



**MONASH** University  
Castan Centre for Human Rights Law

## **Submission to UNHCHR on the Use of Force**

Prepared by Eleanor Jenkin

On behalf of the Castan Centre for Human Rights Law

Faculty of Law, Monash University

Dated: 16 April 2019

1. The Castan Centre for Human Rights Law at Monash University is a leading academic centre using its human rights expertise to create a more just world where human rights are respected and protected, allowing people to pursue their lives in freedom and with dignity. We welcome the opportunity to make this submission pursuant to Human Rights Council resolution 36/16. This submission will focus on the laws, regulations and policies governing the use of force, restraint and seclusion in adult prisons and juvenile detention facilities in Australia.
2. In 2016, the Castan Centre launched a project examining to use of force in closed environments in Australia. As part of this project, we have compared the regulation of the use of force in prisons and juvenile justice facilities in each Australian jurisdiction, and assessed their compliance with international human rights standards. This submission draws on this ongoing work.
3. Our research indicates that legal protections for incarcerated adults and children in all Australian states and territories fall short of international standards and best practice. These deficiencies disproportionate impact society's most vulnerable, including people with disability (in particular mental ill-health) and Indigenous Australians, who are overrepresented in the criminal justice system.

## ***Background***

4. Australia is a signatory to a number of international treaties which are relevant to the use of force prisons and juvenile detention facilities. These include the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD). In December 2017, Australia ratified the Optional Protocol to the Convention against Torture (OPCAT).
5. Australia's implementation of its international human rights obligations is complicated by its dualist system of incorporation of international law, and its federal system of government in which responsibilities are divided between the Federal Government, and six states and two territories. Importantly, under the Australian Constitution, responsibility for criminal justice falls to states and territories. Consequently, the regulation and administration of criminal justice and institutions vary across these jurisdictions.

6. While its federated system makes implementation of Australia's treaty obligations more complex, it does not change these obligations. By entering into international human rights treaties, Australia has voluntarily committed to comply with their provisions in good faith and to take the necessary steps to give effect to those treaties under domestic law.<sup>1</sup> That implementation depends on the actions of the states and territories is no justification for failure to meet treaty obligations.<sup>2</sup>

### ***The number of people incarcerated in Australia is rising***

7. The number of people incarcerated in Australia's prisons and juvenile justice facilities is increasing, and continues to disproportionately impact Indigenous Australians. Between 30 June 2017 and 30 June 2018, the number of prisoners in adult corrective services custody increased by 4%, from 41,202 to 42,974.<sup>3</sup> Aboriginal and Torres Strait Islander prisoners accounted for just over a quarter (28%) of the total Australian prisoner population. The total Aboriginal and Torres Strait Islander population in Australia aged 18 years and over in 2018 was approximately 2%. The number of Indigenous prisoners increased by 5% in the year ending June 2018.<sup>4</sup>

8. Between 2014 and 2018, rates of incarceration of young people in Australia also rose. On an average night in the June quarter 2018, 980 young people were in youth detention. Nearly fifty-nine percent— or three in five — of young people aged 10–17 in detention were Indigenous, despite Indigenous young people making up only 5% of the general population aged 10–17. Indigenous young people aged 10–17 were twenty-six times as likely as non-Indigenous young people to be in detention on an average night.<sup>5</sup>

---

<sup>1</sup> Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331, art. 26.

<sup>2</sup> As above, art. 27. However, note Australia's declaration in respect of the ICCPR: "'Australia has a federal constitutional system in which legislative, executive and judicial powers are shared or distributed between the Commonwealth and the constituent States. The implementation of the treaty throughout Australia will be effected by the Commonwealth, State and Territory authorities having regard to their respective constitutional powers and arrangements concerning their exercise.'" This declaration does not, however, alter Australia's obligations under international law.

<sup>3</sup> Australian Bureau of Statistics, *4517.0 - Prisoners in Australia, 2018* (6 December 2018) <<https://www.abs.gov.au/ausstats/abs@.nsf/mf/4517.0>>.

<sup>4</sup> Australian Bureau of Statistics, *4517.0 - Prisoners in Australia, 2018: Aboriginal and Torres Strait Islander Prisoner Characteristics* (6 December 2018) <<https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2018~Main%20Features~Aboriginal%20and%20Torres%20Strait%20Islander%20prisoner%20characteristics%20~13>>.

<sup>5</sup> Ibid.

### ***Ill-treatment of detainees, including children, is alarming***

9. Statistics on the use of force, restraint and seclusion in custodial settings are not comprehensively compiled or disclosed in Australia. However in recent year, a number of serious incidents of misuse of chemical, mechanical and physical restraint have gained widespread media attention. Several of these incidents have resulted in death:

- On 29 December 2015, Indigenous man David Dungay died after being physically and chemically restrained in his cell at the mental health ward of Long Bay jail, in New South Wales. Prison administrators were attempting to transfer Mr Dungay – a diabetic - to another cell to stop him from eating biscuits. Guards rushed Mr Dungay’s cell, held him in a prone restraint and injected him with a sedative. His last words were “I can’t breathe.” An inquest is ongoing.
- On 28 July 2016, Hizir Ferman may have “progressively suffocated” when physically restrained in Loddon Prison in Victoria. Prison officers used their body weight to pin him to the ground after forcibly removing him from his cell. An inquest is ongoing.
- In September 2016, another Indigenous man, Wayne Fella Morrison, died three days after being restrained by a group of prison officers and placed face down in a van at Yatala Labour Prison, South Australia, because he had assaulted staff. An inquest is ongoing.

10. On 25 July 2016, the Australian Broadcasting Corporation’s Four Corners programme broadcast an investigation into the abuse of youths at Don Dale Youth Detention Centre in the Northern Territory. The episode was titled ‘Australia’s Shame’. The footage included images of children strapped to restraint chairs, their heads covered in spit hoods, as well as boys being assaulted, stripped naked and tear-gassed. At the time, the Office of the High Commissioner for Human Rights expressed its shock at the footage, and stated that, ‘The treatment these children have been subjected to could amount to a violation of the Convention on the Rights of the Child and the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment, to which Australia is a party.’<sup>6</sup>

---

<sup>6</sup> ‘UN rights office shocked by inhumane treatment of children in Australian detention centre’, UN News (29 July 2016) <<https://news.un.org/en/story/2016/07/535722-un-rights-office-shocked-inhumane-treatment-children-australian-detention>>.

11. The disclosures by the ABC, and accompanying public outrage, triggered the Royal Commission into the Detention and Protection of Children in the Northern Territory, which handed down its findings on 17 November 2017. In March 2019, the Northern Territory Parliament passed new laws regulating the use of force in juvenile detention. These laws contradict the recommendations of the Royal Commission, and have been condemned by human rights activists. According to the president of the Criminal Lawyers Association NT, Marty Aust, the legislation 'extends the use of force, restraint and torturous confinement, potentially to levels beyond the practices that so horrified the nation that it resulted in a royal commission being called.'<sup>7</sup>

### ***Regulation of the use of force, restraint and seclusion in prisons and juvenile detention facilities***

12. There are complex reasons for the troubling use of force in Australia's places of detention. Even in circumstances where laws are appropriate, inadequacies in staff training and resourcing, problems in institutional culture, and lack of effective oversight and accountability mean the law is not always properly implemented.

13. However, it is evident that a key contributing factor is the lack of rights-based regulation. Tables 1 and 2, below, set out the level of compliance with indicators of best practice of each Australian jurisdiction's laws and policies on the use of force in prisons (adult) and juvenile detention facilities. The indicators are, wherever possible, based on international standards. This analysis clearly reveals that Australia's legal frameworks for regulating use of force in detention do not meet international standards.

### **Key concerns in the regulation of restraint, seclusion and use of force in prisons**

14. Our research reveals multiple areas in which the laws and policies governing the use of force and restraint in Australian prisons do not meet international standards. These are shown in full in Table 1, however the following issues warrant particular attention:

- Only half of Australian jurisdictions expressly provide that restraint may only be used as a measure of last resort

---

<sup>7</sup> Criminal Lawyers Association of the Northern Territory, 'A dark day for justice in the NT' (21 March 2019) <<https://clant.org.au/news/a-dark-day-for-justice-in-the-nt/>>.

- Only one jurisdiction limits the use of force to those grounds set out in the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)
- Only one jurisdiction limits the use of restraint to those grounds set out in the Mandela Rules
- Three jurisdictions do not require that any application of force is no more than strictly necessary and/or reasonable
- While all jurisdictions have some sort of independent oversight, the enhanced monitoring processes required under OPCAT have yet to be implemented in any state or territory

15. The inadequacy of legal protections for detainees subjected to isolation are especially stark:

- Indefinite and prolonged isolation is permissible in some circumstances under the laws of every jurisdiction
- No Australian jurisdiction expressly provides that isolation only be used in exceptional circumstances, as a last resort
- Six jurisdictions' laws and policies do not meet international standards on minimum conditions for isolation

### **Key concerns in the regulation of restraint, seclusion and use of force in juvenile justice facilities**

16. We have identified a number of areas in which Australian jurisdictions' regulation of force, restraint and seclusion in juvenile detention fall significantly short of international standards. The following issues are of particular concern:

- None of the 8 jurisdictions prohibit chemical restraint
- Only three of 8 jurisdictions meet the international standard that restraint may only be used as a last resort
- Only two jurisdictions meet the permissible grounds for using force, as set out in the United Nations Rules for the Protection of Juveniles Deprived of their Liberty
- Only 2 jurisdictions meet international standards for prohibiting prolonged isolation
- Three jurisdictions allow the use of isolation for punishment

- Only one jurisdiction makes it a specific offence to use restraint or seclusion contrary to the relevant law
- While all jurisdictions have some sort of independent oversight, the enhanced monitoring processes required under OPCAT have yet to be implemented in any state or territory

**Table 1: Laws, regulations and policies governing use of force, restraint and seclusion in prisons<sup>8</sup>**

	<b>ACT</b>	<b>NSW</b>	<b>NT</b>	<b>QLD</b>	<b>SA</b>	<b>TAS</b>	<b>VIC</b>	<b>WA</b>
<b>Restrictive practices are regulated under law, not only policy</b>	YES <sup>i</sup>	YES <sup>ii</sup>	YES <sup>iii</sup>	YES <sup>iv</sup>	YES <sup>v</sup>	YES <sup>vi</sup>	YES <sup>vii</sup>	YES <sup>viii</sup>
<b>Restraint may only be used as a last resort<sup>ix</sup></b>	YES <sup>x</sup>	NO <sup>xi</sup>	YES <sup>xii</sup>	YES <sup>xiii</sup>	NO <sup>xiv</sup>	YES <sup>xv</sup>	NO <sup>xvi</sup>	NO <sup>xvii</sup>
<b>Force is prohibited except in self-defence, cases of attempted escape, or active or passive physical resistance to an order based on law or regulations.<sup>xviii</sup></b>	NO <sup>xix</sup>	NO <sup>xx</sup>	NO <sup>xxi</sup>	NO <sup>xxii</sup>	NO <sup>xxiii</sup>	NO <sup>xxiv</sup>	YES <sup>xxv</sup>	NO <sup>xxvi</sup>
<b>Restraint may only be used as a precaution against escape</b>	NO <sup>xxviii</sup>	NO <sup>xxix</sup>	NO <sup>xxx</sup>	NO <sup>xxxi</sup>	NO <sup>xxxii</sup>	NO <sup>xxxiii</sup>	NO <sup>xxxiv</sup>	YES <sup>xxxv</sup>

<sup>8</sup> Last updated April 2019.



