isolate a young person for up to 24 hours, 72 hours with Commissioner approval.
NSW	Division 19, Segregation of Detainees for Protection <i>Children (Detention Centres) Act 1987</i>	No	Segregation is permitted under certain circumstances – if the centre manager believes on reasonable grounds that a detainee should be segregated to protect the personal safety of that person or another detainee. There are specified conditions, including that duration be as short as practicable and must not exceed three hours without the approval of the Director-General. There are requirements for reporting, external review and oversight (record forwarded to the detainee and the Director General within 24 hours of the segregation). Segregation must not be used for punishment.
QLD	Part 4, Division 5, <i>Youth</i>	Yes	The separation process and length of time the young person remains separated are strongly guided by legislated obligations. Children can be separated if they are ill, request to be

QLD (cont.)	<i>Justice Regulation 2003 (QLD)</i>		separated, for routine security purposes, for protective purposes or to restore order. There is no right to separate as a punishment. A child cannot be separate for protective or security purposes for more than 2 hours without manager approval, 12 hours without informing the chief executive or 24 hours without the chief executive's approval.
SA	<i>Family and Community Services Regulations 2009 (SA)</i> Isolation from other residents, other than in a detention room, is a prohibited treatment.	Yes	Separation is used frequently following an incident. Segregation is only for short times in detention rooms but can be for longer periods in a resident's bedroom; commonly three or four days, though the conditions are generally eased over that time. The use of detention rooms is guided by legislation and procedure. Only residents aged 12 years and over can be placed in a detention room. Residents should only be detained in a detention room as a last resort and for as long as necessary to protect the resident and/or another person or to maintain order and preserve the security of the centre. While in the detention room the resident must be closely supervised at all times and observed at intervals not longer than five minutes. Exercise outside the room is provided for 10 minutes every hour during the day. Levels of approval depend on length of time and age of resident. Use of detention room must be recorded. The same provisions do not exist when the bedrooms are used for the purpose of separation.
TAS	ss. 132 and 133, <i>Youth Justice Act 1997 (TAS)</i>	Yes	Isolation is prohibited as punishment. The Centre Manager may authorise isolation if it is in 'the interests of the security of the centre' or the detainee's behaviour is an immediate threat to their safety or another person's safety and all other reasonable steps have been taken to prevent the detainee from committing harm or property damage. Supervision and observation is required.
VIC	s. 488, <i>Children, Youth and Families Act 2005 (VIC)</i>	Yes	<p>The use of isolation is expressly prohibited unless it is necessary to prevent a young person from harming themselves or others, damaging property or trying to escape. Isolation is not a punishment and must not be used as such. It is an intervention of last resort, used only when all other less restrictive practices have been tried and have not been successful, and where there is an immediate threat to the safety of the young person or others. The procedures within the Youth Justice Custodial Services Practice Manual ensure that appropriate safeguards are in place in regards to the approval processes.</p> <p>Any period of isolation requires a minimum of Unit Manager approval or Operations Manager approval if the young person is of Aboriginal or Torres Strait Islander descent.</p> <p>Periods of isolation are cumulative. If a young person has not settled by the end of the first hour, additional levels of authorisation is required. You cannot cease one episode of isolation and commence a new one without seeking additional authorisation.</p> <p>Young people who are placed in isolation must be on a minimum of close observation (every</p>

<p>VIC (cont.)</p>		<p>five minutes) and every isolation must be fully recorded in a dedicated isolation register.</p> <p>A young person must be released from isolation as soon as they have settled, are calm and are no longer an immediate threat to themselves or others.</p> <p>If a young person is repeatedly isolated, a more integrated approach to their behaviour is implemented.</p> <p>Staff may direct a young person to remove themselves from a situation into an unlocked space, not a bedroom, to calm down or stop a particular behaviour. The door must be left unlocked. As soon as the young person is calm, the young person can re-join the other young people. This is called a 'time out'. They must be placed on observation with the level to be determined by a risk assessment conducted by the most senior staff member.</p> <p>Occasionally, young people present with behaviours that are so extreme and difficult to manage that all less restrictive behaviour management strategies have been exhausted.</p> <p>Separation can be used to provide a time limited response to incidents of extreme acts of aggression or other unsafe behaviour</p> <p>Separation from other young people is not a punishment. It happens rarely and only on the recommendation of the General Manager and approval from the Director of Secure Services.</p> <p>Separation is distinguished from isolation as the young person continues to have access to education, programs and other aspects of the broader precinct and may not be confined to a locked room.</p> <p>The purpose of separation is to allow for a comprehensive plan be developed to assist the young person to change violent and maladaptive behaviours and gradually reintegrate the young person into the broader precinct – both physically by returning them to a unit, and in an interpersonal sense by encouraging them to make restoration to others who have been harmed through their actions.</p> <p>Consultation with care team members is required and young people must receive daily scheduled access to educational and specialist health providers.</p> <p>The use of separation must be reviewed every 72 hours and requires re-approval from the Director, Secure Services.</p> <p>Temporary separation of a young person also provides an alternative to transfer to prison where this may have been considered as a final resort, and allows youth justice to meet our mandate of managing young offenders in an age and developmentally appropriate setting.</p>
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WA	Yes Regulation 74, <i>Young Offenders Regulations 1995</i> (WA) s. 196(2)(e), <i>Young Offenders Act 1994</i> (WA)	Yes	Confinement is permissible as a way of dealing with a detainee who has committed a detention offence or in order to maintain good governance, order or security in a detention centre. Detainees who are confined are entitled to fresh air, exercise and staff company for at least 30 minutes every 3 hours. A detainee can be confined for 24 hours or 48 with approval.
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Achieving a human rights approach

This section looks at those organisational factors that have been shown to assist in achieving a human rights approach to young people in detention.

