



Pre-visit submission to the United Nations Working Group on Arbitrary Detention

by Community Restorative Centre (CRC)

3 November 2025

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ACKNOWLEDGEMENT OF COUNTRY

CRC acknowledges the Traditional Custodians of the land on which we work and live. We recognise their continuing connection to land, water, and community. The offices of CRC stand on the lands of the Gadigal, Wangal, Bidjigal, Wiljkali, Baarkintji, Darug, Wiradjuri, Dharawal, Awabakal, and Worimi peoples. We recognise their continuing connection to land, water, and community, and pay respects to Elders, past and present.

The overrepresentation of First Nations people in the criminal legal system¹ across Australia is a national shame. We recognise the harm caused by carceral systems and the tireless advocacy of First Nations people to reduce the criminalisation of their communities.

Ultimately, incarceration is not part of First Nations cultures in Australia, and First Nations people have had, and continue to have, systems of accountability outside of the colonial carceral system.

¹ We use the term ‘criminal legal system’, as opposed to ‘criminal justice system’ to reflect that the ‘justice system’ in Australia has been imposed on First Nations communities without their consent through settler colonialism. The term ‘criminal legal system’ also highlights the way the system-including police, courts and prisons- frequently fail to deliver justice. These failures are part of a broader, ongoing problem. This is evident in the fact that First Nations people in Australia have the highest imprisonment rate in the world, are racially targeted by police, and experience a lack of accountability from the ‘justice system’ when First Nations people die in custody. More broadly, the system criminalises people experiencing homelessness, poverty, mental illness, disability, alcohol and other drug dependency and trauma, and perpetuates cycles of marginalisation and disadvantage. In this way, the system does not deliver ‘just’ outcomes for individuals or communities. By using ‘criminal legal system’, we acknowledge the harmful effects of colonial systems and seek to validate people’s lived experiences. Changing language is one part of our effort to advocate for systems that are ‘just’ for all communities.

ABOUT COMMUNITY RESTORATIVE CENTRE

Community Restorative Centre (CRC) is the lead NGO in New South Wales (NSW), Australia, providing specialist support to people affected by the criminal legal system, with a particular emphasis on the provision of post-release and reintegration programs for people with multiple and intersecting needs exiting prison. Recognising First Nations communities are overrepresented in the prison system, CRC supports a large number of First Nations community members in our everyday work.

CRC has over 70 years of specialist experience supporting people involved with prison systems. All CRC programs aim to reduce recidivism, break entrenched cycles of criminal legal system involvement, and build pathways out of the criminal legal system. CRC works holistically to do this, addressing issues such as homelessness, drug and alcohol use, social isolation, physical and mental health, disability, employment, education, family relationships, financial hardship, and histories of trauma.

OVERVIEW

We make this submission to the United Nations Working Group on Arbitrary Detention (UNWGAD) ahead of its visit to Australia from 1-12 December 2025. We provide this submission to assist the UNWGAD to prepare for its visit and understand some of the issues of concern to CRC in relation to arbitrary detention in Australia.

We encourage you to refer to the appendix at the end of this document for examples of organisations and groups that can be contacted for consultation or to learn more about the arbitrary detention concerns we detail in this submission. We also welcome the UNWGAD meeting with CRC whilst in Australia to discuss the issues we have raised.

Recognising the scope of arbitrary detention

We recognise that the term ‘detention’ refers to a ‘deprivation of liberty’ (OHCHR, 2024, p. 10), and that a ‘deprivation of liberty’ means instances where a person ‘is unable to leave at will’ (OHCHR, 2024, p. 11). We note guidance from the United Nations Human Rights Office of the High Commissioner on instances where the deprivation of one’s liberty becomes

arbitrary (OHCHR, 2024, pp. 12–20), and the summary of instances provided by the United Nations Human Rights Council below:

Category I: when it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his [sic] sentence or despite an amnesty law applicable to the detainee);

Category II: when the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights;

Category III: when the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character;

Category IV: when asylum seekers, refugees or migrants are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy;

Category V: when the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (United Nations Human Rights Council, n.d., pp. 2–3).

We also recognised the instances where deprivation of liberty is not considered arbitrary, including:

it results from a final decision taken by a domestic judicial instance and which is both in accordance with domestic law and in accordance with other relevant international standards set forth in the Universal Declaration of Human Rights and the relevant international instruments accepted by the State concerned (OHCHR, 2024, p. 12).

How we developed this submission

To develop this submission, CRC consulted with organisations/groups including the Intellectual Disability Rights Service (IDRS),² the Aboriginal Legal Service NSW/ACT,³ and the Trans and Gender Diverse Criminal Justice System Advisory Council to Corrective Services NSW.⁴ We would especially like to thank IDRS for supplying case studies and content relating to the arbitrary detention of people with disabilities for this submission.

In addition to consultation with other organisations and groups, CRC drew on our experience of direct service provision (including casework and counselling) to people exiting prison in NSW. We additionally drew on research by CRC's Advocacy, Research and Policy Unit.

Summary of Recommendations

First Nations communities

- **Recommendation 1:** that the Australian government implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), through developing an action plan in consultation with First Nations people. This action plan should include annual reporting to parliament.
- **Recommendation 2:** that the government increase funding and support for Aboriginal Community Controlled organisations that divert people's involvement with the criminal legal system at the earliest possible opportunity. This includes services providing long-term, individualised, outreach, holistic support, and that bolster the social and emotional wellbeing of individuals and their families.
- **Recommendation 3:** that governments ensure every First Nations person who is involved in the criminal legal system has access to culturally safe support at every critical point in the system.

² IDRS is a frontline service working with people with cognitive disability. It is particularly knowledgeable about the arrest and detention of people who should be provided with support in community, and where detention is used as an alternative to community support, secure housing and as a means to address challenging communication and/or behaviours.

³ The ALS NSW/ACT is an Aboriginal community-controlled peak organisation that provides free, culturally appropriate legal advice, representation, information and referrals for Aboriginal communities in NSW and the ACT. CRC's consultation with the ALS particularly informed points in this submission regarding bail law tightening and mandatory minimum sentencing.

⁴ This Council includes relevant individuals from Corrective Services NSW, the NSW Department of Communities and Justice, the Justice Health and Forensic Mental Health Network, trans workers from relevant community organisations, and trans-focused community services. The Council provided input into the section of this submission related to the arbitrary detention of trans and gender diverse communities.

- **Recommendation 4:** the minimum age of criminal responsibility should be raised to at least 14 across all jurisdictions in Australia.
- **Recommendation 5:** that state and territory governments abolish mandatory minimum sentencing.

People with mental health needs

- **Recommendation 6:** the audit of, and change to, relevant legislation and policy in Australia to ensure it is in alignment with international obligations regarding people with mental healthcare needs (United Nations High Commissioner for Human Rights, 2025, p. 6).
- **Recommendation 7:** That unmet mental health needs are addressed in the community, rather than through involuntary mental health treatment, via action to ensure mental health services are, ‘affordable, accessible, equitable and culturally appropriate, including for groups in marginalized or vulnerable situations’ (United Nations High Commissioner for Human Rights, 2025, p. 17).
- **Recommendation 8:** that government offer reparative justice options for people who have been subject to involuntary treatment, including compensation, apologies, and oversight of this process through community mechanisms (United Nations High Commissioner for Human Rights, 2025, p. 18).
- **Recommendation 9:** that government expand its support for culturally appropriate, peer-led interventions for communities in need of mental health support (United Nations High Commissioner for Human Rights, 2025, p. 17).

People with disabilities

- **Recommendation 10:** Independent and accessible communication be available to women when interacting with criminal legal system actors (including police and courts) regarding domestic and family violence (DFV) (Women with Disabilities Australia & People with Disabilities Australia, 2024, p. 7).
- **Recommendation 11:** there be greater accessibility and cultural safety in DFV services for women with disabilities who experience DFV.