<p>during a transfer, or by order of the prison director if other methods of control fail, in order to prevent a prisoner from injuring himself or herself or others or from damaging property.<sup>xxvii</sup></p>								
<p>Any application of force must be no more than strictly necessary and / or reasonable<sup>xxxvi</sup></p>	YES <sup>xxxvii</sup>	YES <sup>xxxviii</sup>	PARTLY (subjective test) <sup>xxxix</sup>	NO <sup>xl</sup>	YES <sup>xli</sup>	YES <sup>xlii</sup>	YES <sup>xliii</sup>	NO <sup>xliv</sup>
<p>Administrators must report to an independent authority any custodial death, disappearance or serious injury, or reasonable belief that an act</p>	PARTLY <sup>xlvi</sup>	NO <sup>xlvii</sup>	NO <sup>xlviii</sup>	NO <sup>xlix</sup>	NO <sup>l</sup>	PARTLY <sup>li</sup>	PARTLY (only policy) <sup>lii</sup>	NO <sup>liii</sup>

<b>of torture or other cruel, inhuman or degrading treatment or punishment has been committed<sup>xiv</sup></b>								
<b>Chemical restraint is expressly prohibited</b>	NO <sup>liv</sup>	NO	NO <sup>lv</sup>	NO	NO	NO <sup>lvi</sup>	NO	NO <sup>lvii</sup>
<b>Indefinite and prolonged (more than 15 consecutive days) isolation are strictly prohibited<sup>lviii</sup></b>	NO <sup>lix</sup>	NO <sup>lx</sup>	PARTLY (only in cases of disciplinary action) <sup>lxi</sup>	PARTLY (only in cases of disciplinary action) <sup>lxii</sup>	NO (time limit exceeds 15 days) <sup>lxiii</sup>	NO <sup>lxiv</sup>	NO <sup>lxv</sup>	NO (time limit exceeds 15 days) <sup>lxvi</sup>
<b>Minimum conditions for isolation are established in law or policy, and meet international legal standards<sup>lxvii</sup></b>	YES <sup>lxviii</sup>	NO <sup>lxix</sup>	NO	NO	NO	NO	NO	PARTLY (only policy) <sup>lxx</sup>

<b>Isolation may only be used in exceptional circumstances, as a last resort</b> <sup>lxxi</sup>	NO <sup>lxxii</sup>	NO <sup>lxxiii</sup>	NO <sup>lxxiv</sup>	NO <sup>lxxv</sup>	NO <sup>lxxvi</sup>	NO <sup>lxxvii</sup>	NO <sup>lxxviii</sup>	NO <sup>lxxix</sup>
<b>Policies include minimum requirements for staff training on use of force and restraint</b> <sup>lxxx</sup>	YES <sup>lxxxii</sup>	NO <sup>lxxxiii</sup>	NO <sup>lxxxiiii</sup>	PARTLY <sup>lxxxv</sup>	NO <sup>lxxxvi</sup>	YES <sup>lxxxvii</sup>	YES <sup>lxxxviii</sup>	PARTLY <sup>lxxxix</sup>
<b>An independent visitor scheme is in place</b> <sup>lxxxix</sup>	YES <sup>xc</sup>	YES <sup>xcii</sup>	YES <sup>xciii</sup>	YES <sup>xciv</sup>	NO <sup>xcv</sup>	YES <sup>xcvi</sup>	YES <sup>xcvii</sup>	YES <sup>xcviii</sup>
<b>Use of force or restraint contrary to the law is an offence under the Act</b>	NO	NO	NO	NO	NO	NO	NO	NO
<b>Officials may be held civilly or criminally liable in relation to restrictive practices</b>	PARTLY (very limited) <sup>xcviii</sup>	PARTLY (very limited) <sup>xcix</sup>	PARTLY (very limited) <sup>c</sup>	PARTLY (very limited) <sup>ci</sup>	YES <sup>cii</sup>	YES <sup>ciii</sup>	PARTLY (very limited) <sup>civ</sup>	PARTLY (very limited) <sup>cv</sup>

**Table 2: Laws, regulations and policies governing use of force, restraint and seclusion in juvenile detention facilities<sup>9</sup>**

	<b>ACT</b>	<b>NSW</b>	<b>NT</b>	<b>QLD</b>	<b>SA</b>	<b>TAS</b>	<b>VIC</b>	<b>WA</b>
<b>Restrictive practices are regulated under law, not only policy</b>	PARTLY <sup>cxvi</sup>	PARTLY <sup>cxvii</sup>	YES <sup>cxviii</sup>	PARTLY <sup>cxix</sup>	YES <sup>cx</sup>	PARTLY <sup>cxii</sup>	PARTLY <sup>cxii</sup>	YES <sup>cxiii</sup>
<b>Restraint may only be used as a last resort, when all other means of control have been exhausted.<sup>cxiv</sup></b>	YES <sup>cxv</sup>	NO <sup>cxvi</sup>	PARTLY (exemption applies in case of emergency) <sup>cxvii</sup>	YES <sup>cxviii</sup>	YES <sup>cxix</sup>	NO <sup>cxx</sup>	NO <sup>cxxi</sup>	NO <sup>cxxii</sup>
<b>Force is prohibited except when a child poses an imminent threat inflicting self-injury, injuries to others or serious destruction</b>	NO <sup>cxxiv</sup>	NO <sup>cxxv</sup>	YES <sup>cxxvi</sup>	YES <sup>cxxvii</sup>	NO <sup>cxxviii</sup>	NO <sup>cxxix</sup>	NO <sup>cxxx</sup>	NO <sup>cxxxii</sup>

<sup>9</sup> Last updated October 2018.

of property <sup>cxxxiii</sup>								
The use of restraint is prohibited except when a child poses an imminent threat of inflicting self-injury, injuries to others or serious destruction of property <sup>cxxxii</sup> , or as a precaution against escape during a transfer <sup>cxxxiii</sup>	NO <sup>cxxxiv</sup>	NO <sup>cxxxv</sup>	YES <sup>cxxxvi</sup>	NO <sup>cxxxvii</sup>	NO <sup>cxxxviii</sup>	NO <sup>cxxxix</sup>	NO <sup>cxl</sup>	ALMOST <sup>cxli</sup> (also includes medical grounds)
Any application of force must be the minimum necessary and / or	YES <sup>cxliii</sup>	YES <sup>cxliv</sup>	YES <sup>cxlv</sup>	NO <sup>cxlvi</sup>	YES <sup>cxlvii</sup>	YES <sup>cxlviii</sup>	YES <sup>cxlix</sup>	YES <sup>cl</sup>

<b>reasonable</b> cxlii								
<b>Every use of restraint must be reported beyond the level of the facility</b> <sup>cli</sup>	NO <sup>clii</sup>	NO <sup>cliii</sup>	NO <sup>cliv</sup>	NO <sup>clv</sup>	NO <sup>clvi</sup>	NO <sup>clvii</sup>	YES <sup>clviii</sup>	NO <sup>clix</sup>
<b>Chemical restraint is prohibited</b> <sup>clx</sup>	NO <sup>clxi</sup>	NO <sup>clxii</sup>	NO <sup>clxiii</sup>	NO <sup>clxiv</sup>	NO	NO <sup>clxv</sup>	NO <sup>clxvi</sup>	NO <sup>clxvii</sup>
<b>Indefinite and prolonged (more than 15 consecutive days) isolation are strictly prohibited</b> clxviii	NO (time limit exceeds 15 days and is extendable without maximum limit) <sup>clxix</sup>	PARTLY (extendable without maximum limit in some circumstances) <sup>clxx</sup>	YES <sup>clxxi</sup>	PARTLY (extendable without maximum limit in some circumstances) clxxii	PARTLY (extendable without maximum limit in some circumstances) clxxiii	NO	NO <sup>clxxiv</sup>	YES <sup>clxxv</sup>
<b>Minimum conditions for seclusion are established in law or policy, and meet</b>	YES <sup>clxxvii</sup>	NO	YES <sup>clxxviii</sup>	NO	NO	NO	NO	NO

<b>international legal standards</b> clxxvi								
<b>It is strictly prohibited to use seclusion as a form of punishment for disciplinary breaches</b> clxxix	YES <sup>clxxx</sup>	NO <sup>clxxxi</sup>	YES <sup>clxxxii</sup>	NO <sup>clxxxiii</sup>	YES <sup>clxxxiv</sup>	YES <sup>clxxxv</sup>	YES <sup>clxxxvi</sup>	NO <sup>clxxxvii</sup>
<b>Policies include minimum requirements for staff training on use of restraint and seclusion</b> clxxxviii	YES <sup>clxxxix</sup>	NO <sup>cxc</sup>	YES <sup>cxci</sup>	YES <sup>cxcii</sup>	YES <sup>cxci</sup>	NO	NO <sup>cxciv</sup>	PARTLY cxcv
<b>An independent visitor scheme is in place</b> cx cvi	YES <sup>cx cvii</sup>	YES <sup>cx cviii</sup>	YES <sup>cx cvix</sup>	YES <sup>cc</sup>	YES <sup>cci</sup>	YES <sup>ccii</sup>	YES <sup>cciii</sup>	YES <sup>cciv</sup>
<b>Use of force or restraint</b>	NO <sup>ccv</sup>	YES <sup>ccvi</sup>	NO <sup>ccvii</sup>	NO <sup>ccviii</sup>	NO <sup>ccix</sup>	NO <sup>ccx</sup>	NO <sup>ccxi</sup>	NO <sup>ccxii</sup>

<b>contrary to the law is an offence under the Act</b>								
<b>Officials may be held civilly or criminally liable in relation to restrictive practices</b>	PARTLY (civil liability exempted only) <sup>ccxiii</sup>	YES <sup>ccxiv</sup>	NO <sup>ccxv</sup>	YES <sup>ccxvi</sup>	YES <sup>ccxvii</sup>	YES <sup>ccxviii</sup>	NO <sup>ccxix</sup>	PARTLY (civil liability exempted only) <sup>ccxx</sup>

<sup>i</sup> See: *Corrections Management Act 2007 (ACT)*. Several relevant policies are also made under s 14(1) of the Act, namely the Corrections Management (Use of Force) Policy 2012 (Notifiable instrument NI2012-278), the Corrections Management (Use of Force) Procedure 2012 (Notifiable instrument NI2012-277), the Corrections Management (Use of Restraints) Policy 2011 (Notifiable instrument NI2011-132) and the Corrections Management (Use of Restraints) Procedure 2011 (Notifiable instrument NI2011-133). None of these policies or procedures is available to the public, having been excluded under s 15(1) of the Act on the grounds that the material would be likely to disclose information that may endanger public safety or undermine justice, security or good order at a correctional centre.

<sup>ii</sup> See: *Crimes (Administration of Sentences) Act 1999 (NSW)*; *Crimes (Administration of Sentences) Regulation 2014 (NSW)*.