Staffing

Committed, understanding and well-trained staff forms the foundation of any functioning and effective custodial institution. This is particularly important in facilities designed to accommodate children and young people.

There are a number of minimum human rights standards specifically related to youth detention centre staffing. The Beijing Rules hold that detention staff should be demographically representative of the young people being detained; this includes recruitment of women and staff from minority groups.¹⁰⁷ Given the overrepresentation of Aboriginal and Torres Strait Islander children and young people in detention centres around Australia this standard is specifically applicable to the recruitment of Aboriginal and Torres Strait Islander youth custodial staff.

Further, rules hold that staff should be selected based on their integrity, humanity and professional capacity to deal with young people.¹⁰⁸ It is also expected that staff should be trained in child psychology, child welfare and international human rights standards, particularly with respect to the rights of the child.¹⁰⁹ Recruitment of staff skilled in these areas and who share the values of the jurisdiction's youth justice system is integral however their ability to deliver an effective service relies heavily on the youth justice system's provision of effective training, management and support.

Adequate staffing levels, good conditions and the provision of training and professional development opportunities are critical to ensure the delivery of quality youth justice services that respect the human rights of children and young people while also respecting the rights of the workers that support them.

The selection of detention centre staff, the procedures governing their employment, the training requirements, and the titles given to youth custodial works differ markedly between jurisdictions. For example, Queensland, Tasmania and the ACT refer to detention centre staff as 'youth workers', Western Australia employs the term 'youth custodial officer' while Victoria uses 'youth justice worker'.

Staff shortages

¹⁰⁷ United Nations General Assembly 1985, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")*, Rule 22, <<http://www.un.org/documents/ga/res/40/a40r033.htm>>

¹⁰⁸ United Nations General Assembly 1990, *United Nations Rules for the Protection of Juveniles Deprived of the Liberty*, Rule 82, <<http://www.un.org/documents/ga/res/45/a45r113.htm>>

¹⁰⁹ *Ibid*, Rule 85.

Adequate staffing levels are not only critical to the maintenance of good order and governance of youth justice facilities but also to the level of support and care provided to the incarcerated children. The United Nations Convention on the Rights of the Child holds that:

*States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.*¹¹⁰

A 2006 independent inquiry into detention facilities in England found a correlation between staffing levels and the prevalence of the use of force and restraints.¹¹¹ The subsequent report noted that institutions boasting good staff retention figures demonstrated better child-staff relationships.

Currently, all Australian youth justice facilities operate on minimum staff-to-child ratios. These facilities, except for Banksia Hill Detention Centre in Perth, employ ratios ranging from 1:3 to 1:5. Banksia Hill employs a 1:8 staff to child ratio for the general population, but this is adjusted when required to respond to the individual needs of the young people. For example, the Department of Corrective Services advised that staffing at Banksia Hill currently averages 283 with average populations of 120, but some young people are managed on a 1:1 ratio. Staffing ratios refer to “unlocked children” meaning that if a ratio cannot be met children remain locked in their cells. A consequence of staffing shortages at Banksia Hill led to the use of “rolling lockdowns” involving a single staff member unlocking eight detainees for a period of time before relocking them and releasing eight more. Bimberi Youth Justice Centre, prior to 2011, is an example of another facility that suffered a negative cycle of staff absenteeism/turnover and rolling lockdowns.

Lower ratios encourage closer relationships between staff and children which in turn can foster mutual respect. This allows staff to pay closer attention to their needs. More respectful environments have been demonstrated to reduce the number of incidents in detention facilities and decrease the need for restraints and force. The Brisbane Youth Detention Centre, for example, whose design was inspired by Banksia Hill in WA, operates on a 1:4 ratio meaning children are supported by twice as many staff as children in detention in some other jurisdictions.

¹¹⁰ United Nations General Assembly 1989, *United Nations Convention on the Rights of the Child*, Article 3(3), <<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>>

¹¹¹ Carlile A 2006, *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 homes*, The Howard League for Penal Reform, London, United Kingdom, p. 31.

Staff training

Comprehensive staff training is crucial to ensure that the human rights and dignity of children in detention are upheld. This includes training in the appropriate use of mechanical restraints, the use of force as well as processes and procedures regarding a youth custodial facility's disciplinary regime. Staff training can also be broader, including modules that will equip detention centre staff to work with young people with complex needs. For example, modules could include trauma informed practice, conflict de-escalation and positive behaviour support and dealing with mental health issues and drug and alcohol use.