- **Recommendation 12:** Police are adequately trained to support women with disabilities who experience DFV, via training co-designed with women with disabilities (Women with Disabilities Australia & People with Disabilities Australia, 2024, p. 13)
- **Recommendation 13:** that a 5-year national action plan be developed to end violence against women who have disabilities (Women with Disabilities Australia & People with Disabilities Australia, 2024, p. 13).

Trans and Gender Diverse (TGD) people

- **Recommendation 14:** that the gender identity of trans and gender diverse people be respected in carceral settings.
- **Recommendation 15:** that there be more targeted diversionary policies and programs, in addition to post-release transition services and resources, for TGD individuals exiting prison across Australia.
- **Recommendation 16:** that governments and NGOs better address the challenges TGD individuals experience upon being released from custody- for example, in relation to exclusion from services related to their identity.
- **Recommendation 17:** eliminate solitary confinement in carceral settings based on trans and gender diverse status.

Migrant sex workers

- **Recommendation 18:** That the Australian Border force cease the targeting of sex worker workplaces through raids on these places of employment (Scarlet Alliance, 2025).
- **Recommendation 19:** that Australia end its policy of mandatory detention to reduce migrant sex workers becoming entangled in arbitrary detention.

Bail law and policy

- **Recommendation 20:** that culturally appropriate accommodation be provided to all people who are seeking bail but facing homelessness, so people are not denied bail on the basis of being homeless.

- **Recommendation 21:** that governments cease pursuing a ‘tough on crime’ approach through the persistent tightening of bail laws.

Prison conditions

- **Recommendation 22:** that all NSW prison staff follow Corrective Services policy in relation to the segregation of individuals who are incarcerated.
- **Recommendation 23:** That there be a requirement for state and territory governments to report more fulsome and reliable data on restrictive practices and solitary confinement inside prisons, including demographic information on who faces such practices.
- **Recommendation 24:** The Australian Government fully implement the Optional Protocol to the Convention Against Torture (OPCAT), to ensure independent oversight and reporting on solitary confinement in prisons.
- **Recommendation 25:** A legislative ban on all spit hoods in Australia.

Arbitrary detention beyond prison walls

- **Recommendation 26:** that governments implement alternative first responders to the police in instances more appropriately addressed through a social or mental health response.

CRC'S CONCERNS REGARDING ARBITRARY DETENTION

First Nations communities

Social determinants of incarceration in Australia, including colonialism and racism against First Nations peoples, drive the hyperincarceration of First Nations peoples in prisons. Many instances of arbitrary detention explored in this submission are thus disproportionately felt by First Nations communities.

Work CRC has been engaged with and encourages government to support to combat the overrepresentation of First Nations communities in prisons and arbitrary detention is detailed below.

The implementation of UNDRIP

CRC has engaged in advocacy to politicians, including the Prime Minister, to implement the United Nations Declaration on the Rights of Indigenous Peoples in Australia (UNDRIP) (United Nations Declaration on the Rights of Indigenous Peoples, 2007). UNDRIP was endorsed by the Australian Government in 2009, though it has not been implemented. Failing to implement UNDRIP breaches Article 38 of the Declaration, which obliges the government to do so. Numerous articles in UNDRIP champion the rights of First Nations communities to self-determination, freedom from discrimination and to lives free from the prison system. Such articles include:

- a) Article 2, which states, 'Indigenous peoples...are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination'.
- b) Article 3- Indigenous peoples have the right to self-determination.
- c) Article 10- that Indigenous peoples shall not be forcibly removed from their lands or territories.

To implement UNDRIP, CRC has, alongside First Nations-led organisations, recommended that the federal government develop an action plan to implement UNDRIP in consultation with First Nations people. This action plan should include annual reporting of implementation progress to parliament.

Diversion from the prison system and decarceration

CRC advocates to government to increase funding and support for Aboriginal Community Controlled organisations that divert people from involvement with the criminal legal system at the earliest possible opportunity, to reduce exposure to arbitrary detention. This includes services providing long-term, individualised, outreach, holistic support, and that bolster the social and emotional wellbeing of individuals and their families.

Throughout its work, CRC also advocates that government policy and legislation be focused on decarceration, recognising the key to reducing the hyperincarceration and deaths in custody of First Nations people is reducing people's involvement with the prison system entirely (Bugmy et al., 2020, p. 6).

The need for community-led, culturally safe, First Nations support (at every point in the criminal legal system)

It is CRC's view that every First Nations person who is involved in the criminal legal system should have access to support at every critical point in the system (Bugmy et al., 2020, pp. 5–6). This support should be *independent* from the government institutions that are responsible for policing and punishing, and should be led by First Nations communities.

Recommendation 1: that the Australian government implement UNDRIP, through developing an action plan in consultation with First Nations people. This action plan should include annual reporting to parliament.

Recommendation 2: that the government increase funding and support for Aboriginal Community Controlled organisations, which divert people from involvement with the criminal legal system at the earliest possible opportunity. This includes services providing long-term, individualised, outreach, holistic support, and that bolster the social and emotional wellbeing of individuals and their families.

Recommendation 3: that government ensure every First Nations person who is involved in the criminal legal system has access to culturally safe support at every critical point in the system.

The need to raise the criminal age of responsibility across Australia to at least 14

We highlight that the deleterious effects of Australia's refusal to raise the minimum age of criminal responsibility is one that especially harms First Nations children and young people, who comprise the majority of children under the age of 14 in youth 'justice' systems (Clancey et al., 2020; McGlade & Davis, 2025). Children entering prison at young ages is not rehabilitative and does not make communities safer; rather, it increases the likelihood of ongoing involvement in the prison system. The age of criminal responsibility is the primary legal barrier to criminalisation and thus protection from entry into the criminal legal system (Cunneen, 2020).

The low age of criminal responsibility is out of alignment with the stance of the United Nations. The low age of criminal responsibility in many jurisdictions in Australia contradicts Article 37(b) of the UN Convention on the Rights of the Child (UNCRC), which states that for children, imprisonment must be a last resort (UN Convention on the Rights of the Child, 1989). The UNCRC has been ratified by Australia. We appreciate calls by the United Nations to increase the minimum age of criminal responsibility to at least 14 (United Nations Committee on the Rights of the Child (UNCRR), 2019). Despite this, we are concerned that in almost every jurisdiction across Australia (outlined in the table below), the minimum age of criminal responsibility is still 10 years old. This means that children as young as 10 are arrested, charged and confined in prison. Many have not been found guilty and are on remand.

Jurisdiction	Status	Progress
Commonwealth	10 years old	No public commitment to raise the age.
New South Wales	10 years old	No public commitment to raise the age.
Queensland	10 years old	No public commitment to raise the age.
Victoria	12 years old	Committed to raise the age to 12 in 2024, but rescinded previous commitment to raise the age to 14 by 2027.

South Australia	10 years old	No public commitment to raise the age.
Western Australia	10 years old	No public commitment to raise the age.
Northern Territory	10 years old	In 2024, the newly elected NT government reversed the previous government's move to raise the age to 12.
Tasmania	10 years old	Commitment to raise the age to 14 and raise the age of detention to 16. However, this will not be implemented until 2029.
Australian Capital Territory	14 years old	Raised the age to 14 in 2025, but there are exceptions for particular 'offences'.

Recommendation 4: that the age of criminal responsibility be raised to at least 14 across all state and territory jurisdictions.

Minimum mandatory sentencing in NSW

CRC supports concerns raised by organisations like the Aboriginal Legal Service NSW/ACT (Aboriginal Legal Service NSW/ACT, 2023, p. 9) about mandatory sentencing in Australia, and is worried that such an approach precipitates arbitrary detention. The NSW Parliamentary Research Service explains mandatory sentencing thus:

Generally, criminal laws in Australia set a maximum penalty for the offence, but do not set a minimum penalty. Judges therefore retain significant discretion to decide upon an appropriate penalty in each case...Mandatory sentencing laws are generally considered to be laws that specify a minimum penalty or a fixed penalty that a judge must impose in relation to a particular offence or type of offender (Roth, 2014, pp. 1–2).