<sup>iii</sup> See: *Correctional Services Act 2014 (NT)*; *Correctional Services Regulations 2014 (NT)*.

<sup>iv</sup> See: *Corrective Services Act 2006 (Qld)*; *Corrective Services Regulation 2017 (Qld)*.



---

<sup>v</sup> See: *Correctional Services Act 1982* (SA); *Correctional Services Regulations 2016* (SA).

<sup>vi</sup> See: *Corrections Act 1997* (Tas); *Corrections Regulations 2018* (Tas).

<sup>vii</sup> See: *Corrections Act 1986* (Vic); *Corrections Regulations 2009* (Vic).

<sup>viii</sup> See: *Prisons Act 1981* (WA); *Prisons Regulations 1982* (WA).

<sup>ix</sup> Rule 48, Mandela Rules, which reads: 'When the imposition of instruments of restraint is authorized in accordance with paragraph 2 of rule 47, the following principles shall apply: (a) Instruments of restraint are to be imposed only when no lesser form of control would be effective to address the risks posed by unrestricted movement; (b) The method of restraint shall be the least intrusive method that is necessary and reasonably available to control the prisoner's movement, based on the level and nature of the risks posed; (c) Instruments of restraint shall be imposed only for the time period required, and they are to be removed as soon as possible after the risks posed by unrestricted movement are no longer present.'

<sup>x</sup> *Corrections Management Act 2007* (ACT), s. 137(1)(a).

<sup>xi</sup> The *Crimes (Administration of Sentences) Act 1999* (NSW) and regulations do not specify that force may only be used as a last resort. The Custodial Operations Policy and Procedures Number 13.7: Use of force includes a section titled 'Force as a Last Resort' at 2.4. Which provides that 'reasonable attempts must be made to resolve a situation without using force unless doing so would place persons, property or correctional centre security at risk of harm.' The language in this provision is arguably too vague to effectively limit the use of force as a last resort.

<sup>xii</sup> Under the *Correctional Services Act 2014* (NT), a corrections officer, in maintaining the security and good order of a custodial correctional facility and prisons, may use the force that is reasonably necessary (s. 137). For that purpose, a correctional officer may use an approved restraint (s. 139(1)). The use of force by a correctional officer is reasonably necessary only if the correctional officer reasonably believes that the purpose for which the force is used could not reasonably be achieved in another practicable way (s. 138(2)(a)). The Commissioner must also ensure that to the extent practicable, force is used under the Act only as a last resort (s. 140(1)(a)(i)).

<sup>xiii</sup> A corrective services officer may use the force only if the officer reasonably believes the act or omission permitting the use of force can not be stopped in another way. (*Corrective Services Act 2006* (Qld), s. 143(2)(a)). The use of force may involve the use of a restraining device (s. 143(4)(d)).

<sup>xiv</sup> While the *Correctional Service Act 1982* (SA) and accompanying regulations deal with the use of force, they do not expressly deal with restraint. There is no requirement under the Act or regulations that force be used only as a last resort.

---

<sup>xv</sup> Under s 34(3) of the *Corrections Act 1997* (Tas), a correctional officer may use mechanical restraints only if the correctional officer believes, on reasonable grounds, that no other less restrictive method of control is applicable or appropriate in the circumstances. Additionally, The Director must ensure, as far as practicable, that the use of force in relation to the management of prisoners and detainees is always a last resort (s 34A(1)(a)). A correctional officer may use necessary and reasonable force if he or she believes on reasonable grounds that the purpose for which the force is used cannot be achieved in another way (s. 34B(2)).

<sup>xvi</sup> Restraint in prisons is not expressly regulated under the *Corrections Act 1986* (Vic). The Act does specifically address the use of restraint during transfers and temporary absences from prison, in which case restraints may be applied to prevent escape as well as injury (Part 8). Under the *Corrections Regulations 2009* (Vic), a prison officer or escort officer may apply an instrument of restraint only if the Governor believes on reasonable grounds that the instrument of restraint is necessary (reg 13(1)).

<sup>xvii</sup> A superintendent may authorise and direct the restraint of a prisoner where in his opinion such restraint is necessary on a permissible ground (*Prisons Act 1981* (WA), s. 42(1)).

<sup>xviii</sup> Rule 82(1), Mandela Rules.

<sup>xix</sup> Force may also be used in the context of searches, to prevent or stop the commission of an offence or disciplinary breach, to prevent unlawful damage, destruction or interference with property, or for any other reason prescribed by regulation (*Corrections Management Act 2007* (ACT), s. 138(1)).

<sup>xx</sup> Under s 253L of the *Crimes (Administration of Sentences) Act 1999* (NSW), a correctional officer may use such force as is reasonably necessary to exercise a broad range of functions under that part of the Act. Under the Custodial Operations Policy and Procedures Number 13.7, staff do not have to make reasonable attempts to resolve a situation without using force if doing so would place persons, property or correctional centre security at risk of harm. Harm includes: escape or attempted escape of inmates, breach or attempted of security barriers like walls or fences, inciting other inmates to violence, Disrupting or obstructing a correctional centre security routine, or attempting to pass a dangerous article to an inmate.

<sup>xxi</sup> Under the *Correctional Services Act 2014* (NT), a correctional officer may take any reasonable and appropriate steps in order to maintain the security and good order of a custodial correctional facility and prisoners, and for the purpose of doing so may use the force that is reasonably necessary. For the purpose of doing so, the officer may use the force that is reasonably necessary (ss. 137(1)-(2)). An officer may also use the force that is reasonably necessary to compel compliance with any reasonable direction (s. 42).

<sup>xxii</sup> Under the *Corrective Services Act 2006* (Qld), force may be used for a range of reasons. In addition to those which are permissible under international standards, force may also be used to restrain a prisoner who is 'attempting or preparing to commit a breach of discipline' (s. 143(1)(b)).

---

<sup>xxiii</sup> Under s 86 of the *Correctional Service Act 1982* (SA), an officer or employee of the Department or a police officer employed in a correctional institution may, for the purposes of exercising powers or discharging duties under the Act, use such force against any person as is reasonably necessary in the circumstances of the particular case. Reasonable force may also be applied to secure compliance with a requirement of a search of a prisoner (s 37(2)).

<sup>xxiv</sup> Under the *Corrections Act 1997* (Tas), force may be used for a variety of reasons, including for 'any other thing prescribed by the regulations' (s. 34B(1)).

<sup>xxv</sup> Under s 23 of the *Corrections Act 1986* (Vic), 'A prison officer may where necessary use reasonable force to compel a prisoner to obey an order given by the prison officer or by an officer under this section,' being 'any order to a prisoner which the officer believes to be necessary for the security or good order of the prison or the safety or welfare of the prisoner or other persons.' The Correctional Management Standards for Men's Prisons in Victoria (2014) (a public document) does however specify that 'force, when used, is applied in accordance with section 23 of the *Corrections Act 1986* and is the minimum necessary for the minimum time to resolve the situation.'

<sup>xxvi</sup> Force, including deadly force, is permissible where the Chief Executive Officer is of the opinion that a serious breach of the good order or security of a prison has occurred or is imminent; and no other reasonable means of control are available at the prison (*Prisons Act 1981* (WA), s. 48(1)). Prison officers may also use force where he or she believes on reasonable grounds it is necessary to ensure that his or her lawful orders are complied with (s. 14(1)(d)).

<sup>xxvii</sup> Drawn from Rule 47 of the Mandela Rules.

<sup>xxviii</sup> The use of force includes the use of restraints (*Corrections Management Act 2007* (ACT), s 140(1)), meaning restraints may be used on the same grounds as the use of force including to compel compliance with a direction given in relation to a detainee (s 138(1)(a)).

<sup>xxix</sup> Under reg 132 of the Crimes (Administration of Sentences) Regulation 2014 (NSW), with the concurrence of the general manager, a correctional officer may use handcuffs, security belts, batons, chemical aids and firearms for the purpose of restraining inmates, and with the concurrence of the Commissioner, a correctional officer may also use for the purpose of restraining inmates anklecuffs, and other articles, other than chains or irons, approved by the Commissioner for use for that purpose. Moreover, the definition of 'force' 'includes the threat to use force and the carriage and use of restraining equipment' (reg. 3). Force may be used for a broad range of reasons, including to ensure compliance with a proper order, or maintenance of discipline, where an inmate is refusing to cooperate (reg. 131(4)(h)), to move inmates who decline or refuse to move from one location to another in accordance with a lawful order (reg. 131(4)(i)), to achieve the control of inmates acting defiantly (reg. 131(4)(j)), and to deal with any other situation that has a degree of seriousness (reg. 131(4)(n)).

<sup>xxx</sup> A correctional officer lawfully using force under the *Correctional Services Act 2014* (NT) may use an approved restraint for that purpose (s. 139(2)). Force may be used for a broad range of reasons, including to compel compliance with directions of correctional officers (s 42(3), to enable searches (ss. 47(3), 48(4), and 50(5)). The Act allows for correctional services dogs to be used to restrain inmates (s. 35(2)(d)).

---

<sup>xxxvi</sup> Under s 143(4) of the *Corrective Services Act 2006 (Qld)*, use of force may involve use of a restraining device. Restraint therefore is permissible under the broad grounds set out in s 143(1) of the Act.

<sup>xxxvii</sup> While the *Correctional Services Act 1982 (SA)* and accompanying regulations deal with the use of force, they do not expressly deal with restraint. The scope for the permissible use of force is expansive (see s 86). s. 86B provides that correctional service dogs authorized by the Chief Executive may be used for various purposes including to restrain a prisoner. No conditions for the exercise of this power are provided.

<sup>xxxviii</sup> Part 4B of the *Corrections Act 1997 (Tas)* covers the use of mechanical restraints not requiring force (where force is required, the relevant provisions are contained in Part 4A). S 34I provides that a correctional officer may use a mechanical restraint on a prisoner for a range of purposes, including to prevent the commission of an offence or disciplinary breach, to prevent the prisoner accessing an area to which they are not permitted access, and for any other purpose prescribed by the regulations. The Corrections Regulations 2018 (Tas) vastly expand the basis upon which officers may apply restraints – reg 8 provides that ‘the Director may order that, in accordance with any standing orders, a prisoner or detainee be subject to... the use of mechanical or chemical restraints.’

<sup>xxxix</sup> Under the *Corrections Act 1986 (Vic)*, an escort officer may use restraints on a prisoner during the course of a transfer where necessary to prevent the escape of the prisoner or the assault of, or injury to, any person (s. 55C(2)). Restraint by prison officers in a prison is not addressed explicitly in the Act. Under the Corrections Regulations 2009 (Vic), a prison officer or escort officer may apply an instrument of restraint if the Governor believes on reasonable grounds that the instrument of restraint is necessary (reg 13(1)). A prison officer or escort officer may also apply an instrument of restraint if the security of a prisoner or the prison is threatened and the officer believes on reasonable grounds that it is necessary. Use of restraints is treated in the Correctional Management Standards for Men’s Prisons in Victoria (2014) as a form of force, to be applied consistently with s 23 of the Act.