Length of training for youth custodial workers

Western Australia:	12 weeks in-classroom (9 month probation)
New South Wales:	4 weeks in-classroom, on-the-job training and 2 days in-classroom every 6-8 weeks
Queensland:	5-7 weeks in-classroom (6 month probation)
Northern Territory:	8 weeks in classroom including on-the-job training (12 month probation)
Victoria:	4 weeks in-classroom (New employees are also expected to enrol in and complete the Diploma of Youth Justice)
South Australia:	6 weeks orientation training made up of three weeks in-classroom, three weeks on-the-job training and a requirement to complete Certificate IV in Youth Justice – Youth Work
ACT:	6 weeks in-classroom, on the job training and supported to complete Certificate III or IV in Youth Work
TAS:	The current length of training for youth custodial workers is 9 days plus three days of on the job supervised training with a buddy. A 6 month probation and professional development framework for ongoing training requirements individually is also practiced.

Staffing practices and human rights

1. Detention centre staff across the country are typically not demographically representative in accordance with international human rights standards. Specifically, there are proportionately not enough Aboriginal and Torres Strait Islander staff employed at Australia's youth justice facilities.
2. The ability of detention centre staff to deliver an effective service depends to a large extent on the system's provision of effective, holistic training and professional development. It is impossible to provide quality support to incarcerated children without also supporting and respecting the staff that work with them.
3. Staff training can be broader than disciplinary procedures, use of force and restraints. It can include modules that will equip detention centre staff to work with young people with complex needs. For example, modules addressing trauma informed practice, conflict de-escalation, positive behaviour support and dealing with detainees mental health issues and drug and alcohol use.
4. Adequate staffing levels are critical to both the maintenance of good order of youth justice facilities and the level of care that needs to be provided to the detained children.

Table 7: Comparison of domestic legislative and policy frameworks regarding staffing

The following table provides a comparison of matters relating to staffing in each jurisdiction, including whether matters are governed by legislation and/or policy, and how each matter operates in practice.

Jurisdiction	Matter	Legislation	Policy	Practice
ACT	Careful selection of detention centre staff	No	Yes	Detention centre staff are called 'youth workers', 'team leaders' and 'unit managers'. CSD practice is to recruit people for a youth work role rather than a corrections role. Psychometric testing is used as a part of the recruitment process.
	Staff should be humane, committed, professional, fair and efficient	No	Yes	Following Children and Young People Commissioner's Review of the ACT Youth Justice System in 2011, the Community Services Directorate implemented improvements to staff recruitment, supervision and rostering to ensure the staff are support and their interactions with young people are positive. Prior to 2011, there was a downward spiral with high numbers of young people, high rates of staff illness, frequent use of force and lockdowns.
	Recruitment of Aboriginal and Torres Strait Islander staff	No	Yes	There is one identified position for an Aboriginal or Torres Strait Islander support worker. ACT Government has mechanisms in place to encourage recruitment of Aboriginal or Torres Strait Islander people.
	Staff training	No	Yes	Community Services Directorate facilitates a training program for new employees, and an ongoing training program. The program was reviewed and improved following the Children and Young People Commissioner's Review in 2011.

NT	Careful selection of detention centre staff	No	No	There are very few prerequisites for qualifications or any psychometric testing for detention staff.
	Staff should be humane, committed, professional, fair and efficient	No	No	Staff that have had interaction with our office have almost unanimously stated that they do not have sufficient training to fulfil their role at the detention centre.
	Recruitment of Aboriginal and Torres Strait Islander staff	No	Yes	There are no particular positions available for Aboriginal and Torres Strait Islander staff though the NT government has instituted special measures through the Indigenous Employment Program (IEP) to increase the level of ATSI participation in the NT public sector.
	Staff training	No	Yes	New employees undertake a Certificate III in Correctional Practice (Youth Custodial) Existing staff have undertaken particular restraint training though it is not mandatory. It is recommended that this training is provided on an on-going basis.
NSW	Careful selection of detention centre staff	-	-	-
	Staff should be humane, committed, professional, fair and efficient	-	-	-
	Recruitment of Aboriginal and Torres Strait Islander staff	-	-	-
	Staff training	-	-	-
QLD	Careful selection of detention centre staff	Yes <i>Public</i>	Yes	Detention Centre staff are employed as Government Employees and as such, in addition to Departmental considerations which include fitness and psychometric