As lawyer and past President of the Australian Law Council, Greg McIntyre explains, 'mandatory sentencing laws exist in all Australian jurisdictions and continue to be considered by governments adopting "tough on crime" political stances' (McIntyre, 2025). Mandatory minimum sentences can constitute arbitrary detention, as they can impinge on the right to a fair trial (Category 3 of the Working Group's definition of arbitrary detention), which necessitates an independent judiciary. Mandatory minimum sentences notably mean that politicians, as opposed to the courts, decide punishments (Human Rights Law Centre, 2025b), impinging on the independence of the judiciary.

Examples of mandatory minimum sentencing in Australia include:

- Mandatory minimum sentences for offences like drug trafficking and murder in NSW.
- The introduction of legislation in Queensland in 2024 called the *Making Queensland Safer Act 2024*, which was branded by the slogan ‘adult time for adult crime’ (Making Queensland Safer Act 2024 (Qld), n.d.; McIntyre, 2025). As legal expert Greg McIntyre states, the law means that, ‘children are actually treated more harshly than adults in some instances’ (McIntyre, 2025). He further explains that the legislation removes, ‘judges’ discretion in relation to fundamental principles such as that detention should only be a last resort for children, and that children’s history and circumstances need to be weighed carefully against the impact of their offending on victims’ (McIntyre, 2025).

Notably, mandatory minimum sentencing is costly, ineffective and heightens the likelihood of the incarceration of minoritised communities, which is why CRC and other stakeholders call for it to be repealed. The Australian Law Reform Commission explains, ‘evidence suggests that mandatory sentencing increases incarceration, is costly and is not effective as a crime deterrent’ (Australian Law Reform Commission, 2017, p. 30). The Commission also expressed concern about the impact mandatory sentencing would have on minoritised groups, such as First Nations people, and, similarly to the Aboriginal Legal Service NSW/ACT, recommended that mandatory sentencing laws be repealed in Australia (Aboriginal Legal Service NSW/ACT, 2023, p. 9; Australian Law Reform Commission, 2017, p. 30).

Recommendation 5: that state and territory governments abolish mandatory minimum sentencing.

People with mental health concerns

Involuntary mental health treatment

Involuntary treatment is the compulsory assessment and/or treatment of people with a mental health condition without the person's consent. People with Disabilities Australia and others explain:

Mental health legislation authorises involuntary psychiatric intervention, including hospital detention of people with mental health conditions, as well as the use of seclusion, physical force, using belts or straps to restrict movement, or pharmacological interventions to control behaviour' (People with Disabilities Australia et al., 2025, p. 14).

Such a situation can precipitate arbitrary detention for people with mental health support needs (Australian Human Rights Commission, 2025, p. 28). The involuntary treatment of people with mental health support needs is particularly concerning to CRC, given the overrepresentation of people with mental health needs in prisons. CRC supports the Royal Australian and New Zealand College of Psychiatrists (RANZCP) position, which opposes involuntary mental health treatment for people in custody, and emphasises the urgent need for the government to provide alternatives (RANZCP, 2017). Involuntary treatment of mental health conditions within and outside of prison can be traumatic, counterproductive, undermine therapeutic relationships, increase disengagement, and there have been documented instances of it leading to physical harm and death (Carroll et al., 2021; People with Disabilities Australia et al., 2025, p. 15).

The rate of involuntary treatment in Australia is high compared to other jurisdictions, which concerns CRC. Notably, scholar Amy Corderoy and others draw attention to the fact that Australia has, 'one of the highest rates of involuntary treatment per 100,000 population of 22 countries across Europe, Australia and New Zealand, with an average annual increase of 3.44%' (Corderoy et al., 2025).

There are numerous ways involuntary mental health treatment can be a breach of international instruments, all of which Australia has ratified or is a signatory to, including:

- Article 3 of the Convention on the Rights of People with Disability (CRPD) and its preamble, which states people with disability have a right to dignity and individual autonomy (Convention on the Rights of Persons with Disabilities, 2006);
- the right to non-discrimination, stipulated in Article 5 of the CRPD and Article 7 of the Universal Declaration of Human Rights (UDHR) (Convention on the Rights of Persons with Disabilities, 2006; Universal Declaration of Human Rights, 1948).

Involuntary treatment is a clear instance of people with mental health concerns facing differential treatment to others.

- the right of people with psychosocial disabilities to exercise legal capacity on an equal basis with others, as stated in Article 12 of the CRPD (Convention on the Rights of Persons with Disabilities, 2006; United Nations High Commissioner for Human Rights, 2025, pp. 5–6)
- The right to liberty and security of the person, as set out in Article 14 of the CRPD (Convention on the Rights of Persons with Disabilities, 2006; United Nations High Commissioner for Human Rights, 2025, pp. 5–6).
- The right to live independently and be included in the community, as set out in article 19 of the CRPD (Convention on the Rights of Persons with Disabilities, 2006; United Nations High Commissioner for Human Rights, 2025, pp. 5–6).

The need for further investment in mental health alternatives to involuntary treatment (including community-based care) is clear in international spending on mental health budgets. As the United Nations High Commissioner points out: ‘a median of only 2.1 per cent of health budgets globally is allocated to mental health, of which most resources go to psychiatric institutions rather than non-biomedical community-based care.

Consequently, community-based care systems are underdeveloped and underutilized’ (United Nations High Commissioner for Human Rights, 2025, p. 6).

Some alternatives to involuntary treatment are included in the recommendations for this section below.

Recommendation 6: an audit of, and change in, legislation and policy in Australia to ensure it is in alignment with international obligations regarding people with mental healthcare needs (United Nations High Commissioner for Human Rights, 2025, p. 6).

Recommendation 7: That unmet mental health needs are addressed in the community, rather than through involuntary treatment, through further action to ensure mental health services are, ‘affordable, accessible, equitable and culturally appropriate, including for groups in marginalized or vulnerable situations’ (United Nations High Commissioner

for Human Rights, 2025, p. 17).

Recommendation 8: that the government offer reparative justice options for people who have been subject to involuntary treatment, including compensation, apologies, and oversight of this process through community mechanisms (United Nations High Commissioner for Human Rights, 2025, p. 18).

Recommendation 9: that the government expand its support for peer-led interventions that are culturally appropriate to the communities that need mental health support (United Nations High Commissioner for Human Rights, 2025, p. 17).

People denied access to courses required for parole in mental health units

CRC caseworkers have shared stories of Corrective Services NSW (the body that runs government prisons in NSW) refusing permission for some people in prison to complete courses they need to support their parole application, due to their placement in a mental health unit. In one example, a client had autism, placing them in a mental health section of the prison. Given this, permission was not granted to undertake courses unless they were in the general population. However, the person's charges put them at risk in a general population. This restricts a person's access to parole, inhibits their chance to rehabilitate and extends their time in prison unnecessarily. These issues are affecting many people in prison and causing concern to their families in the community.

The denial of parole due to mental health unit placement breaches international human rights standards. This includes being a breach of Article 7 of the UDHR, which states everyone has an entitlement to, 'equal protection against any discrimination' (Universal Declaration of Human Rights, 1948). It also breaches Article 14 of the CRPD, which Australia has ratified, that requires state parties to:

ensure that persons with disabilities, on an equal basis with others:

- a. Enjoy the right to liberty and security of person;
- b. Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

People with disability

Inadequate options for diversion in local court

In NSW, there are limited options available to the Court which appropriately consider a defendant's disability once charged by the police. The limited availability of alternative pathways for the courts leads to the arbitrary detention of many people with cognitive disability.