<sup>xxxv</sup> The use of restraint is permissible to prevent a prisoner injuring himself or any other person; or upon considering advice from a medical officer or some other medical practitioner, on medical grounds; or to prevent the escape of a prisoner during his movement to or from a prison or during his temporary absence from a prison ((*Prisons Act 1981 (WA)*, s. 42)

<sup>xxxvi</sup> Rule 82(1), Mandela Rules.

<sup>xxxvii</sup> A corrections officer may use force only if the officer uses no more force than is necessary and reasonable in the circumstances (*Corrections Management Act 2007 (ACT)*, s 139(1)(c)).

<sup>xxxviii</sup> In dealing with an inmate, a correctional officer may use no more force than is reasonably necessary in the circumstances and must not exceed the force that is necessary for control and protection (Crimes (Administration of Sentences) Regulation 2014 (NSW), reg. 131(1)).

<sup>xxxix</sup> In maintaining the order and security of a facility and its prisoners, a correctional officer may use the force that is reasonably necessary (s 137(2) *Correctional Services Act 2014 (NT)*). According to the s 138(2)), ‘the use of force by a correctional officer is reasonably necessary only if the correctional officer reasonably believes that: (a) the purpose for which the force is used could not reasonably be achieved in another

---

practicable way; and (b) the nature and amount of force used is reasonable in the circumstances.’ Under a strict reading of this provision, the nature or amount of force is not itself required to be reasonable, merely the correctional officer’s *belief* that it is reasonable.

<sup>xl</sup> While the *Corrective Services Act 2006* (Qld) only allows the use of force when it is reasonably necessary (s 143(1)), it does not require reasonableness in the application of force. It simply requires corrective officers to attempt to use the force in a way that is unlikely to cause death or grievous bodily harm (s. 143(2)(d)).

<sup>xlii</sup> Under s. 86 *Correctional Services Act 1982* (SA), a corrections officer may ‘use such force against any person as is reasonably necessary in the circumstances of the particular case.’

<sup>xliii</sup> A correctional officer may use force only if the correctional officer uses no more force than is necessary and reasonable in the circumstances (*Corrections Act 1997* (Tas), s. 34C(1)(c)).

<sup>xliiii</sup> Under s 23 of the *Corrections Act 1986* (Vic), a prison officer may where necessary use ‘reasonable force’.

<sup>xliiv</sup> While under s 48(1) *Prisons Act 1981* (WA) force may be used when the CE believes a serious breach of order has occurred and no other means of control are available, there is no requirement that the force used must be reasonable or necessary. The force permitted in s 48(1) includes force which may cause death or serious injury. To ensure their orders are complied with, prison officers are also permitted to use such force as they believe on reasonable grounds to be necessary to ensure compliance (s 14(1)(d)). The extent of force permitted in these circumstances is therefore based upon the officer’s subjective belief as to what is necessary.

<sup>xliv</sup> Mandela rules 71

<sup>xlvi</sup> Under s 142(3) of the *Corrections Management Act 2007* (ACT), a record of any incident involving the use of force that causes injury or death to anyone must be given by the director-general to the inspector of correctional services. A record of any incident involving use of forces that causes injury or death must also be kept and be available for inspection (s 142(1)-(2)). The Act does not expressly impose any reporting obligations where there are reasonable grounds to believe that torture, cruel, inhuman or degrading treatment, or punishment has been imposed.

<sup>xlvii</sup> The *Crimes (Administration of Sentences) Regulations 2014* (NSW) require any correctional officer who uses force on an inmate to report it to the governor (reg. 133). There is no requirement that the governor escalate this report.

<sup>xlviii</sup> The *Correctional Services Act 2014* (NT), s 91(1) requires the General Manager to notify the Commissioner as soon as practicable after a prisoner becomes critically ill or injured, or dies. The Commissioner in turn is required to take reasonable steps to notify the prisoner’s next of kin, legal practitioner and any other person with decision making authority for the prisoner (s 91). There is however no requirement that an independent authority be notified.

---

<sup>xlix</sup> The *Corrective Services Act 2006* (Qld) does not require the making and keeping of records of each use of force or restraint. Records must be kept of any incident of lethal force or involving the discharge of a weapon, and the Chief Executive must immediately advise the Minister of such an incident (s. 148). There is no requirement that an independent body be notified.

<sup>l</sup> Neither the *Correctional Services Act 1982* (SA) nor the *Correctional Services Regulations 2016* (SA) require any recording or reporting of the use of force or restraint. The Act does not expressly impose any reporting obligations where there are reasonable grounds to believe that torture, cruel, inhuman or degrading treatment, or punishment has been imposed.

<sup>ii</sup> The Director must keep a record of any incident involving the use of force that causes injury or death to anyone, and must give a copy of the record to the Coordinator of the Official Visitors Scheme for the purpose of informing the official visitors as soon as practicable after the incident (*Corrections Act 1997* (Tas), s. 34F).

<sup>iii</sup> The *Corrections Act 1986* (Vic) does not contain any reporting requirement for the use of force against prisoners within prisons. The Corrections Victoria Commissioner's *Commissioner Requirements 2014* do require the death of a prisoner, use of restraint or any use of force causing serious injury to be reported within 30 minutes to the Commissioner.

<sup>iiii</sup> The *Prisons Act 1981* (WA) imposes no reporting requirement for the use of force against prisoners.

<sup>liv</sup> Chemical restraint is expressly allowed under s 140(4) of the *Corrections Management Act 2007* (ACT).

<sup>lv</sup> The General Manager may authorise the administration of medication to an inmate without consent, where he or she considers the administration of medication to a prisoner might be necessary to prevent, or reduce the risk of, the prisoner causing serious harm to himself or herself or to another person (*Correctional Services Act 2014* (NT), s. 93(1)).

<sup>lvi</sup> The use of chemical restraint is expressly permitted under the *Corrections Regulations 2018* (Tas), reg. 8(1)(b). The use is only subject to standing orders, which are not made public.

<sup>lvii</sup> Chemical restraint is expressly permitted under s. 42(2) of the *Prisons Act 1981* (WA), which states that 'Restraint involving the use of medication shall be used only on medical grounds with the approval of a medical officer or some other medical practitioner.'

<sup>lviii</sup> Rules 43-44, The Mandela Rules

<sup>lix</sup> While segregation for the purpose of punishment or discipline is prohibited under the *Corrections Management Act 2007* (ACT)(s. 89), separate confinement for 3, 7 or 28 days may expressly be imposed as an administrative penalty (s 184(d)). Segregation may still be used to protect the safety of others, or to protect the security and good order at the correctional centre (s. 90). Segregation for health reasons or as protective custody are also permissible (ss. 91-92). Where a segregation direction has been issued under ss 90 or 91, the direction comes to

---

an end 28 days after it is given, unless a further direction has been made by the director-general, or 90 days after a further direction has been made.

<sup>lx</sup> Reg 164 of the Crimes (Administration of Sentences) Regulations 2014 (NSW) prohibits the use of solitary confinement as a punishment. However, this expressly excludes the segregation of an inmate from others under s 10 of the *Crimes (Administration of Sentences) Act 1999* (NSW) (which deals with segregated custody, which may be indefinite), and the confinement of an inmate to cell as a penalty for a correctional offence in accordance with ss 53 and 56 of the Act. Confinement to cell may be imposed by the Governor for up to 7 days (s 53(c)), or up to 28 days by a Visiting Magistrate (s 56).

<sup>lxi</sup> No time limits are imposed for separation under s 41 of the *Correctional Services Act 2014* (NT). Separation as a penalty under s 78 for a disciplinary offence may not exceed 7 days (s. 78(2)(b)).

<sup>lxii</sup> An inmate subjected to separate confinement as a penalty for a disciplinary breach may be confined for not longer than 7 days (*Corrective Services Act 2006* (Qld), ss. 118 and 121). An inmate may also be placed in separate confinement under a safety order (which may be imposed by the Chief Executive on the grounds (amongst others) that it is necessary for the security or good order of the corrective services facility). A safety order must not be for a period longer than one month, however consecutive orders may be made without maximum limit. (*Corrective Services Act 2006* (Qld), ss. 53-54).

<sup>lxiii</sup> An order directing that a prisoner be kept separately and apart from other prisoners has effect for a period not exceeding 30 days (*Correctional Service Act 1982* (SA), s. 36(3)). Moreover, if a prisoner is to be kept separate and apart for a period exceeding 5 days or an aggregate of 5 days in a 10 day period, the matter must be reviewed by the Minister who may confirm or revoke the direction (s. 36(9)-(10)).

<sup>lxiv</sup> Where a detainee has been subjected to separation as a penalty for a prison offence, the period must not exceed 30 days (*Corrections Act 1997* (Tas), s. 61(b)). Where a detainee has been ordered into separate confinement under Corrections Regulations 2018 (Tas) reg. 8(1)(a), there is no time limit.

<sup>lxv</sup> The amount of time a prisoner may be separated from other prisoners must not be longer than is necessary to achieve the purpose of the separation (*Corrections Regulations 2009* (Vic), reg 27(2)).

<sup>lxvi</sup> Under s 43(1) of the *Prisons Act 1981* (WA), for the purpose of maintaining good government, good order or security in a prison, the chief executive officer may order the separate confinement in prison of a prisoner for period not exceeding 30 days. Different provisions apply to the imposition of orders for separate confinement as a penalty for a prison offence, with maximum allowable durations ranging up to 28 days (see ss. 77-79).

<sup>lxvii</sup> See, Mandela Rules r. 42.

---

<sup>lxviii</sup> S 95 of the *Corrections Management Act 2007* (ACT) states that segregation of a detainee does not affect the applicable standards (minimum living conditions which meet international standards are set out in s 12), although this does not prevent the application of the standards in a way that is necessary and reasonable for the purpose of the segregation.

<sup>lxix</sup> S 12(2) *Crimes (Administration of Sentences) Act 1999* (NSW) provides that an inmate held in protective custody is not to be deprived of any rights or privileges other than those determined by the Governor or necessarily incidental to holding the inmate in protective custody, but it does not specifically establish minimum standards for isolation.

<sup>lxx</sup> Adult Custodial Rule 1: Management of Prisoners in Confinement provides various standards for the treatment of prisoners in separate confinement, including a ventilated and well-lit cell, access to daily exercise, clothing, food, water and sanitation, and visits by health service personnel.

<sup>lxxi</sup> Mandela Rules, Rule 45 (1).

<sup>lxxii</sup> The director-general may direct that a detainee be segregated from other detainees if the director-general believes, on reasonable grounds, that the segregation is necessary or prudent to protect the safety of anyone else at a correctional centre, or security or good order at a correctional centre (*Corrections Management Act 2007* (ACT), s 90(1)). Separate confinement for 3, 7 or 28 days may also expressly be imposed as an administrative penalty (s 184(d)).

<sup>lxxiii</sup> While solitary confinement is a prohibited punishment (*Crimes (Administration of Sentences) Regulation 2014* (NSW), reg. 164 (1)), the definition of 'solitary confinement' excludes the segregation of an inmate to secure good order and discipline within a correctional centre (s. 10 of the *Crimes (Administration of Sentences) Act 1999* (NSW)), and the confinement of an inmate to a cell as a penalty for a correctional centre offence (ss. 53 and 56).