QLD (cont.)		<i>Service Act 2008</i> (QLD)		testing, are required to undertake criminal history, probity and reference processes expected of all state government employees.
	Staff should be humane, committed, professional, fair and efficient	Yes <i>Public Service Act 2008</i> (QLD)	Yes	See above. Appointment of a public service employee must be made in accordance with the Act.
	Recruitment of Aboriginal and Torres Strait Islander staff	No	Yes	Aboriginal and/or Torres Strait Islander peoples are strongly encouraged to apply for positions within the Queensland Government. Queensland Youth Justice has a cultural capability strategy which specifically addresses this issue. This includes a strategic outcome of 'Increased Aboriginal and TSI employment participation across all classifications and business units' within Youth Justice, 'Embed cultural capability into the department's selection and recruitment processes' as well as a range of other relevant actions.
	Staff training	Yes <i>Public Service Act 2008</i> (QLD)	Yes	The Detention Centre has responsibility for ensuring that staff are provided with regular (at least annually) training in Youth Detention Protective Continuum techniques (mandatory training). The Queensland Government is committed to the ongoing training of public sector employees and as such has requirements for regular cultural awareness and code of conduct training. Additionally, the Chief Executive has a responsibility to ensure staff are provided with training and development under legislation.
SA	Careful selection of detention centre staff	Yes <i>Public Sector Act 2009</i> (SA)	Yes	Background screening, psychometric testing, other standard selection procedures, work shadowing.
	Staff should be humane, committed, professional, fair and efficient	Yes <i>Public Sector Act 2009</i> (SA)	Yes Code of Ethics for the Public Sector	Standard Departmental policies plus procedures specific to working with young people in custodial settings.

SA (cont.)	Recruitment of Aboriginal and Torres Strait Islander staff	No	Yes Youth Justice Cultural Inclusion Strategy	Five dedicated positions for Aboriginal staff and recruitment strategies to encourage Aboriginal staff to apply for mainstream positions. The Department as a whole has a policy for provision of Aboriginal Services which includes a workforce strategy.
	Staff training	No	Yes	Six week induction training followed by work shadowing and on-the-job training. All youth support workers are expected to commence and complete a Certificate IV in Youth Justice – Youth Work.
TAS	Careful selection of detention centre staff	Yes <i>The State Services Act 2000 (TAS)</i>	Yes	Detention centre staff members are called 'youth workers'. Practice is to recruit people for a youth work role rather than a corrections role. Operations staff are recruited subject to suitability testing through the Australian Institute of Forensic Psychology. DHHS has the policy titled 'Right Job, Right Person' which is a contemporary and innovative Tasmanian State Service recruitment and selection framework to equip recruiting managers with the resources to get the right people, in the right job at the right time.
	Staff should be humane, committed, professional, fair and efficient	Yes <i>The State Services Act 2000 (TAS)</i>	Yes	Children and Youth Services apply the 'Right Job, Right Person' framework whenever recruiting staff to ensure the best people are employed in our services. DHHS/CYS expects high standards of our staff, these basic principles are engrained in our policies, procedures and practice advice. CYS ensures that all staff adhere to these policies and procedures and the state service code of conduct.
	Recruitment of Aboriginal and Torres Strait Islander staff	Yes <i>Tasmanian Anti-Discrimination Act 1998 (TAS)</i>	Yes	DHHS values workforce diversity and recognises the value each person offers which is shaped by their unique characteristics, background, experiences, knowledge, skills, values and perspectives. Governed by practice advice. All recruitment panel staff have a sound understanding of equal opportunity and workforce diversity and anti-discrimination principles in a recruitment context.
	Staff training	No	Yes	A comprehensive ongoing training and professional development regime is in place, incorporating rostered training days for all operations staff, including an online training program. All duty statements for custodial staff have been reviewed, and

TAS (cont.)				salary progression has been changed to link advancement to the attainment of accredited training. A major staff training program has also been introduced including improved procedures that relate to health and safety.
VIC	Careful selection of detention centre staff	No	Yes	Secure Services DHHS undertake transparent and robust selection and recruitment processes. These include short-listing of application, interview, psychometric testing, pre-employment medical and fitness assessment, safety screening and referee checks.
	Staff should be humane, committed, professional, fair and efficient	No	Yes	Professional behaviour standards apply to all staff working in youth justice precincts. These standards ensure that all staff and young people are treated fairly and consistently. Youth Justice Centre Custodial staff must comply with the DHHS Code of Conduct and Departmental values.
	Recruitment of Aboriginal and Torres Strait Islander staff	No	Yes	DHHS policies aim to recruit, develop and retain Aboriginal staff through the provision of support, development opportunities and by reducing barriers to employment. Youth Justice Centres employ Aboriginal support workers at both precincts.
	Staff training	No	Yes	Every new Secure Service staff members must complete induction training. Induction training includes all mandatory training modules, shadow shifts and additional workshops to support their role at Secure Services. Continued professional development is an important part of every role at secure services.
WA	Careful selection of detention centre staff	No	Yes	The recruitment process is considered to be thorough and contains the following steps: Applications are submitted and assessed; shortlisted applicants complete psychological, aptitude, literacy and numeracy tests; further shortlisting occurs and interviews conducted; medical fitness testing occurs; shortlisted candidates are then interviewed again by a psychologist; these results are then reviewed by an internal psychologist; all information is then referred to a Decision Panel that comprises members from Banksia Hill and others.
	Staff should be humane, committed, professional, fair and efficient	Yes <i>Young Offenders Act 1994</i> (WA)	Yes	Review of Banksia Hill found some Youth Custodial Officers treated detainees increasingly poorly, being abusive, bullying and showing little respect. YCS staff must enforce common decency principles and must have due regard to detainees' physical and mental status.