Diversion under section 14 of the *Mental Health Cognitive Impairment (Forensic Provisions) Act 2020* (NSW) is one available option for the court. Under this section, a Magistrate can:

dismiss a charge and discharge the defendant--

- (a) into the care of a responsible person, unconditionally or subject to conditions, or
- (b) on the condition that the defendant attend on a person or at a place specified by the Magistrate for assessment, treatment or the provision of support for the defendant's mental health impairment or cognitive impairment, or
- (c) unconditionally (*Mental Health Cognitive Impairment (Forensic Provisions) Act, 2020*).

This provision requires that material be available to the court that identifies the nature of a person's disability and treatment or supports available, which is a requirement many cannot meet. Many people are not diagnosed as having a cognitive disability until they are already in prison. Reports required can be difficult and expensive to obtain, and supports are often not available, not adequately resourced or can take a long time to secure (for example, through lengthy National Disability Insurance Scheme application processes). Additionally, many stakeholders and actors in the criminal legal system have a limited understanding of disability, particularly cognitive disability, or how a person with cognitive disability might be appropriately supported. Even where there is evidence to support a diversion application, resulting conditions and orders by courts can be onerous, punitive and coercive. Of significance, court orders can be made even when a person has not been found guilty or convicted of any offence. As is evident, there are a range of barriers to people with cognitive disabilities attaining genuine diversion from the criminal legal system.

The barriers people with disabilities face in accessing diversion through the courts speaks to environments and knowledge gaps which can fall short of Australia's obligations under the CRPD. Relevant sections include:

- Article 8(1)(a) on 'awareness raising', which stipulates states must implement effective measures to raise awareness about the rights and dignity of people with disabilities throughout society (Convention on the Rights of Persons with Disabilities, 2006). Such an obligation includes, 'promoting awareness-training programmes regarding persons with disabilities and the rights of persons with disabilities'-Article 8(2)(d).
- Article 12, which states people with disabilities must have equal access to others before the law. When individuals are not identified as having a cognitive disability when appearing in court, and diagnosis for cognitive disability can be inaccessible due to cost, it is arguable that people with cognitive disability are not able to, 'enjoy legal capacity on an equal basis with others in all aspects of life' - Article 12(2). Additionally, Article 12(3) states, 'State Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity'. However, given many actors in the criminal legal system can have a limited understanding of cognitive disability, and ways to support people with cognitive disability, people with cognitive disabilities may not be able to access their rights under Article 12 of the CRPD.
- Article 13 of the CRPD, which says state parties, 'shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations' (Convention on the Rights of Persons with Disabilities, 2006).

Case Study

Belinda is 27-year-old young woman with intellectual disability. She has reported an extensive history of domestic violence perpetrated by her husband, who is also her carer. She has disclosed that her husband used physical violence towards her, including but not limited to 'hitting, choking, suffocation and strangulation'. He does not allow her to access any disability supports. Belinda reports that her husband is using tracking devices on her phone.

Belinda has expressed the desire to leave her husband, but is too afraid and has nowhere else to go. After an argument at home with her husband, Belinda attended the police station to report the violence perpetrated by her partner. Despite there being a current Apprehended Domestic Violence Order (ADVO) protecting Belinda after an incident where she was punched so hard in the face she was left unconscious, the police do not believe Belinda's account of what happened and end up charging her with assault and talking out an ADVO to protect her husband.

When she attended Court, the Ability Rights Service (within IDRS) made an application to have her matter dismissed and diverted in accordance with section 14 of the *Mental Health Cognitive Impairment Forensic Provisions Act* (2020) based on her disability and significant history of domestic violence. The Court refused this application, given she had one charge dismissed under this section five years ago.

Arbitrary detention for women misidentified as perpetrators of domestic and family violence (DFV)

Disability advocacy and support organisations like IDRS, Women with Disabilities Australia and People with Disabilities Australia highlight women with disabilities commonly being misidentified as the perpetrators of DFV when DFV is reported to police (Women with Disabilities Australia & People with Disabilities Australia, 2024, pp. 11–12), and troublingly, arbitrary detention can occur in relation to this. Misidentification occurs in a context where women with cognitive and intellectual disabilities (and particularly First Nations women with such disabilities) experience significantly higher rates of violence perpetrated against them than people without disability. Despite this, victim-survivors are often not believed, and their concerns are not acted upon by police. As Women with Disabilities Australia and others explain, misidentification generally stems from, 'the perpetrator appearing more credible and calmer, while the victim was emotional or perceived as unable to communicate "effectively"' (Women with Disabilities Australia & People with Disabilities Australia, 2024, pp. 11–12). IDRS explains that in general, women with disabilities are more likely to be dismissed, perceived as untruthful or unreliable by the legal sector. For First Nations women, the intersection of racism, colonialism and sexism intersect to invalidate their

experiences of harm and inaction by law enforcement. In relation to sexual violence specifically, police can lack training in supporting women with disabilities, and there are issues with a lack of accessible communication options for women with disabilities to voice their experiences, fuelling negative encounters with police (Women with Disabilities Australia & People with Disabilities Australia, 2024, p. 12).

There is a risk of deprivation of liberty for women that stems from misidentification when women with disabilities are arrested and detained by police for being the perpetrator of DFV. Notably, a deprivation of liberty stemming from DFV misidentification can breach Australia's obligations under international instruments, including to: 'recognise that women and girls with disabilities are subject to multiple discrimination and to take measures to ensure their full and equal enjoyment of all human rights and fundamental freedoms'- Article 6 of the CRPD (Convention on the Rights of Persons with Disabilities, 2006). Such a right includes women being free from violence or discrimination (Article 16 of the CRPD), to be able to access justice (Article 13 of the CRPD), and to equal recognition before the law (Article 12 of the CRPD) (Convention on the Rights of Persons with Disabilities, 2006). The misalignment between international obligations and the current experiences for women with disability in Australia can stem from processes for reporting violence being difficult and inaccessible for some women with disabilities, and few support services available to people with cognitive disability.

Case Study

Ability Rights Centre (ARC), a service within IDRS, legally assisted a woman who had experienced DFV from a family member. Despite her being the main victim of violence, the other party contacted the police first with a false allegation of violence and arrested the Centre's client. The police issued her with an ADVO. This prevented her from living in her own home. Much of her property was damaged and she held serious fears for her safety from the other party. When she attended the police station, she was not offered any support or legal advice, even though the police were aware of her disability. Despite numerous requests for police assistance, they would not help her due to her being labeled as the defendant. ARC filed a private ADVO on the woman's behalf to protect her. They encountered numerous legal difficulties related to issues they faced serving the ADVO, given

the perpetrator was evading the police and service of the ADVO. However, they were able to file an application for substitute service, which involved running a mini hearing on the issue. They were then successful in their application for an ADVO protecting the client. Since then, the other party has been charged with several offences. 18 months later, the ADVO and charges were dismissed by the court, but during that time, the provisional ADVO made by the police was still in place, wherein any breach could have resulted in further criminal charges and imprisonment.

Recommendation 10: that independent and accessible communication be available to women when interacting with the criminal legal system in relation to DFV (Women with Disabilities Australia & People with Disabilities Australia, 2024, p. 7).

Recommendation 11: that there be greater accessibility and cultural safety in DFV services for women with disabilities who experience DFV.

Recommendation 12: police are adequately trained to support women with disabilities who experience domestic and family violence, with this training being co-designed with women with disabilities (Women with Disabilities Australia & People with Disabilities Australia, 2024, p. 13)

Recommendation 13: that a 5-year national action plan be developed to end violence against women who have disabilities (Women with Disabilities Australia & People with Disabilities Australia, 2024, p. 13).