<sup>lxxiv</sup> The General Manager of a custodial correctional facility may separate a prisoner from other prisoners as the General Manager considers appropriate. The Act provides a specific example of doing so as a penalty for misconduct. (*Correctional Services Act 2014* (NT), s. 41)

<sup>lxxv</sup> An inmate may be subjected to separate confinement as a penalty for a disciplinary breach (*Corrective Services Act 2006* (Qld), s. 118), or pursuant to a safety order, which may be made on the advice of a doctor or psychologist, or because the chief executive reasonable believes there is a risk of the prisoner harming themselves or someone else (or the prisoner is at risk of being harmed), or because it is necessary for the safety or good order of the facility (s 53).

<sup>lxxvi</sup> A prisoner may be kept separately and apart from other prisoners if it is in the interests of the proper administration of justice where an investigation is to be conducted into an offence alleged to have been committed by the prisoner; or in the interests of the safety or welfare of the prisoner; or in the interests of protecting other prisoners; or in the interests of security or good order within the correctional institution. There is no requirement for the measure to be a last resort. (*Correctional Services Act 1982* (SA), s. 36(2)).



---

<sup>lxxvii</sup> The *Corrections Act 1997* (Tas) and accompanying regulations provide very broad scope for the isolation of prisoners. Under reg 8(1) of the Corrections Regulations 2008 (Tas), the Director may order that, in accordance with any standing orders, a prisoner or detainee be subject to separate confinement. A detainee found guilty of a prison offence may also be subject to a penalty of a period of separation from other prisoners not exceeding 30 days (*Corrections Act 1997* (Tas), s. 61(b)).

<sup>lxxviii</sup> A prisoner may be separated from others 'If reasonable for the safety or protection of the prisoner or other persons, or the security, good order or management of the prison' ((Corrections Regulations 2009 (Vic), reg 27(1)).

<sup>lxxix</sup> Under s 43(1) of the *Prisons Act 1981* (WA), the chief executive officer may order the separate confinement in prison of a prisoner for a period not exceeding 30 days for the purpose of maintaining good government, good order or security in the prison. Separate confinement may also be imposed as a penalty for a prison offence (for up to 28 days, in some circumstances) (ss. 77-79).

<sup>lxxx</sup> Mandela Rules, rr. 49, 75-76, 82(2).

<sup>lxxxi</sup> Under s 140(3) of the *Corrections Management Act 2007* (ACT), the director-general must ensure that restraints and weapons are only used by corrections officers trained to use them though the requirements of the training are not specified. No training requirements are provided for seclusion.

<sup>lxxxii</sup> The NSW legislation and Custodial Operations Policy and Procedures do not provide any minimum training requirements for the use of force and weapons.

<sup>lxxxiii</sup> The NT legislation does not provide any minimum training requirements for the use of force and weapons.

<sup>lxxxiv</sup> Per s 144 of the *Corrective Services Act 2006* (Qld) the chief executive must ensure that a corrective services officer authorised to use lethal force has been trained to use lethal force and other forms of force in a way that causes the least possible risk of injury to anyone other than the person against whom lethal force is directed. Only appropriately trained correctives services officers may be issued with weapons (s 145(1)).

<sup>lxxxv</sup> The SA legislation does not provide any minimum training requirements for the use of force and weapons.

<sup>lxxxvi</sup> The *Corrections Act 1997* (Tas) specifies that the Director must ensure that restraints and weapons are only used by correctional officers trained to use them (s. 34D(3)), however it does not specify the requirements of such training. The relevant Tasmanian policies are confidential.

<sup>lxxxvii</sup> Under the Correctional Management Standards for Men's Prisons in Victoria (a public document), the Prison General Manager will ensure that staff required to exercise the use of force have undergone relevant and appropriate training. Specifics of the training are not provided.

---

<sup>lxxxviii</sup> s 24 *Prisons Regulations* 1982 (WA) provides that a prison officer may be required to undertake firearm training and can be issued a firearm upon authorisation by the superintendent. Adult Custodial Rule 15: Use of Firearms provides that firearms are only to be used by persons qualified after completing a training program. Other weapons, restraints or use of force are not addressed.

<sup>lxxxix</sup> Mandela r 83-85. There shall be a twofold system for regular inspections of prisons and penal services:

(a) Internal or administrative inspections conducted by the central prison administration;

(b) External inspections conducted by a body independent of the prison administration, which may include competent international or regional bodies

<sup>xc</sup> See: *Official Visitor Act 2012* (ACT) and *Corrections Management Act 2007* (ACT) Chapter 7.

<sup>xc<sup>i</sup></sup> See: *Crimes (Administration of Sentences) Act 1999* (NSW), s. 228; *Crimes (Administration of Sentences) Regulation 2014* (NSW), regs 165-167.

<sup>xc<sup>ii</sup></sup> See: *Correctional Services Act 2014* (NT), Part 2.3.

<sup>xc<sup>iii</sup></sup> See: *Corrective Services Act 2006* (Qld), Part 6.

<sup>xc<sup>iv</sup></sup> South Australia does not have an Official Visitor scheme in place. The *Correctional Services Act 1982* (SA) does however mandate that prisons must be inspected on a regular basis by an inspector appointed by the Governor on the recommendation of the Minister, who is empowered to receive and investigate prisoner complaints (s. 20).

<sup>xc<sup>v</sup></sup> See: *Corrections Act 1997* (Tas), s. 10.

<sup>xc<sup>vi</sup></sup> See: *Corrections Act 1986* (Vic), s. 35, and *Corrections Regulations 2009*, reg 63.

<sup>xc<sup>vii</sup></sup> See: *Prisons Act 1981* (WA), s. 57; *Prisons Regulations 1982* (WA), Part X ; and *Inspector of Custodial Services Act 2003* (WA).

<sup>xc<sup>viii</sup></sup> Under s 223 of the *Corrections Management Act 2007* (ACT), a person who exercises, or has exercised, a function under the Act; or is, or has been, otherwise involved in the administration of the Act, does not incur civil liability for an act or omission done honestly and without recklessness for this Act. Any civil liability that would normally attach to the person attaches instead to the Territory. Liability is therefore limited to dishonest or reckless conduct.

---

<sup>xcix</sup> Under s 263(1) of the *Crimes (Administration of Sentences) Act 1999* (NSW), an act or omission by various people exercising power under the Act (including corrections officers) are not subject to any action, liability, claim or demand if the act or omission was done or omitted to be done in good faith in the administration or execution of the Act or any other Act. Liability is therefore limited to actions not done in good faith.

<sup>c</sup> Under s 199(1) of the *Correctional Services Act 2014* (NT), a person – including a correctional services officer - is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of their function. This does not affect the Territory's liability. Liability is therefore limited to actions not done in good faith.

<sup>ci</sup> An official does not incur civil liability for an act done, or omission made, honestly and without negligence under the *Corrective Services Act 2006* (Qld). Liability is therefore limited to dishonest or negligent conduct. Where this provision prevents a civil liability attaching to an official, the liability attaches instead to the State. (*Corrective Services Act 2006* (Qld), s. 349).

<sup>cii</sup> There is no provision in the relevant legislation expressly excluding prison staff from liability.

<sup>ciii</sup> There is no provision in the relevant legislation expressly excluding prison staff from liability.

<sup>civ</sup> A prison officer is not liable for injury or damage caused by the use of force in accordance with s. 23 of the *Corrections Act 1986* (Vic), which authorises use of force to control prisoners (s. 23(5)). This indicates that a prison officer can be liable for injury or damage caused by the use of force contrary to s 23, though there is no express provision that attaches liability to such conduct.

<sup>cv</sup> Under s. 111 of the *Prisons Act 1981* (WA), 'No action or claim for damages shall lie against any person for or on account of anything done, or ordered or authorised to be done, by him which purports to be done for the purpose of carrying out the provisions of this Act, unless it is proved that the act was done, or ordered or authorised to be done, maliciously and without reasonable and probable cause.'

<sup>cvi</sup> See Part 6.6 of the *Children and Young People Act 2008* (ACT). Note however that the Act leaves certain critical issues – including the circumstances, and by whom, force may be used, the kinds of force that may be used, and the use of restraints – to be determined by the director-general in a policy or operating procedure (ss 143 and 223(7)). Provision is made in respect of these issues in the Children and Young People (Use of Force) Policy and Procedures 2015 (No.1) (Notifiable instrument NI2015-400).

<sup>cvi</sup> 'Forcible restraint' is regulated – to some extent - under the *Children (Detention Centres) Act 1987* (NSW) (s 32A(s)). While s 22(1)-(3) of the Act clearly prohibits a range of restrictive practices as punishments, the Act defers regulation around other uses of these practices to policy (s 32A(t) for restraint, and 32A generally for a wide range of practices).

<sup>cvi</sup> The use of restraints is regulated by the *Youth Justice Act 2017* (NT).

<sup>cix</sup> Ss 18 and 19 of the Youth Justice Regulations 2016 (Qld) deal with the use of restraints. These provisions are then expanded upon in the Youth detention - Use of mechanical restraints policy (YD-3-7). The use of force is not dealt with under the regulations.

- 
- <sup>cx</sup> Restriction of free movement by means of mechanical restraints (other than in prescribed circumstances) and isolation or segregation (other than in a safe room or in prescribed circumstances) from other residents are prohibited under s. 29 of the *Youth Justice Administration Act 2016* (SA). These circumstances are expounded in reg 8 of the Youth Justice Administration Regulations 2016 (SA).
- <sup>cx<sup>i</sup></sup> S 132 of the *Youth Justice Act 1997* (Tas) prohibits the use of physical force unless it is reasonable and necessary under certain circumstances, the administering of corporal punishment, that is, any action which inflicts, or is intended to inflict, physical pain or discomfort on the detainee as a punishment, the use of any form of psychological pressure intended to intimidate or humiliate the detainee, and the use of any form of physical or emotional abuse. S 133 regulates the use of isolation. The Act does not however deal with the use of restraint.
- <sup>cx<sup>ii</sup></sup> Restraint is not specifically dealt with under the *Children, Youth and Families Act 2005* (Vic). However, the Act prohibits the use of physical force unless it is reasonable and necessary under certain circumstances, the administering of corporal punishment, that is, any action which inflicts, or is intended to inflict, physical pain or discomfort on the detainee as a punishment, the use of any form of psychological pressure intended to intimidate or humiliate the detainee, and the use of any form of physical or emotional abuse (s. 487). S 488 regulates the use of isolation. Detailed guidance on the use of restraints appears to be provided in the Youth Justice Custodial Practice Manual, however this is an internal document and not publicly available.
- <sup>cx<sup>iii</sup></sup> See ss. 11C and 11D of the *Young Offenders Act 1994* (WA).
- <sup>cx<sup>iv</sup></sup> UN General Assembly, *United Nations Rules for the Protection of Juveniles Deprived of Their Liberty: resolution / adopted by the General Assembly*, 2 Apr. 1991, A/RES/45/113, r. 64. Note that the bar is set even higher in the UN Committee on the Rights of the Child's General Comment No. 10 (2007) *Children's rights in juvenile justice*, which posits the principle that restraint or force can be used only when the child poses an imminent threat of injury to him or herself or others (25 Apr. 2007 (CRC/C/GC/10) ¶ 89).
- <sup>cx<sup>v</sup></sup> *Children and Young People Act 2008* (ACT), s. 223(1)(a), and further codified in the Children and Young People (Use of Force) Policy and Procedures 2018 (No.1) (Notifiable instrument NI2018-451) (definition of 'use of force') s 4.
- <sup>cx<sup>vi</sup></sup> *Children (Detention Centres) Act 1987* (NSW) s 22(2) permits restraint as a punishment with 'reasonable excuse' (Act does not specify what will satisfy this requirement). Further, under Children (Detention Centres) Regulation 2015 (NSW) reg 65 there is no specification of 'last resort' in permitting the use of force (under which restraint falls per reg 62).
- <sup>cx<sup>vii</sup></sup> Force may only be used if all other practicable measures to resolve the situation have been attempted and those measures have failed to resolve the situation (*Youth Justice Act 2017* (NT) s 10(1)(a)). This does not apply in emergency situations (s 10(2)).
- <sup>cx<sup>viii</sup></sup> Under reg 19(1)(d), an authorised staff member may use restraints to restrain a child only if 'the staff member reasonably believes there is no other way to stop the child from engaging in the [proscribed] behaviour.'
- <sup>cx<sup>ix</sup></sup> Youth Justice Administration Regulations 2016 (SA) reg 8(3)(a).
- <sup>cx<sup>x</sup></sup> The Act does not expressly deal with use of restraint. While a use of physical force (which may include use of restraint) must be 'reasonable', there are no requirements that it must be of last resort (*Youth Justice Act 1997* (Tas) s 132(b)).
- <sup>cx<sup>xi</sup></sup> For example, use of force is permitted if deemed 'reasonable' or 'necessary', however with no clear restrictions regarding what will satisfy this necessity (see *Children, Youth and Families Act 2006* (Vic) s 161B).