WA (cont.)	Recruitment of Aboriginal and Torres Strait Islander staff	No	No	The Office of the Inspector of Custodial Services believes more needs to be done to recruit Aboriginal staff. Detainees often seek out the few Aboriginal officers on staff and refuse to speak to other workers. The recruitment process makes it difficult for Aboriginal people, fitness and medical testing is often the biggest hurdle. The Centre has looked at employing older Aboriginal people who do not pass fitness tests as 'aunties' or 'uncles' to the young Aboriginal detainees. Banksia Hill is seeking to recruit more Aboriginal staff. A review of the Department's practices in attracting, recruiting and retaining Aboriginal staff will be released by the Inspector in 2015.
	Staff training	No	No	Staff are required to undertake a paid Entry Level Training Course at the Department's Academy for three months. This is followed by a 9 month probation period during which staff complete a competency-based qualification. Staff shortages have limited possibilities for additional training and professional development. Training facilities at Banksia Hill are considered inadequate. Emphasis has been on seeking training in weapons and chemical agents while staffing levels and adherence to policies and procedures are more pressing concerns.

External oversight and review

In order to supervise the strict observance of relevant laws and regulations, places of detention must be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.¹¹² The types of oversight mechanisms in operation around the country are detailed in the table below. Western Australia's Office of the Inspector of Custodial Services is a best practice example of an independent review body charged with inspecting places of detention. The Western Australian model has been adopted with success by New South Wales. The Office of the Inspector of Custodial Services focuses on institutional and systemic issues within places of detention rather than pursuing individual complaints. The Office has comprehensive powers to obtain and use information to review and report on detention conditions. This focus on systemic problems has led to important changes within facilities. The work of the Office is complemented by the work of Independent Detention Centre Visitors who are responsible for receiving and acting on individual requests and complaints.

In other jurisdictions inspections are typically carried out by Official Visitors, the Ombudsman's office or another body independent of the relevant detention centre or government department.¹¹³ Generally, Official Visitors must be appointed by an appropriate Minister to whom they ultimately provide feedback and advice.¹¹⁴ Jurisdictions vary with respect to the qualifications Official Visitors must hold however they will usually be individuals with expertise in youth justice or a demonstrated concern for and understanding of the needs and rights of children within the youth justice system.¹¹⁵ Jurisdictions also vary in relation to the mandated frequency of detention facility inspections. Typically inspections range from monthly¹¹⁶ to quarterly¹¹⁷ however certain jurisdictions merely specify that inspections be undertaken at any reasonable time.¹¹⁸

Every child or young person should have the right to make a request or complaint, without censorship as to substance, to the central administration, the judicial authority or other proper authorities through approved channels, and to be informed

¹¹² United Nations General Assembly 1988, *United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, Principle 29, <<http://www.un.org/documents/ga/res/43/a43r173.htm>>

¹¹³ *Children (Detention Centres) Act 1987* (NSW), section 8A; *Juvenile Justice Act 1992* (NT), sections 71-72; *Young Offenders Act 1994* (WA), sections 166-167; *Youth Justice Act 1992* (Qld), sections 204-205.

¹¹⁴ *Juvenile Justice Act 1992* (NT), sections 72; *Children (Detention Centres) Act 1987* (NSW), section 8A(4); *Children's Services Act 1986* (ACT), section 19A; *Young Offenders Act 1994* (WA), section 167.

¹¹⁵ *Children (Detention Centres) Act 1987* (NSW), section 8A.

¹¹⁶ *Youth Justice Act 1992* (Qld), section 205(2); *Juvenile Justice Act 1992* (NT), section 73.

¹¹⁷ *Young Offenders Act 1994* (WA), section 167.

¹¹⁸ *Children (Detention Centres) Act 1987* (NSW), section 8A; *Young Offenders Act 1994* (WA), section 169.

of the response without delay.¹¹⁹ Access to legal advice is particularly important for incarcerated young people. Not only does this ensure they are provided with advice concerning their sentence or court proceedings but also ensures they are informed of their rights in detention. This is even more pertinent for young people held on remand. Policies and procedures in all jurisdictions mandate the provision of legal advice to incarcerated children however the degree to which this is provided often depends unacceptably on the availability of legal practitioners.

Optional Protocol to the Convention against Torture

External oversight and review of youth justice facilities is likely to be strengthened if the Australian Government decides to ratify the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT). Under OPCAT, state parties (a) agree to international inspections of places of detention by the UN Subcommittee on the Prevention of Torture; and (b) commit to establish an independent National Preventive Mechanism (NPM) to conduct inspections of all places of detention. Australia became a signatory to the OPCAT in 2009, but is yet to ratify the treaty.