Apprehended violence orders generally, and arbitrary detention

The frequent and inappropriate use of Apprehended Violence Orders (AVOs) generally against people with cognitive disability and the failure of the AVO legislation to properly take into consideration a person's capacity to understand an AVO is a court process that can lead to the arbitrary detention of people with disability. AVOs are frequently made against people with cognitive disability who lack the capacity to understand the legal process, the order itself, or the consequences of breaching the order. AVOs can be made against people

who have little or no capacity to comply with the order due to their disability. These people are at high risk of breaching an AVO and, therefore, at high risk of incurring penalties like imprisonment. Although an AVO is a civil order, it is a criminal offence to knowingly contravene an AVO and is punishable by a fine and/or 2 years imprisonment. Making AVOs against people with impaired capacity exposes them to a high risk of criminal legal system involvement. Limited understanding by professionals and workers involved in the legal system of impaired capacity, and the potential relationship between the person's disability and behaviour, as well as inadequate services available to people with impaired capacity due to cognitive disability, contribute to this issue.

Where AVO legal processes are inaccessible to people with disabilities, and there is a lack of understanding amongst legal stakeholders about the impaired capacity of some with disabilities to understand AVOs, people with disabilities can be subject to arbitrary detention, which is contrary to Article 14 of the CRPD (Convention on the Rights of Persons with Disabilities, 2006). Other articles of the CRPD that the situation can breach include:

- Article 13 (1) on access to justice, which stipulates that parties, 'shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations' (Convention on the Rights of Persons with Disabilities, 2006).
- Article 13(2), which states that, 'in order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff'.

Case Study

A woman with a moderate intellectual disability, autism, ADHD, generalised anxiety disorder, post-traumatic stress disorder and chronic adjustment disorder lives in a group home with one other resident with intellectual disability. She also has a significant history of emotional and sexual abuse by her family. One day, the woman became upset and started ripping her clothes off. As a result, staff decided that she would not be allowed to go out on her usual day trip. The woman then became very upset and started yelling at staff and kicking cars in the driveway (there was no damage to the cars). She tried to kick a staff

member. The staff that day were from an agency and had minimal experience working with this young woman. They did not follow the planned behaviour support strategies that had been developed for her. Instead, staff called the police, who charged this woman with assault and applied for a provisional ADVO to protect staff. IDRS appeared for this woman and determined that she had no knowledge or understanding of the ADVO. She did not know that it would be a criminal offence to breach the order and that she might be sent to gaol for breaching the ADVO

Trans and gender diverse (TGD) communities

TGD people being housed in carceral settings that do not align with their gender

Due to carceral settings often being premised on a rigid gender binary (there are only men's or women's prisons, for instance, and who gets to occupy these spaces are based on cisgender norms), people who are not cisgender⁵ are regularly placed in Australian prisons and detention centres that do not align with their gender (Beyond Bricks and Bars, 2025; Brocchi, 2024, pp. 96–97; Du Plessis et al., 2025; Simpson et al., 2024, p. 388; Winter, 2024). Beyond the implications of not affirming the person's gender, this can have significant implications relating to safety (Phillips et al., 2024, p. 24), wellbeing and access to essential services (Feliks, 2025). A trans decarceration project in Victoria, Beyond Bricks and Bars, which supports TGD people who have been incarcerated, said 90% of trans women they support, 'are placed in men's prisons where the risk of sexual, physical and psychological violence is a daily reality' (Beyond Bricks and Bars, 2025). Additionally, in October 2025, the Northern Territory government announced an official ban on trans women in women's prisons- a first across the country (Sargeant, 2025).

Placing trans people against their will in prisons or detention centres that do not align with their gender is a breach of Article 7 of the Universal Declaration of Human Rights, which provides the right to non-discrimination. UN bodies have affirmed that the right to non-discrimination is intended to cover the ground of gender identity. For instance, the UN High Commissioner for Human Rights has indicated that, 'human rights treaty bodies have confirmed that States have an obligation to protect everyone from discrimination on

⁵ The term cisgender refers to those who are the same gender as what they were presumed to be at birth.

grounds of sexual orientation or gender identity. The fact that someone is... transgender does not limit their entitlement to enjoy the full range of human rights' (UN Human Rights Council, 2011, p. 7).

CRC, like many TGD advocates, do not advocate simply for 'trans-affirmative' prisons or detention centres that correctly gender TGD people, but for policy approaches that focus on systemic change to the prison and detention system (Simpson et al., 2024, p. 389). We say this recognising TGD people are overrepresented in carceral settings (Mitchell et al., 2022, p. 99; Walters et al., 2024; Winter, 2024, p. 131), which is inseparable from the historical criminalisation of their perceived gender deviance (Riseman, 2023, pp. 30–36) and the current overpolicing of TGD communities (Mitchell et al., 2022). This overrepresentation is notably more acute for TGD people of colour and those who are First Nations. We advocate for policy and practice focused on decarceration, recognising that carceral settings are inherently unsafe and traumatising for a range of communities (Brocchi, 2024, p. 90).

Central components of decarceration work for TGD people include:

- ensuring there are more targeted diversionary policies and programs for trans and gender diverse people, in addition to post-release transition services and resources, to keep trans and gender diverse people out of prison. Victoria has the invaluable program Beyond Bricks and Bars, but such a service is a rarity in Australia.
- that governments and NGOs better address the challenges TGD individuals experience upon being released from custody- for example, in relation to exclusion from housing services due to being trans, issues accessing appropriate health services that meet their needs and respect their identity, and a lack of identification, to help them establish identities outside of carceral settings.

Recommendation 14: that the gender identity of trans and gender diverse people be respected in prison and detention settings.

Recommendation 15: that there be more targeted diversionary policies and programs, in addition to post-release transition services and resources, for TGD individuals exiting prison.

Recommendation 16: that governments and NGOs better address the challenges TGD individuals experience upon being released from custody- for example, in relation to exclusion from services due to being trans.

Solitary confinement

Concerns have also been raised about TGD people being subject to solitary confinement in prisons in Australia (Beyond Bricks and Bars, 2025), allegedly to manage their ‘safety’ or that of others in the rigidly gender binary prison environment (Winter, 2024, p. 139). One stakeholder reported it was common for staff to respond to instances where trans women were sexually assaulted in men’s prisons by putting trans women into solitary confinement for their ‘safety’. Staff from the Beyond Bricks and Bars project in Victoria report, ‘for the few trans women who have been allowed to go into the women’s system, all have endured long term solitary confinement locked alone in a cell for 23 hours a day’ (Beyond Bricks and Bars, 2025). They also report that, ‘for trans women prison placement is a “choice” between the risk of sexual and physical violence in the men’s system or total isolation and alienation with profound impacts on mental health and wellbeing in the women’s system’ (Beyond Bricks and Bars, 2025).⁶

The solitary confinement of TGD people can breach international law and standards, including:

- the principle of solitary confinement only being used in exceptional circumstances and as a last resort, as per rule 45 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules, 2015). Solitary confinement often means someone being isolated in their cell for up to 22 hours per day, and for multiple extended periods during the term of their imprisonment. If the person is placed in solitary confinement for extended periods- for example, in excess of 15 days- this is also a breach of the United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules, 2015).

⁶ The word ‘choice’ is placed in inverted commas in this quotation as a) for many trans people, placement is still based on sex presumed at birth, and b) the word choice implies agency and genuine options for TGD people.

- The Convention Against Torture- notably, it has been found that nearly all instances of non-disciplinary solitary confinement are in breach of this Convention (Fuller, 2018, p. 120), which Australia has ratified.
- Article 7 of the Universal Declaration of Human Rights, which cements the right to non-discrimination under the law (Universal Declaration of Human Rights, 1948).

Solitary confinement of trans and gender diverse people in carceral settings is particularly concerning given, as the Human Rights Law Centre in Australia explains, the trans and gender diverse community, ‘face disproportionate rates of distress, mental ill health, and suicidality compared to the population as a whole’ (Human Rights Law Centre, 2025a).