---

<sup>cxixii</sup> The use of restraint permitted under s 11D (or use of force generally under s 11C) of the *Young Offenders Act 1994* (WA) must be the minimum necessary to control the detainee's behaviour (see *Young Offenders Regulations 1995* (WA)); however there is no express requirement (in the Act or Regulations) that this be of last resort.

<sup>cxixiii</sup> UN General Assembly, *United Nations Rules for the Protection of Juveniles Deprived of Their Liberty: resolution / adopted by the General Assembly*, 2 Apr. 1991, A/RES/45/113, r 64. Note that the bar is set even higher in the UN Committee on the Rights of the Child's General Comment No. 10 (2007) *Children's rights in juvenile justice*, which posits the principle that restraint or force can be used only when the child poses an imminent threat of injury to him or herself or others (25 Apr. 2007 (CRC/C/GC/10) ¶ 89).

<sup>cxixiv</sup> Under s 224(b) of the *Children and Young People Act 2008* (ACT), force may be used: to compel compliance with a direction given in relation to a young detainee by the director-general; to prevent or stop the commission of an offence or behaviour breach; to prevent unlawful damage, destruction or interference with property; to defend the person or someone else; to prevent a young detainee from inflicting self-harm; or to prevent a young detainee from escaping. Permissible grounds for the use of force are also set out in s 6.4 of the *Children and Young People (Use of Force) Policy and Procedures 2015* (No.1) (Notifiable instrument NI2015-400), which is made under s 143 of the Act. Permissible grounds include (in addition to imminent threat of harm or serious destruction of property) for the prevention of escape, to enforce a segregation order, to undertake a search, to prevent or stop the commission of an offence, and to prevent or quell a riot or persistent serious disruption to safety and security.

<sup>cxixv</sup> Under reg. 65 of the *Children (Detention Centres) Regulations 2015* (NSW), a juvenile justice officer may use force for the following purposes: to prevent a detainee from injuring himself or herself; to protect the officer or other persons from attack or harm; to prevent a detainee from inflicting serious damage to property; to prevent a detainee from escaping; to prevent a person from entering a detention centre by force; to search a detainee in circumstances in which the detainee refuses to submit to being searched; to seize any dangerous or harmful article or substance that is in the possession of a detainee; to prevent or quell a riot or other disturbance; to protect a dog being used to assist in the detection of prohibited goods in a detention centre from attack or harm; to allow a medical practitioner to carry out medical treatment on a detainee; and to move a detainee who refuses to move from one location to another in accordance with an order of that officer.

<sup>cxixvi</sup> S 154(1)(a) of the *Youth Justice Act 2017* (NT) allows for the use of force if the force is necessary to prevent an imminent risk of a detainee: inflicting self-harm; or harming another person; or seriously damaging property. S 153(2) prohibits the use of force except in accordance with s 154 (and s 10), and expressly prohibits the use of force or restraint for the purpose of maintaining the good order of the detention centre of disciplining a detainee, or the use of any form of physical, verbal or emotional abuse.

<sup>cxixvii</sup> Under reg 16(5) of the *Youth Justice Regulations 2016* (Qld), a 'detention centre employee may use reasonable force to protect a child, or other persons or property in the centre, from the consequences of a child's misbehaviour if— (a) the employee has successfully completed physical intervention training approved by the chief executive; and (b) the employee reasonably believes the child, person or property cannot be protected in another way.' Force may also be used when necessary during a search (regs. 24-26)

<sup>cxixviii</sup> Under s 33 of the *Youth Justice Administration Act 2016* (SA), an employee of a training centre may use force against a resident to prevent the resident from harming himself or herself or another person, to prevent the resident from causing significant damage to property, to maintain order in the centre, or to preserve security in the centre. Force may also be used during a search (s. 30(2)(e)).

---

<sup>cxxix</sup> Under s 132 of the *Youth Justice Act 1997* (Tas), the use of physical force is prohibited unless it is reasonable and is necessary to prevent the detainee from harming himself or herself or anyone else; or is necessary to prevent the detainee from damaging property; or is necessary for the security of the centre; or is otherwise authorised by or under the Act or any other Act or at common law. It may also be used to place the detainee in isolation ‘if necessary’, however this is not explicitly defined (s 133(4)).

<sup>cxxx</sup> Reasonable force may be used if it is necessary to prevent the detainee from harming himself or herself or anyone else or from damaging property, or is necessary for the security of the centre or police gaol, or is otherwise authorised by or under the Act or any other Act or at common law (*Children, Youth and Families Act 2005* (Vic), s. 487(b)). Force may also be used to carry out a search if necessary (s. 486(5)).

<sup>cxxxi</sup> According to s 11C(2) of the *Young Offenders Act 1994* (WA), a custodial officer must not use force on a young offender unless that force is used in the prescribed circumstances. Reg 72(1) Young Offenders Regulations 1995 (WA) states that ‘prescribed circumstances means an immediate period when a detainee is imminently presenting a risk of physical injury to himself or herself, other detainees or staff.’ However, the circumstances in which force may be applied are expanded by section 11B(d) of the *Young Offenders Act 1994* (WA), which allows that ‘A custodial officer may issue to a detainee such orders as are necessary for the purposes of this Act, including the security, good order, or management of a facility or detention centre, and may use such force as is prescribed under section 11C as is necessary to ensure that lawful orders given to a detainee are complied with (s 11B(d)).’

<sup>cxxxii</sup> UN General Assembly, *United Nations Rules for the Protection of Juveniles Deprived of Their Liberty: resolution / adopted by the General Assembly*, 2 Apr. 1991, A/RES/45/113, r. 64; UN Committee on the Rights of the Child, General Comment No. 10 (2007) *Children’s rights in juvenile justice* (25 Apr. 2007 (CRC/C/GC/10) ¶ 89).

<sup>cxxxiii</sup> This ground for the use of restraint is drawn from rule 2(a) of the Nelson Mandela Rules (*United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules): resolution / adopted by the General Assembly*, 8 January 2016, A/RES/70/175). Note however that the Mandela Rules do not seek specifically to regulate juvenile detention facilities, and are only generally applicable. The addition of this ground for use of restraint represents the lowest threshold for grounds for restraint.

<sup>cxxxiv</sup> Restraint is considered a use of force (per both *Children and Young People Act 2008* (ACT) s 226(1) and Children and Young People (Use of Force) Policy and Procedures 2018 (No.1) (Notifiable instrument NI2018-451) s 4) and may therefore be used on the grounds set out in s 224(b) of the *Children and Young People Act 2008* (ACT) and s 6.4 of the Children and Young People (Use of Force) Policy and Procedures. This is qualified by a restriction on the use of restraint to circumstances which are ‘sufficiently serious’ to ‘justify the use’, and both the use and kind of restraint must be ‘appropriate’ in such circumstances (*Children and Young People Act 2008* (ACT) s 226(2)(a)-(c)).

<sup>cxxxv</sup> The *Children (Detention Centres) Act 1987* (NSW) provides that a detainee shall not be handcuffed or forcibly restrained ‘without reasonable excuse’ (s. 22). Under the Children (Detention Centres) Regulations 2015 (NSW), force may (in addition to the purposes listed) also be used to protect a dog being used to assist in the detection of contraband in a detention centre from attack or harm, or in order to move a detainee who refuses to move from one location to another, but only if the officer first gives a warning to the detainee of the consequences of failing to comply with the order (reg 65).

<sup>cxxxvi</sup> The superintendent of a detention centre may authorise the use of an approved restraint on a detainee if an emergency situation exists, and restraint is necessary to prevent an imminent risk of the detainee inflicting self-harm, harming another person, or seriously damaging

---

property. An approved restraint may also be authorised when a detainee is being escorted outside the detention centre, and the superintendent believes on reasonable grounds that the detainee is likely to attempt escape (*Youth Justice Act 2017* (NT) s 155).

<sup>cxvii</sup> Under the Youth Justice Regulations 2016 (Qld), the permissible grounds for the use of restraints are the staff member's reasonable belief that the detainee is likely to attempt to escape; or seriously harm himself, herself or someone else; or seriously disrupt order and security at the centre (reg 19(c)).

<sup>cxviii</sup> S 29(f) of the *Youth Justice Administration Act 2016* (SA) prohibits restriction of free movement by means of mechanical restraints (other than in prescribed circumstances). The Youth Justice Administration Regulations 2016 (SA) prescribes these circumstances, specifically where an employee believes on reasonable grounds that the residents is about to harm himself or herself or another person, or it is necessary to restrain the resident to preserve the security of the centre, to prevent the resident from escaping custody, or to preserve community safety (reg 8(2)(b)).

<sup>cxix</sup> The use of restraints is not expressly dealt with in the *Youth Justice Act 1997* (Tas). To the extent that the use of restraints constitutes the use of force, s 132 applies. Per s 132, the use of physical force is prohibited unless it is reasonable and is necessary to prevent the detainee from harming himself or herself or anyone else; or is necessary to prevent the detainee from damaging property; or is necessary for the security of the centre; or is otherwise authorised by or under the Act or any other Act or at common law. . It may also be used in placing the detainee in isolation 'if necessary' (s 133(4)).