In April 2012, the Standing Council on Law and Justice agreed to work towards ratification of OPCAT. In June 2012, the Australian Parliament Joint Standing Committee on Treaties tabled a review of OPCAT, recommending that Australia take 'binding treaty action'. The Commonwealth Attorney General's Department *Annual Report 2012-2013* stated that '[t]he department has continued to work towards the ratification of the *Optional Protocol to the Convention against Torture* (OPCAT).' In 2012 the Commonwealth, State and Territory governments developed a national model bill, to establish the necessary legislative arrangements for the subcommittee to inspect places of detention in the ACT, following Australia's ratification of OPCAT. The obligation to establish a National Preventive Mechanism will come into effect three years after ratification, and it is anticipated this will be facilitated by future implementing legislation.

Most jurisdictions introduced bills into their parliaments in 2013, based on the national model bill, and continue to await ratification of OPCAT by the Australian Government. However there has been no public discussion by the Commonwealth Government of ratification of OPCAT in the last few years and at present Western Australia is the only jurisdiction with an independent National Preventive Mechanism¹²⁰ that satisfies the requirements set out in the optional protocol.

¹¹⁹ United Nations General Assembly 1990, *Rules for the Protection of Juveniles Deprived of their Liberty*, Rule 76, <<http://www.un.org/documents/ga/res/45/a45r113.htm>>

¹²⁰ The Office of the Inspector of Custodial Services WA

Independent oversight and human rights

1. Independent oversight and review strengthens human rights protections in youth justice facilities. Consequently, all places of detention should be visited regularly by qualified and experienced persons in order to assess compliance with minimum standards and receive feedback and complaints from detainees.
2. Every child should have the right to make a request or complaint, without censorship as to substance. In order to facilitate the making of complaints young people must be aware of their right to do so and be provided with support throughout the complaint process.

Table 8: Comparison of domestic legislative and policy frameworks regarding external oversight and review

The following table provides a comparison of matters relating to the external oversight of detention centres in each jurisdiction, including whether matters are governed by legislation and/or policy, and how each matter operates in practice.

Jurisdiction	Matter	Legislation	Policy	Practice
ACT	Inspections by external oversight agency	Yes <i>Children and Young People Act 2008 (ACT)</i>	Yes	Official visitor visits fortnightly. Public Advocate has right of access. Human Rights Commission (including the Children and Young People Commissioner) has right of access.
	Right to communicate confidentially with oversight agency	Yes Division 6.6.2 <i>Children and Young People Act 2008 (ACT)</i>	Yes	Bimberi cannot monitor telephone or mail correspondence between young people and the Official Visitor, Public Advocate or Children and Young People Commissioner.
	Right to complain	Yes <i>Children and Young People Act 2008 (ACT)</i> <i>Human Rights Commission Act 2005 (ACT)</i>	Yes	Young people can complain internally to Bimberi management, or externally to the Official Visitor, Public Advocate or Children and Young People Commissioner. Internal complaints procedures/policies.
	Right to request assistance to make a complaint	Yes <i>Children and Young People Act 2008 (ACT)</i> <i>Human Rights Commission Act 2005 (ACT)</i>	Yes	Young people have free and direct telephone access to the Official Visitor and Public Advocate and Children and Young People Commissioner from the phone in their cabin.

NT	Inspections by external oversight agency	Yes s. 171, <i>Youth Justice Act</i> (NT)	No	Official Visitors are required to visit on a monthly basis. The Children's Commissioner attends the detention centres on a needs basis depending on any complaints received.
	Right to communicate confidentially with oversight agency	Yes ss. 20 and 40, <i>Children's Commissioner Act 2013</i> (NT)	No	Detainees have the right to contact the Children's Commissioner to lodge a complaint irrespective of any restrictions placed on them in a confidential manner. They cannot be prevented in any way from doing so. A free call line is available to them at the detention centres.
	Right to complain	Yes s. 163, <i>Youth Justice Act</i> (NT) Regs. 66 and 67, <i>Youth Justice Regulations</i>	Yes	Young people can make a complaint internally to an Official Visitor or to the Children's Commissioner. A detainee can provide a written complaint about their detention to the Superintendent. The Superintendent is obliged to deal with these complaints as soon as practicable. The Superintendent has the option to refer these complaints to the Children's Commissioner if they do not they have to at least inform the Children's Commissioner of the existence of the complaint. They must keep a register of complaints.
	Right to request assistance to make a complaint	Yes Reg. 66(3), <i>Youth Justice Regulations</i> (NT) s. 20(2), <i>Children's Commissioner Act 2013</i> (NT)	No	Detainees can get assistance by requesting members of staff to accurately record complaints in writing. Complaints made to the Children's Commissioner can be made orally and with the assistance of OCC staff.
NSW	Inspections by external oversight agency	Yes ss. 7, 8, 8A <i>Children (Detention Centres) Act 1987</i> s. 6, <i>Inspector of Custodial Services Act 2012</i> (NSW)	-	Each NSW detention centre shall be inspected at least one every 12 months by a juvenile justice officer about by the Director-General. Detention Centres may be inspected by any Judge of the Supreme Court or Direct Court or any Magistrate at any time. The Minister may appoint a person to be an official visitor for a detention centre. The Office of the Inspector of Custodial Services is also required to inspect each juvenile justice centre and correctional centre at least once every 3 years.