Recommendation 17: eliminate solitary confinement in carceral settings based on trans and gender diverse status.

Migrant sex workers

Migrant sex workers are at particular risk of arbitrary detention in immigration detention in Australia, given the potential for racial profiling at the Australian border (like airports) and targeting due to their line of work, the raids of sex worker workplaces by law enforcement, and Australia’s policy of mandatory immigration detention (Felix, 2025; Scarlet Alliance, 2025, n.d.).

A policy called ‘Operation Inglenook’ was initiated by the Australian government in 2022, following media coverage of migrant sex workers, which treated migrant sex work as synonymous with human trafficking and exploitation (Scarlet Alliance, 2025, p. 2). Operation Inglenook was a multiagency operation that, as the Australian Border Force frames it, sought to, ‘identify criminals who seek to exploit visa programs and visa holders who are victims of trafficking or modern slavery practices within the sex industry’ (Australian Border Force, 2023). While the Australian Government officially ended Operation Inglenook on 31 December 2024 (Department of Home Affairs, n.d.), through CRC’s involvement in a campaign by Scarlet Alliance, a sex worker advocacy organisation, to end the racial profiling of Asian migrant sex workers, we have heard the policy of raids on sex worker workplaces

and targeting at the border persists in Australia (Scarlet Alliance, n.d.).

Australia's policy of mandatory detention means many migrant sex workers who do not hold citizenship and are deemed not to have a correct visa by law enforcement are detained in mandatory immigration detention. Australia's policy of mandatory detention commenced in 1992, and means that, as the Australian Human Rights Commission explains any, 'non-citizen who is in Australia without a valid visa must be detained. These people may only be released from immigration detention if they are granted a visa or removed from Australia' (Australian Human Rights Commission, 2023). Such actions are permitted by the *Migration Act 1958* (Cth). The Commission also explains, 'Australia has one of the strictest immigration detention regimes in the world. It is mandatory, is not time-limited and people are not able to challenge their detention in court' (Australian Human Rights Commission, 2023). This law means many migrant sex workers, after being profiled at the border or having their workplace raided, have been held without trial in immigration detention and deported (Feliks, 2025). Notably, a slew of bodies in Australia have called for an end to the policy mandatory immigration detention, given its punitive focus on incarceration over alternatives (RACGP, 2024; Scarlet Alliance, n.d.). Scarlet Alliance argues, 'all asylum seekers should be supported to be housed in the community while awaiting immigration and visa decisions' (Scarlet Alliance, n.d.).

Sending migrant sex workers to immigration detention based on racial profiling at the Australian border and targeted raids of sex worker workplaces can breach Article 7 of the Universal Declaration of Human Rights, which stipulates the right to non-discrimination before the law. Notably, border profiling and workplace raids disproportionately impact Asian migrant sex workers (Feliks, 2025; Rossoni & Van Der Woude, 2025). Reporter Natalie Feliks explains:

Operation Inglenook almost entirely targets racial minorities, particularly workers from East and Southeast Asia. More than half of the operation's victims have come from Japan (52 per cent), with China, Taiwan and Thailand combined making up another quarter. Additionally, 93 per cent of victims are women, nearly half of whom are under thirty years old. But the main reason there has been so little reporting

about these raids is that these victims are sex workers, many are trans women, and their workplaces are brothels and massage parlours (Feliks, 2025).

Notably, exploitation occurs in a slew of workplaces across Australia, but these workplaces do not face the same raids as sex worker workplaces because of the nature of the work (sex work) being conducted (Feliks, 2025), and because of the way migrant sex workers are popularly framed through the intersection of racist, sexist and sex-worker-phobic discourses as being inherently more vulnerable than others.

Detention conditions faced by migrant sex workers are also concerning. There have been cases of trans migrant sex workers being held in male detention facilities, facing heightened violence in such settings due to being trans and being denied access to their gender affirming care (Feliks, 2025). Natalia Feliks points out, ‘it is beyond ironic that Operation Inglenook is conducted in the name of “protecting” these women from the metaphorical shackles of sex trafficking, but ends up placing them in the very real confinement of mandatory detention’ (Feliks, 2025).

The effects of raids on workplaces are also concerning, given they can be traumatising for sex workers, foster mistrust of government authorities, and reduce help-seeking behaviours (such as connecting with peer support networks and accessing services) by migrant sex workers, and drive this work underground (Scarlet Alliance, 2025, pp. 3–4).

Recommendation 18: That the Australian Border Force cease targeting sex worker workplaces through raids (Scarlet Alliance, 2025).

Recommendation 19: that Australia end its policy of mandatory detention to reduce migrant sex workers becoming entangled in arbitrary detention.

Bail law and policy

People who do not receive bail due to a lack of appropriate accommodation

Section 28 of the *Bail Act 2013* (NSW) states that a, 'bail condition can impose accommodation requirements' (Bail Act 2013 No 26 (NSW), 2013), and this provision can prevent people who lack appropriate accommodation from acquiring bail. This leads to an unfair and arbitrary form of detention for people who otherwise could be released on bail if they had a place to stay. Furthermore, this issue disproportionately affects First Nations people, young people, and people with cognitive disabilities, making the law discriminatory in practice. Under section 28 of the *Bail Act 2013* (NSW), an accommodation requirement may be imposed upon a person 'if the accused person is a child', directly impacting the liberty of young people, and disproportionately affecting First Nations people. The IDRS have highlighted an increase in the number of people with dementia being incarcerated on remand for many months due to a lack of aged care accommodation. They additionally comment that, 'gaols are becoming the accommodation of last resort for people with cognitive impairment in NSW'.

The requirement that people have a stable address to be released on bail may breach:

- Article 9(3) of the International Covenant on Civil and Political Rights (ICCPR), which states, 'it shall not be the general rule that persons awaiting trial shall be detained in custody' (International Covenant on Civil and Political Rights (ICCPR), 1966).
- Article 7 of the Universal Declaration of Human Rights, which states that 'all are equal before the law', and cements the right to non-discrimination (Universal Declaration of Human Rights, 1948). Notably, if certain groups are being denied bail because they do not have adequate housing, all are not, in practice, equal before the law.

Case Study 1

A young woman has an intellectual disability as well as mental health comorbidities and has always been supported by her parents as her main carers. She was subject to domestic violence-related charges- specifically, domestic violence and assault occasioning actual bodily harm, in addition to various AVOs and stalk/intimidate, with her parents being the other party. She is now bail refused and in prison as she can't go back to her parents' house.

Her support team consist of government and non-government supports, and she has a consistent GP in the community. IDRS work with her on submitting a guardianship application with her cousin as guardian, in addition to an NDIS access application, and investigating housing options with appropriate support.

Recommendation 20: that culturally appropriate accommodation be provided to all people who are seeking bail but facing homelessness, so they are not held needlessly in detention. Notably, Article 11(1) of the International Covenant on Economic, Social and Cultural Rights states housing is a human right (International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966).