<sup>cxl</sup> The use of restraints is not expressly dealt with in the *Children, Youth and Families Act 2005* (Vic). To the extent that the use of restraints constitutes the use of force, reasonable force may be used if it is necessary to prevent the detainee from harming himself or herself or anyone else or from damaging property, or is necessary for the security of the centre or police gaol, or is otherwise authorised by or under the Act or any other Act or at common law (s. 487(b)). Force may also be used to carry out a search if necessary (s 486(5))

<sup>cxli</sup> Under s 11D(1) of the *Young Offenders Act 1994* (WA), the chief executive officer, or a superintendent, may authorise and direct the restraint of a young offender where in his or her opinion such restraint is necessary to prevent the young offender injuring himself or herself, or any other person; or upon considering advice from a medical practitioner, on medical grounds; or to prevent the escape of a young offender during his or her movement to or from a facility or detention centre, or during his or her temporary absence from a facility or detention centre.

<sup>cxlii</sup> UN General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules): resolution / adopted by the General Assembly*, 8 January 2016, A/RES/70/175, r 82(1).

<sup>cxliii</sup> *Children and Young People Act 2008* (ACT), s 225(1)(c).

<sup>cxliv</sup> In dealing with a detainee, a juvenile justice officer must use no more force than is reasonably necessary in the circumstances, and the infliction of injury on the detainee is to be avoided if at all possible (*Children (Detention Centres) Regulations 2015* (NSW) reg 65(3)).

<sup>cxlv</sup> The person using force may use no more force than is necessary and reasonable in the circumstances (*Youth Justice Act 2018* (NT), s 10(b)(iii)).

---

<sup>cxlvi</sup> Per the Youth Justice Regulation 2016 (Qld), the only restrictions on the use of force are that the employee has successfully completed physical intervention training approved by the chief executive, and that they reasonably believe that the child cannot be protected (or search cannot be completed) in another way (regs 16(5)(a), (b)).

<sup>cxlvii</sup> An employee of a training centre may only use such force as is 'reasonably necessary' (*Youth Justice Administration Act 2016 (SA)*, s. 33(1)).

<sup>cxlviii</sup> *Youth Justice Act 1997 (Tas)*, s. 132(b).

<sup>cxlix</sup> *Children, Youth and Families Act 2005 (Vic)* s 161B(a).

<sup>cl</sup> A custodial officer is authorised to use no more than prescribed force in the management, control and security of a facility or detention centre (*Young Offenders Act 1994 (WA)*, s 11C(1)), being the degree of physical force which is the minimum required to control a detainee's behaviour in the circumstances (*Young Offenders Regulations 1995 (WA)*, reg 71(1)).

<sup>cli</sup> This is drawn from rule 64 of the UN General Assembly, *United Nations Rules for the Protection of Juveniles Deprived of Their Liberty: resolution / adopted by the General Assembly*, 2 Apr. 1991, A/RES/45/113, which states that where instruments of restraint or force are used, 'in such instances, the director should at once consult medical and other relevant personnel and report to the higher administrative authority.'

<sup>clii</sup> Under s. 227 of the *Children and Young People Act 2008 (ACT)*, the director-general must ensure that, as soon as practicable after the end of each month, a youth detention officer gives the director-general a report summarising the incidents (if any) during the month that involved the use of force in relation to a young detainee. An ongoing register of these incidents is also to be kept by both the director-general and Managers at each detention place, and must be made available for inspection to a Judge, Magistrate, Official Visitor, Commissioner exercising functions under the *Human Rights Commission Act 2005*, the Public Advocate, and the Ombudsman (*Children and Young People Act 2008 (ACT)* s 195(1)(b), (5); *Children and Young People (Records and Reporting) Policy and Procedures 2018 (No 1)* s 6.7, 6.12). This register must also be inspected by the Public Advocate every 3 months (*Children and Young People Act 2008 (ACT)* s 195(6)). Per s 6.15 of *Children and Young People (Use of Force) Policy and Procedures 2018 (No.1)* the treating doctor or a nurse must also be notified every time a use of force is used against a young person (but this does not appear to be beyond the level of the facility).

<sup>cliii</sup> As soon as practicable after force is used by an officer, a report must be furnished to the centre manager by each officer involved in the use of force (*Children (Detention Centres) Regulations 2015 (NSW)* reg 66(1)). However, this requirement does not apply in respect of the use of an instrument of restraint in circumstances where the person is restrained for the purposes of being moved from one location to another, and the move and use of the restraint is required to be noted administratively (reg 66(2)).

<sup>cliv</sup> A register of the use of approved restraints must be kept, containing particulars of each use of approved restraints (*Youth Justice Act 2017 (NT)* s 158B).

<sup>clv</sup> Per the Youth Justice Regulation 2016 (Qld), there must be a record made of every use of approved restraints (reg 20), however there is no explicit obligation to provide this report to anyone beyond the level of the facility.

<sup>clvi</sup> If force is used against a resident of a training centre each employee of the centre involved must ensure that a written report is provided to the manager (*Youth Justice Administration Act 2016 (SA)*, s. 33(2)(a)). However there is no requirement for this to be escalated further.



---

clvii The Act does not expressly deal with use of restraint. The only record of use of force (presumably including use of restraint) the detention centre manager must keep is in the context of isolating a detainee (*Youth Justice Act 1997* (Tas) s 133(6)). However, there is no obligation to provide this register of records to anyone beyond the level of the facility.

clviii Where an officer uses physical force or places a detainee in isolation, as soon as possible after taking the action, the officer must report the taking of the action to the Officer in Charge, who must report the taking of the action by the officer to the Secretary to the Department of Justice and Regulation (*Children, Youth and Families Act 2005* (Vic) s 488AA).

clix A written report of any incident involving the use of prescribed force or another similar physical restraint must be provided to the superintendent by the staff member involved (Young Offenders Regulations 1995 (WA) reg 72(5)), however reporting above the level of the superintendent is not required.

clx UN General Assembly, *United Nations Rules for the Protection of Juveniles Deprived of Their Liberty: resolution / adopted by the General Assembly*, 2 Apr. 1991, A/RES/45/113, r 55 ('[medicines] they must not be administered with a view to eliciting information or a confession, as a punishment or as a means of restraint.') Although note that chemical restraint is implicitly permitted under the UN Committee on the Rights of the Child's General Comment No. 10 (2007) *Children's rights in juvenile justice*, which states that 'the use of restraint or force, including physical, mechanical and medical restraints, should be under close and direct control of a medical and/or psychological professional.' (25 Apr. 2007 (CRC/C/GC/10) ¶ 89)

clxi Both the *Children and Young People Act 2008* (ACT) and the Children and Young People (Use of Force) Policy and Procedures 2018 (No.1) (Notifiable instrument NI2018-451) are silent on the use of chemical restraint. The use of medication to restrict movement or manage behaviour is not included in the definition of restraint, and is not dealt with under other provisions.

clxii Although s 22 of the *Children (Detention Centres) Act 1987* (NSW) does prohibit the punishment of detainees by dosing with medicine or any other substance.

clxiii The definition of restraint does not include chemical restraint (*Youth Justice Act 2017* (NT) s 151AB), nor is the issue dealt with elsewhere in the Act.

clxiv Chemical restraint is not expressly dealt with in law or policy. A list of approved restraints is provided in Appendix A to the Youth detention - Use of mechanical restraints policy (YD-3-7). These are all mechanical restraints; no chemical restraints are listed. Reg 16(4)(h) of the Youth Justice Regulation 2016 (Qld) states that the chief executive must not use, as a way of disciplining the child medication or deprivation of medication.

clxv The *Youth Justice Act 1997* (Tas) does not expressly prohibit any forms of restraint, including chemical restraint.

clxvi The *Children, Youth and Families Act 2005* (Vic) is silent on the issue of chemical restraint.

clxvii In fact, chemical restraint is expressly permitted. Under s 11D(2) of the *Young Offender Act 1994* (WA), 'Restraint involving the use of medication must not be used on medical grounds unless the approval of a medical practitioner is obtained first.'

clxviii Under the Nelson Mandela Rules, indefinite solitary confinement and prolonged solitary confinement are considered to amount to torture or other cruel, inhuman or degrading treatment or punishment, and shall be prohibited (8 January 2016, A/RES/70/175, r 43). Solitary confinement

---

refers to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement refers to solitary confinement for a time period in excess of 15 consecutive days (r 44).

clxx A segregation direction ends at the end of 28 days after it is given (unless revoked sooner), however in practice a further segregation directions may be issued (subject to review) without maximum limit (*Children and Young People Act 2008* (ACT) s 218).

clxx Confinement to a place as punishment for misbehavior must not exceed 12 hours or, in the case of a detainee of or over the age of 16 years, 24 hours (*Children (Detention Centres) Act 1987* (NSW) s 21(1)(d)). Segregation in order to protect the personal safety of that or any other detainee must be as short as practicable and, in any case, must not exceed 3 hours except with the approval of the Secretary (s 19(1)(b)).

clxxi Where a detainee has been separated from other detainees for their protection or the protection of another person or property (under s 155A(2)(c) of the *Youth Justice Act 2017* (NT)), the superintendent may not authorise the separation for a period exceeding 12 hours without the CEO's approval, and a detainee may not be separated for more than 72 consecutive hours (s 155A(5)-(6)). These limits do not apply where a detainee has been separated where the separation has been requested by the detainee, or on the basis of infectious disease.

clxxii A detainee cannot be separated 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. If the separation period is more than 24 hours, additional approval from the chief executive for each 24 hour period of separation after the first 24 hours is required (reg 21).

clxxiii Isolation must not continue for longer than 24 hours unless the manager of the centre considers that the circumstances are exceptional and isolation of the resident for that longer period has been approved by the Chief Executive (Youth Justice Administration Regulations 2016 (SA), reg 6(7)(c)). Detention in a safe room is subject to time limits without extension – no longer than 24 hours for residents aged between 12 and 14 years, no longer than 48 hours for residents aged 15 years or over (*Youth Justice Administration Act 2016* (SA) s 28(4)).

clxxiv Under s 488 of the *Children, Youth and Families Act 2005* (Vic), the period of isolation must simply be approved by the Secretary.

clxxv Where a detainee has been confined to their sleeping quarters or a designated room as a punishment for a detention offence, the confinement must not exceed 24 hours (if imposed by the superintendent) or 48 hours (if imposed by a visiting justice) (*Young Offenders Act 1994* (WA), s 173)(e); *Young Offenders Regulations 1995* (WA) reg 74(1)). A detainee so confined is entitled to fresh air, exercise and staff company for a period of at least 30 minutes every 3 hours during unlock hours (*Young Offenders Regulations 1995* (WA) reg 76(3)). A detainee may also be confined in order to maintain good government, good order or security in a detention centre for a period not exceeding 24 hours. (*Young Offenders Act 1994* (WA) s 196(2)(e); *Young Offenders Regulations 1995* (WA) reg 74(2)). A detainee whose confinement is for 12 hours or longer is entitled to at least one hour of exercise each 6 hours during unlock hours (reg 79(4)).

clxxvi UN General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules): resolution / adopted by the General Assembly*, 8 January 2016, A/RES/70/175, r 42.

clxxvii The segregation of a detainee under this division is not to affect the standards applying to the detainee (*Children and Young People Act 2008* (ACT) s 206), which are set out in s 141 of the Act, and reflect international standards. Note that these standards may be applied in a way which is necessary and reasonable for the purposes of the segregation (s 206(b)). S 2.5 of the *Children and Young People (Segregation) Policy and Procedures 2018* (No.1) also specifically incorporates several international standards into the application of the policy.