NSW (cont.)	Right to communicate confidentially with oversight agency	Yes s. 8A, <i>Children (Detention Centres) Act 1987</i> s. 7, <i>Inspector of Custodial Services Act 2012</i> (NSW)	-	An Official Visitor that has been appointed by the Minister is permitted to confer privately with any person who is detained in the centre. The Office of the Inspector of Custodial Services is permitted to communicate with detainees.
	Right to complain	Yes s. 8A, <i>Children (Detention Centres) Act 1987</i>	-	After having conferred privately with detainees an inspector may furnish to the Minister
	Right to request assistance to make a complaint	-	-	-
QLD	Inspections by external oversight agency	Yes Part 2, <i>Public Guardian Act 2014</i> (QLD)	Yes	Community visitor; Child advocacy Officer; Ombudsman.
	Right to communicate confidentially with oversight agency	Yes Part 4 Division 7, <i>Youth Justice Regulation 2003</i> (QLD)	Yes	The detention centre is not allowed to monitor telephone or mail correspondence between young people and the public guardian; a community visitor (child); a child advocacy officer; a legal practitioner representing the child. The Department addresses this in its Youth Detention Centre Operations Manual.
	Right to complain	Yes Part 4 Division 2, <i>Youth Justice Regulation 2003</i> (QLD)	Yes	If a child makes a complaint about their treatment within the process of being admitted to the detention centre the Chief Executive must make record of that complaint under legislation. A child, parent, friend or any other person is able to make a complaint about a detention centre or the manner with which a young person is treated within the centre. Complaints may be lodged directly with the detention centre; the Department of Justice and Attorney-General; through the Community Visitor (that sits with the Office of Public

QLD (cont.)				Guardian) or Child Advocate. Complaints can also be made to QPS and the Queensland Ombudsman. Depending on the nature of the complaint and who received it, matters can also be referred to and investigated by the department's Ethical Standards Unit, Crime and Corruption Commission and Child Safety Services.
	Right to request assistance to make a complaint	Yes Chapter 4 Parts 2-4, <i>Public Guardian Act 2014</i> (QLD)	Yes	Queensland has a specific policy on complaints to external agencies. This information is publicly available on our website. Our policy statement states that 'The department fully supports and will actively facilitate young people's access to external complaints mechanisms, in particular, those administered by the Queensland Police Service and the Office of the Public Guardian'. All staff are required to be able to explain the complaints process to young people, their families and other external people.
SA	Inspections by external oversight agency	No	Yes	Delegation instruments provide for the Guardian for C&YP to monitor the circumstances of young people detained in the facility and can investigate and inquire into matters of concern. (NB A Youth Justice Administration Bill, if enacted, will provide for legislative functions and powers to an independent training centre visitor.)
	Right to communicate confidentially with oversight agency	-	Yes	Residents have the right to contact the Guardian confidentially. They can also complain to the SA Ombudsman.
	Right to complain	No	Yes	Residents have the right to complain to the Ombudsman and raise issues with the Guardian.
	Right to request assistance to make a complaint	No	Yes	Residents can request assistance with making a complaint. This can be requested of training centre staff or Office of the Guardian.

TAS	Inspections by external oversight agency	No	No	The Attorney General in Tasmania has confirmed that the Office of the Ombudsman has been provided with \$150,000 "to scope and plan" for the introduction of a Custodial Inspector in Tasmania. This work will include the development of inspection guidelines and legislation. It is anticipated that this work will be completed by June 2016.
	Right to communicate confidentially with oversight agency	No	Yes	While there is currently no oversight agency, there are various processes that must be followed. Please see below.
	Right to complain	Yes <i>ss. 137 and 138, Youth Justice Act 1997 (TAS)</i> <i>s. 129, Youth Justice Act 1997 (TAS)</i>	Yes	Young people can complain internally to Centre management, to the Secretary or externally to the Ombudsman. AYDC detainees may access DHHS complaints protocol- set out in internal Protocol. Legislated right to complain to Secretary or Ombudsman
	Right to request assistance to make a complaint	<i>Children, Young Persons and Their Families Act 1997</i>	No	Commissioner for Children and Young People may act as an advocate for a detainee and may advise the Minister of matters affecting the wellbeing of detainees. Young people have free and direct telephone access to the Commissioner for Children and to the Ombudsman.
VIC	Inspections by external oversight agency	No	Yes	Commission for Children and Young People: The Independent Visitor Program (IVP) for Youth Justice Centres visits Centres on a monthly basis and conducts exit interviews with young people exiting centres on a fortnightly basis. There is no legislation governing the IVP, but it falls within the CCYP legislative function to provide advice to the Minister about the safety and wellbeing of vulnerable children and young people. Ombudsman Victoria is governed by legislation and young people have unlimited Arunta phone access to the Ombudsman to make complaints/raise issues about their experiences in custody.