Bail law tightening, including for children and young people

Similarly to other jurisdictions in Australia, NSW has faced bail reforms that have made it more difficult to gain bail, heightening the risk of arbitrary detention for minoritised and disadvantaged communities. In 2023, for instance, bail law reform was announced in NSW by the state government to make it more difficult for young people aged 14-17 to be granted bail for offences including specific break and enter and car theft while on bail (*Open Letter to NSW Premier Minns and the Labor Government from 560 Lawyers, Community Workers and Academics, 2024*). Concern was raised by CRC, legal practitioners, academics and other community workers that the legislative amendment- which has passed, and is subject to a sunset clause that will end October 2026 (Attorney General, 2024; Department of Communities and Justice, 2025)- will increase the number of young people in youth prisons (Open letter to NSW Premier Minns and the Labor Government 2024). There is also public concern that the law will inhibit the capacity of the NSW government to meet its Closing the Gaps targets (*Open Letter to NSW Premier Minns and the Labor Government from 560 Lawyers, Community Workers and Academics, 2024, p. 1*). Closing the Gap is a formalised national agreement between the Australian government and First Nations-led organisations to address the socio-economic inequities and hyperincarceration faced by First Nations communities in Australia. One Closing the Gap target is Target 11, which is aimed at reducing the rate of Aboriginal and Torres Strait Islander young people (10-17 years) in detention by at least 30 percent (Commonwealth of

Australia, Department of the Prime Minister and Cabinet n.d.). The Law Society of NSW said the bail law tightening is, 'likely to result in the incarceration of some children and young people who are unlikely to be found guilty of any offence... in practice, many charges against children and young people are ultimately withdrawn or dismissed, as they are not adequately supported by evidence' (McGrath 2024, p. 2). Additionally, some CRC workers noted that, prior to the reform, it was already difficult for young people they were supporting to get bail and keep them out of the harmful cycle of youth prison. The new bail law additionally sits in tension with Article 37(b) of the United Nations Convention on the Rights of a Child, which states that the detention of young people should always be a, 'last resort' (Office of the United Nations High Commissioner for Human Rights 1989).

Recommendation 21: that governments cease advocating for a 'tough on crime' approach through the persistent tightening of bail laws.

Prison conditions

Inappropriate use of solitary confinement/segregation

The discretion staff have inside NSW prisons to segregate people 'for the good order of the prison' under prison policy (Department of Communities and Justice, n.d., p. 5), has in some instances meant the inappropriate use of solitary confinement. One CRC worker reported two instances where women she supported were placed into segregation (solitary confinement) because the staff did not like the women, rather than for a genuine concern regarding the 'good order' of the prison. Corrective Services NSW policy says the Governor of the prison is meant to check on people when segregation occurs, but the caseworker reported there could be a gap between policy and practice. Additionally, the policy states, 'Segregated custody must never be used if there are other satisfactory ways of managing the identified risk(s) of the inmate. Governors (and delegates) should consider the use of Behavioural Management Plans (COPP 3.11) in defining and conveying behavioural expectations for inmates' (Department of Communities and Justice, n.d., p. 29). The caseworker also reported that in one instance, she received a posted letter from someone she was supporting inside prison asking her to connect her to legal assistance to get her out

of segregation, which eventually occurred. Such an occurrence suggests inadequate access to legal support to challenge the inappropriate use of solitary confinement.

The use of solitary confinement due to interpersonal misalignment between staff and people who are incarcerated may be a breach of international law, recognising it has been found that nearly all instances of non-disciplinary solitary confinement are in breach of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984; Fuller, 2018, p. 120), which Australia has ratified. As mentioned, Rule 45 of The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela rules) also states that solitary confinement should only be employed in exceptional circumstances and as a last resort (The Nelson Mandela Rules, 2015).

The inappropriate use of solitary confinement can be addressed in a variety of ways. Prison staff abiding by Corrective Services NSW policy is one means. Another is better mechanisms to hold government accountable in instances where inappropriate use of solitary confinement might be employed. Improved government reporting can assist with this. Notably, researchers have drawn attention to data gaps in government reporting on restrictive practices and solitary confinement in prisons in Australia. Scholar James Foulds and others note that in relation to government reports on such practices that most, 'gave limited detail on the incidence, duration, and reasons for solitary confinement, and the demographic profile of the people exposed to it' (Foulds et al., 2025, p. 21). Given First Nations people, people with disabilities, and TGD people are disproportionately exposed to solitary confinement (Foulds et al., 2025, p. 21; Winter, 2024), reliable data on those subjected to solitary confinement is crucial.

Outside of better reporting, another means of holding government accountable for its responsibilities regarding restrictive practices and solitary confinement is the Australian government implementing the Optional Protocol to the Convention Against Torture (OPCAT), which Australia has ratified. OPCAT, 'provides for the establishment of national preventive mechanisms to monitor places of deprivation of liberty, including restrictive practices such as solitary confinement' (Foulds et al., 2025, p. 21; Optional Protocol to the

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2002). Notably, scholar James Foulds and others explain, ‘inspection mechanisms are coordinated by the Commonwealth Ombudsman and involve ombudsman’s offices for the commonwealth and each state and territory, in addition to several other bodies’ (Foulds et al., 2025, p. 21). However, such preventative mechanisms are not operational in all jurisdictions in Australia (Foulds et al., 2025, p. 21). As the Committee is aware, Australia did not comply with its obligation under OPCAT in 2022-2023 to properly facilitate access by the UN Subcommittee on Prevention of Torture to places of detention, meaning the subcommittee had to suspend and then terminate a planned inspection visit to Australia (Foulds et al., 2025, p. 21). Governments implementing OPCAT would improve oversight and accountability regarding restrictive practices and solitary confinement.

Recommendation 22: that all NSW prison staff follow policy in relation to the segregation of individuals.

Recommendation 23: state and territory governments across Australia are required to report more fulsome and reliable data on restrictive practices and solitary confinement, including demographic information on who faces such practices.

Recommendation 24: The Australian Government fully implement OPCAT, to ensure independent oversight and reporting on solitary confinement in prison.

Spit hoods

There are still jurisdictions in Australia that allow the use of spit hoods on young people, despite their use contradicting international human instruments. Spit hoods are put over people’s heads in environments like custodial settings with the stated aim of preventing them from spitting at others, and this is usually coupled with force (National Spit Hoods Coalition, 2022, p.1). Notably, ‘if a spit hood is occluded with spit, vomit or sweat from a restrained person, it can pose a risk to breathing’ (National Spit Hoods Coalition, 2022, p. 2). Spit hoods, combined with force and restraint manoeuvres have been implicated in people’s deaths (National Spit Hoods Coalition, 2022, p. 1). Jurisdictions like NSW (AIHW,

2024) and South Australia have implemented legislative bans on their use. However, despite concerns with spit hoods, the Northern Territory has reintroduced their use, which sits in tension with a recommendation by the Northern Territory Ombudsman to not do so (Office of the NT Children’s Commissioner, 2023, p. 2; Torre, 2025).

The use of spit hoods has been described as inhumane (National Spit Hoods Coalition, 2022, pp. 1–2) and contravenes international human rights instruments, including:

- the Convention on the Rights of the Child, of which Article 37(c) states: ‘No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment’ (UN Convention on the Rights of the Child, 1989). Article 37(c) additionally states that, ‘Every child deprived of liberty shall be treated with humanity and respect’.
- the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, of which Article 2.1 instructs state parties to: ‘take effective, legislative, administrative and judicial or other measures to prevent acts of torture’ (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984). Notably, in 2022 the UN Committee Against Torture condemned the use of spit hoods at the Don Dale Youth Detention Centre in the Northern Territory, describing it as a ‘clear breach’ of its obligations under the Optional Protocol to the Convention (Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2002), which was ratified by Australia in 2017.

Recommendation 25: A legislative ban on all spit hoods in Australia.

Arbitrary detention beyond the prison walls

Arbitrary detention precipitated by police as first responders

Currently, police are first responders to many who more appropriately need a social support or health response in Australia, including people experiencing mental health episodes, which has led to unnecessary police contact for people we support. We recognise the report by the United Nations Office of the High Commissioner for Human rights, which noted that

law enforcement being first responders to people experiencing mental health crises was one of the 3 primary reasons for more than 85% of fatalities of people related to policing (Office of the United Nations High Commissioner for Human Rights, 2021, p. 14). The office thus recommended alternative first responders to the police and the need to use alternatives to force in such contexts. In the Australian jurisdiction of Victoria, people who have accessed mental health support services are six times as likely to be fatally shot by police (Kesic et al., 2010). A survey by the National Justice Project, a social justice-focused organisation of stakeholders, including youth, legal services and mental health organisations, showed '100% agreed that alternatives to police as first responders are urgently needed for situations where a health or social response is required' (National Justice Project, 2025, p. 4).