---

clxxviii See *Youth Justice Act 2017* (NT) s 155B.

clxxix UN General Assembly, *United Nations Rules for the Protection of Juveniles Deprived of Their Liberty: resolution / adopted by the General Assembly*, 2 Apr. 1991, A/RES/45/113, r. 67; UN Committee on the Rights of the Child, General Comment No. 10 (2007) *Children's rights in juvenile justice*, 25 Apr. 2007 (CRC/C/GC/10) ¶ 89. See also: UN General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules): resolution / adopted by the General Assembly*, 8 January 2016, A/RES/70/175, r 45(2).

clxxx S 205 of the *Children and Young People Act 2008* (ACT) states that, 'To remove any doubt, segregation under this division must not be used for punishment or disciplinary purposes.'

clxxxi Confinement to a place for a period not exceeding 12 hours or, in the case of a detainee of or over the age of 16 years, not exceeding 24 hours, is permitted as punishment for misbehavior under s 21(1)(d) (*Children (Detention Centres) Acts 1987* (NSW)).

clxxxii See *Youth Justice Act 2017* (NT) s 155A(1).

clxxxiii Punishment is not included in the exhaustive list of grounds for separation of a detainee in a locked room (Youth Justice Regulations 2016 (Qld), reg 21(1)). However, some of these grounds are expansive, such as separation to restore order in the detention centre, or for routine purposes under a direction issued by the chief executive. Separation is not listed in reg 16(4) as a prohibited way of disciplining a child.

clxxxiv *Youth Justice Administration Act 2016* (SA) s 6(6).

clxxxv *Youth Justice Act 1997* (Tas) s 132(a).

clxxxvi The use of isolation as a punishment is prohibited under s 487 of the *Children, Youth and Families Act 2005* (Vic).

clxxxvii Confinement is expressly allowed as a punishment for detention offences under the *Young Offenders Act 1994* (WA) s 173(e).

clxxxviii UN General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules): resolution / adopted by the General Assembly*, 8 January 2016, A/RES/70/175, r 75-76.

clxxxix Under s 226(3)(a) of the *Children and Young People Act 2008* (ACT), the director-general must ensure that restraints are only used by youth detention officers trained to use them. Under s. 3 of the *Children and Young People (Use of Force) Policy and Procedures 2018* (No.1) (Notifiable instrument NI2018-451), only those youth workers, transfer escorts and escort officers who have successfully completed the approved training are permitted to use force at or in relation to a detention place, and the Manager must ensure youth workers receive approved training in relation to the use of force, including the use of instruments of restraint. The Manager must ensure that instruments of restraint are only used by youth workers in accordance with the policy.

cx c There is no reference to training in relation to use of restraints or segregation in either the *Children (Detention Centres) Act 1987* (NSW) or *Children (Detention Centres) Regulation 2015* (NSW). In the NSW Juvenile Justice Executive Committee *Code of Conduct* (2010) there is reference to an expectation that staff must be familiar with the requirements with which they must comply under the legislation (reg 1.5.1), however a breach of this code is only subject to the discretion of the manager or supervisor of the facility (reg 1.3).

cxci Under s 10(1)(b)(iv) of the *Youth Justice Act 2017* (NT), a person using force must hold a current qualification in physical intervention techniques on youths.

---

<sup>cxcii</sup> A staff member must successfully complete physical intervention training approved by the Chief Executive in order to use ‘approved restraints’ or use of force against a detainee (Youth Justice Regulations 2016 (Qld) reg 18).

<sup>cxci</sup> Under reg 8(5)(b) (Youth Justice Administration Regulations 2016 (SA)), mechanical restraint may only be used by an employee of the centre who has been trained in the use of such restraints.

<sup>cxci</sup> There are no prerequisite training requirements pertaining to the permitted use of reasonable force in the context of search or isolation under s 131 and s 133 of the *Youth Justice Act 1997* (Tas), or in the Youth Justice Regulations 2009 (Tas).

<sup>cxci</sup> Under reg 71(2) of the Young Offenders Regulations 1995 (WA), a person cannot use a physical restraint hold when applying prescribed force unless ‘that person has received instruction in the proper use of that hold’ (reg 71(2)(a)).

<sup>cxci</sup> UN Committee on the Rights of the Child, General Comment No. 10 (2007) *Children’s rights in juvenile justice*, 25 Apr. 2007 (CRC/C/GC/10) ¶ 89 (‘Independent and qualified inspectors should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative; they should place special emphasis on holding conversations with children in the facilities, in a confidential setting.’) Also, UN General Assembly, *United Nations Rules for the Protection of Juveniles Deprived of Their Liberty: resolution / adopted by the General Assembly*, 2 Apr. 1991, A/RES/45/113, r 72.

<sup>cxci</sup> The *Children and Young People Act 2008* (ACT) establishes a procedure for independent Official Visitors, including access to detention centres, a system for complaints, and access to sensitive information (see Part 2.3). Further, at any reasonable time, the following persons may enter and inspect a detention centre: (a) a judge; (b) a magistrate; (c) a member of the Legislative Assembly; (d) a commissioner exercising functions under the Human Rights Commission Act 2005; (e) the ombudsman (s 153).

<sup>cxci</sup> An Official Visitor programme is overseen by the Inspector of Custodial Services. Official visitors may visit a detainee at any time (Children (Detention Centres) Regulations 2015 (NSW) reg 28).

<sup>cxci</sup> An official visitor scheme is established under Part 9 of the *Youth Justice Act 2017* (NT).

<sup>cc</sup> The Office of the Public Guardian conducts a Community Visitor programme under the *Public Guardian Act 2014* (Qld).

<sup>cci</sup> An Official Visitors scheme is established under Part 3 of the *Youth Justice Administration Act 2016* (SA).

<sup>ccii</sup> S 135A of the *Youth Justice Act 1997* (Tas) states that a ‘prescribed officer’ is entitled to be allowed access at any reasonable time for the purpose of exercising their functions – ‘prescribed officer’ is defined under reg 6 of the Youth Justice Regulations 2009 (Tas) as the Commissioner for Children and Young People (reg 6(a)), or the Custodial Inspector (reg 6(b)). Per reg 7, the functions of these officers are then outlined in their respective corresponding Acts (*Commissioner for Children and Young People Act 2016* (Tas) and *Custodial Inspector Act 2016* (Tas)). This includes monitoring, and mandatory inspection of youth detention facilities (*Commissioner for Children and Young People Act 2016* (Tas) s 8, and *Custodial Inspector Act 2016* (Tas) s 6, respectively). The independence of each of these prescribed officers is then also codified in their corresponding Acts (*Commissioner for Children and Young People Act 2016* (Tas) s 8(3), and *Custodial Inspector Act 2016* (Tas) s 7).

<sup>cciii</sup> The Commission for Children and Young People oversees an Independent Visitor programme.

<sup>cciv</sup> *Inspector of Custodial Services Act 2003* (WA), s. 41.

---

<sup>ccv</sup> There is no corresponding offence to the prohibition within either the Act or relevant policies. Further, the Act imposes only a low threshold of subjective belief on 'reasonable grounds' to circumvent the limitations on use of force (see for example *Children and Young People Act 2008* (ACT) ss 223(3) and 224(a)-(b)).

<sup>ccvi</sup> It is an offence under s 22 of the *Children (Detention Centres) Act 1987* (NSW) to handcuff or forcibly restrain a detainee without reasonable excuse, or to punish a detainee in a prohibited manner (including striking, cuffing, shaking or subjecting them to any other form of physical violence, dosing them with medicine or any other substance, compelling them to hold himself or herself in a constrained or fatiguing position, subjecting them to treatment of a kind that could reasonably be expected to be detrimental to his or her physical, psychological or emotional well-being, subjecting to treatment of a kind that is cruel, inhuman or degrading, or segregating them in contravention of the Act). A person who does so is guilty of an offence and liable to a penalty not exceeding 10 penalty units or imprisonment for a period not exceeding 12 months, or both (s. 22(3)).

<sup>ccvii</sup> While ss 10, 153 and 154 of the *Youth Justice Act 2017* (NT) place prohibitions on the use of force (with some exceptions), there is no corresponding offence found in either the Act or Youth Justice Regulations 2017 (NT).

<sup>ccviii</sup> While the use of restraints is prohibited (unless approved by the chief executive), neither the *Youth Justice Act 1992* (Qld) or Youth Justice Regulation 2016 (Qld) expressly create a corresponding offence in relation to a contravention of this prohibition.

<sup>ccix</sup> While s 33 of the *Youth Justice Administration Act 2016* (SA) restricts the use of force, there is not corresponding offence under either the Act, or the Youth Justice Administration Regulations 2016 (SA).

<sup>ccx</sup> While s 132(b) of the *Youth Justice Act 1997* (Tas) prohibits the use of force (with some exceptions), there is no corresponding offence within the Act.

<sup>ccxi</sup> While s 487 of the *Children, Youth and Families Act 2005* (Vic) prohibits the use of force (with some exceptions), there is no corresponding offence within the Act.

<sup>ccxii</sup> While s 11C of the *Young Offenders Act 1994* (WA) limits the use of force, there is no corresponding offence within the Act, or the Young Offenders Regulations 1995 (WA).

<sup>ccxiii</sup> Under s 878 of the *Children and Young People Act 2008* (ACT), an official, or anyone engaging in conduct under the direction of an official, is not civilly liable for conduct engaged in honestly and without recklessness in the exercise of a function under the Act, or in the reasonable belief that the conduct was in the exercise of a function under the Act. Any liability that would attach to an official attaches instead to the Territory. According to the Children and Young People (Use of Force) Policy and Procedures 2015 (No.1) (Notifiable instrument NI2015-400), youth worker, transfer escort and escort officer may be criminally liable for any excessive use of force (s 6.36).

<sup>ccxiv</sup> There are no limitations on criminal or civil liability in the *Children (Detention Centres) Act 1987* (NSW) or the Children (Detention Centres) Regulation 2015 (NSW).

<sup>ccxv</sup> Under s 215 of the *Youth Justice Act 2017* (NT), a person is not civilly or criminally liable for an act done or omitted to be done in good faith in the exercise or purported exercise of a power, or the performance or purported performance of a function, under the Act. This does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

---

<sup>ccxvi</sup> There are no limitations on criminal or civil liability in the *Youth Justice Act 1992* (Qld), or corresponding Youth Justice Regulation 2016 (Qld).

<sup>ccxvii</sup> There are no limitations on criminal or civil liability in the *Youth Justice Administration Act 2016* (SA) or the Youth Justice Administration Regulations 2016 (SA).

<sup>ccxviii</sup> There are no limitations on criminal or civil liability in the *Youth Justice Act 1997* (Tas) or the Youth Justice Regulations 2009 (Tas).

<sup>ccxix</sup> Under s 487A of the *Children, Youth and Families Act 2005* (Vic), an officer is not personally liable for injury or damage caused by the use of reasonable force in accordance with section 487. This does not affect the liability of the Crown or any other body or person.

<sup>ccxx</sup> Under s 182(2) of the *Young Offenders Act 1994* (WA), 'any action in tort does not lie against a person for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act'. However this section does not relieve the Crown of this civil liability (s 182(4)).