VIC (cont.)	Right to communicate confidentially with oversight agency	No	Yes	<p>Any person who feels that they have been treated unjustly by a government department has the right to contact the Ombudsman so that their situation can be investigated. This includes young people and staff of custodial precincts.</p> <p>Young people can make verbal complaints or requests to an Ombudsman's representative visiting the precinct, write to the Ombudsman's office with a complaint, or telephone the duty system.</p> <p>They are able to make a call to the Ombudsman at any time; phone calls to the Ombudsman are not monitored and staff do not listen to these calls.</p> <p>Letters to and from the Ombudsman are strictly confidential, and must be opened and read only by the young person concerned.</p> <p>Staff may assist young people to contact the Ombudsman by explaining the process or helping them write a letter, but must not advise them on whether or not they should proceed. The General Manager ensures that the Ombudsman's office has free access to the precincts and facilitates and supports young people's access to the Ombudsman during visits.</p> <p>Young people are told about the Ombudsman's role and the confidential nature of any complaints when admitted into custody. This information is reinforced in the What I need to know booklet that every young person receives upon admission.</p>
	Right to complain	No	Yes	<p>The grievance procedure in the Youth Justice Custodial Practice Manual details the rights of young people and staff to make complaints and provides direction for complaints made to unit staff and management, independent bodies such as the Ombudsman.</p> <p>There are clear processes in place for responding to allegations of police misconduct prior to a young person's admission to custody and young people are explicitly asked about their experiences in police custody at the point of admission.</p> <p>The General Manager is responsible for managing any serious allegations against staff and staff must report any allegations of criminal conduct to the police.</p>

VIC (cont.)				<p>Young people are informed of their right to make a complaint throughout the admission process.</p> <p>Any young person who feels that they have been treated unfairly or unjustly by a government department has the right to contact the Ombudsman so that their situation can be investigated.</p>
	Right to request assistance to make a complaint	No	Yes	<p>The <i>What I need to know</i> booklet encourages young people to raise issues and complaints with their allocated key worker in the first instance and explains the role staff can play in assisting them to resolve complaints.</p> <p>Staff can help young people to contact the Ombudsman by explaining the process or helping them write a letter, but must not advise them on whether or not they should proceed. Independent visitors from the Commission for Children and Young People visit the Youth Justice Centres on a monthly basis to talk to young people about their experiences in custody.</p>
WA	Inspections by external oversight agency	<p>Yes</p> <p><i>Inspector of Custodial Services Act 2003 (WA)</i></p> <p><i>Young Offenders Act 1994 (WA)</i></p>	Yes	<p>The Office of the Inspector of Custodial Services (OICS) must inspect Banksia Hill at least once every three years but can visit any time. The Minister, after having regard to the advice of the Inspector may appoint Independent Detention Centre Visitors. IDCV cannot inspect more than every three months. The Minister may appoint visiting justices. IDCV and Visiting Justices cannot perform each other's functions. Visiting Justices review detention offences. Inspections are permitted under policy and legislation. Inspections are conducted by OICS and independent detention centre visitors (e.g. judge or magistrate, JP etc.)</p>
	Right to communicate confidentially with oversight agency	<p>Yes</p> <p>s. 29, <i>Inspector of Custodial Services Act 2003 (WA)</i></p>	Yes	<p>The Inspector must have free and unfettered access to a detainee in a detention centre. Letters addressed to OICS are confidential.</p>
	Right to complain	<p>Yes</p> <p>s. 40, <i>Inspector of Custodial Services Act 2003 (WA)</i></p>	Yes	<p>Young people can complain to the IDCV or the Inspector. Detainees are encouraged to make requests or complaints.</p>

WA (cont.)	Right to request assistance to make a complaint	-	-	-
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Conclusion

The evidence is clear that any approach to youth justice needs to be firmly based on diversion away from detention, with detention considered as a last resort for young people. Practices such as warnings, police cautions and youth justice conferences are commonplace throughout Australia in preference to a young person appearing before the court and placed in detention.

However, for those children who are in detention, they are in need of special protection. Children are not merely small adults. They are vulnerable with the majority having come from poor, drug and alcohol affected complex needs families and many have had traumatic experiences. This vulnerable population, who for some, have never been treated with respect, are deserving of a youth justice system that does not perpetuate their already traumatic experiences. Planning for behaviour management practices and disciplinary regimes in Australian youth justice facilities must be acutely aware of the unique vulnerability of these children.

Youth justice services serve a dual purpose; to protect the community, but to also support and rehabilitate young people to ensure they are reintegrated within the community in a positive and productive manner. Systems of punishment must be built on evidence of what is effective in achieving both of these purposes. Any period of detention must serve to support, educate and rehabilitate child offenders and seek to mitigate any factors that could exacerbate pre-existing vulnerabilities.

All detention centre practices that involve invasive or restrictive procedures must be carried out with full respect for the dignity of the child and any child that feels aggrieved should have a confidential recourse to complain about treatment and practices to an independent third party. These complaints procedures must be complemented by robust internal and external oversight mechanisms that ensure all complaints are not merely received but also thoroughly investigated.

Finally, it is important to acknowledge that in most areas, Australia's youth justice facilities offer child-focussed care and support. However there is room to improve in a number of jurisdictions to ensure that all potentially humiliating, invasive or degrading procedures are used proportionately and reasonably with specific attention paid to the individual and unique circumstances of each detained young person.