Police being first responders can mean people are unnecessarily held in police custody, rather than being met by social workers or peers trained in de-escalation techniques. Issues with police as first responders were reported by a CRC staff member:

It was alleged that a client scratched a police officer when they physically intervened when the client was crossing the road, during a verbal altercation with their partner. Police claimed that the physical intervention was necessary for safety reasons. The magistrate did not accept this claim. The client was subsequently scheduled by police due to concerns about their mental health. The client states that this was unnecessary. Charges against the client were dismissed at court. Additional similar reports indicate that police can be particularly unaware of de-escalation and how to support people with mental health challenges.

As can be seen, police being first responders to mental health episodes can precipitate arbitrary detention of people who would otherwise be assisted by mental health supports (or being left alone) to maintain their liberty and wellbeing (Ezer & Tomasini-Joshi, 2021). Police being first responders to those with mental health concerns can also contravene Article 7 of the Universal Declaration of Human Rights, which cements the right to non-discrimination before the law. Notably, the overrepresentation of people with cognitive disabilities and unmet mental health needs in police custody highlights the lack of equality before the law for this cohort.

Alternatives to police as first responders include the PACER (Police, Ambulance, and Clinical Early Response) model- where a mental health worker is embedded with police and ambulance services to provide early intervention. This can reduce unnecessary police engagement. PACER, as opposed to police alone as first responders, reduces hospitalisations, police use of force, and incarceration (Huppert & Griffiths, 2015). Another option is medics and social workers attending a scene where appropriate as opposed to police, and the main emergency number in Australia having a number added to it for people experiencing mental health crises (Ezer & Tomasini-Joshi, 2021; National Justice Project, 2025).

Recommendation 26: that governments implement alternative first responders to the police in instances that more suitably require a social or mental health response.

CONCLUSION

CRC would like to thank the Committee for considering the issues and recommendations made in this submission. We welcome an in-person meeting with the Committee to discuss this submission further during its visit to Australia. We also welcome other contact from the Committee should it have follow-up questions or concerns.

REFERENCES

Aboriginal Legal Service NSW/ACT. (2023). *Submission to NSW Sentencing Council Firearms, Knives and Other Weapons Offences*. NSW Sentencing Council.

<https://share.google/UTOgrLZLXBo2sQsJ1>

AIHW. (2024, December 13). *First Nations young people in detention*. Australian Institute of Health and Welfare. <https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2024/contents/summary/first-nations-young-people-in-detention>

Attorney General. (2024, March 22). New bail and performance crime laws passed to prevent youth crime. *Department of Communities and Justice*. <https://www.nsw.gov.au/media-releases/new-bail-and-performance-crime-laws-passed-to-prevent-youth-crime>

Australian Border Force. (2023). *ABF crackdown on migrant worker exploitation*. <https://www.abf.gov.au/newsroom-subsite/Pages/abf-crackdown-on-migrant-worker-exploitation-04-07-2023.aspx>

Australian Human Rights Commission. (2023). *Immigration detention and human rights*. <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/projects/immigration-detention-and-human-rights#:~:text=Since%201992%2C%20Australia%20has%20had%20a%20system,granted%20a%20visa%20or%20removed%20from%20Australia.>

Australian Human Rights Commission. (2025). *Visit of UN Working Group on Arbitrary Detention to Australia Submission to the Working Group on Arbitrary Detention*. https://humanrights.gov.au/sites/default/files/AHRC%20Submission%20to%20Working%20Group%20on%20Arbitrary%20Detention%20Public_Redacted_0.pdf

Australian Law Reform Commission. (2017). *Pathways To Justice—Inquiry Into The Incarceration Rate Of Aboriginal And Torres Strait Islander Peoples (ALRC Report No 133)*. <https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/>

Bail Act 2013 No 26 (NSW) (2013). <https://legislation.nsw.gov.au/view/html/inforce/current/act-2013-026>

Beyond Bricks and Bars. (2025). *Trans Day of Visibility post*. https://www.linkedin.com/posts/flat-out-inc_tdov-abolitionfeminism-activity-7311235869728747520-79IC/

Brocchi, N. (2024). With Love and Abolition. In *When Cops are Criminals* (pp. 87–109). Scribe.

Bugmy, K., King, T., Gray, G., Merritt, M., Morrison, T., Parker, K., Wymarra, E., & Sotiri, M. (2020). *Community Restorative Centre Submission for the Select Committee on the High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody*. https://www.crcnsw.org.au/wp-content/uploads/2025/02/CRC_Submission_First_Nations_OverAUG_2020-1.pdf

Carroll, A., Ellis, A., Aboud, A., Scott, R., & Pillai, K. (2021). No involuntary treatment of mental illness in Australian and New Zealand prisons. *The Journal of Forensic Psychiatry & Psychology*, 32(1), 1–28. <https://doi.org/10.1080/14789949.2020.1817524>

Clancey, G., Wang, S., & Lin, B. (2020). Youth justice in Australia: Themes from recent inquiries. *Trends & Issues in Crime and Criminal Justice*, No. 605. https://www.aic.gov.au/sites/default/files/2020-09/ti605_youth_justice_in_australia.pdf

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984). <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>

Convention on the Rights of Persons with Disabilities (2006). <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>

Corderoy, A., Kisely, S., Zirnsak, T., & Ryan, C. J. (2025). The benefits and harms of inpatient involuntary psychiatric treatment: A scoping review. *Psychiatry, Psychology and Law*, 32(5), 734–781. <https://doi.org/10.1080/13218719.2024.2346734>

Cunneen, C. (2020). *Arguments for raising the minimum age of criminal responsibility: Research report, Comparative Youth Penalty Project*. <https://justicereinvestment.net.au/wp-content/uploads/2020/02/macrc-final-2020-2.pdf>

Department of Communities and Justice. (2025). *Extension of strict bail laws for young people will strengthen community safety*. <https://dcj.nsw.gov.au/news-and-media/media-releases/2025/extension-of-strict-bail-laws-for-young-people-will-strengthen-c.html>

Department of Communities and Justice. (n.d.). *Custodial Operations and Procedures. 3.4 Segregation*. (Version 1.6). <https://correctiveservices.dcj.nsw.gov.au/content/dam/dcj/corrective-services-nsw/documents/copp/03-management-of-specific-inmates/03.04-segregation.pdf>

Department of Home Affairs. (n.d.). *Freedom of information request-FA 25/06/01429*. <https://share.google/UJzDiweaQeZ5oNY0K>

Du Plessis, C., Sanders, T., Gildersleeve, J., Mullens, A., Olczak, A., & Brömdal, A. (2025). Gender minority stress, resilience, and coping experiences of trans women incarcerated in

Australia. *International Journal of Transgender Health*, 1–22.

<https://doi.org/10.1080/26895269.2025.2487015>

Ezer, T., & Tomasini-Joshi, D. (2021). First Responders with a Rights-Based Approach to Mental Health Crises. *Health and Human Rights*.

<https://www.hhrjournal.org/2021/10/10/first-responders-with-a-rights-based-approach-to-mental-health-crises/>

Feliks, N. (2025). *Australia's own ICE raids: A look at Operation Inglenook*.

<https://overland.org.au/2025/10/australias-own-ice-raids-a-look-at-operation-inglenook/>

Foulds, J., Shalev, S., Monasterio, E., Campbell, A., Shuttleworth, R., & Kinner, S. (2025). Public Reporting on Solitary Confinement in Australian and New Zealand Prisons and Youth Detention Facilities. *Health and Human Rights*, 27(1), 19–26.

Fuller, S. (2018). Torture as a Management Practice: The Convention against Torture and Non-Disciplinary Solitary Confinement. *Chicago Journal of International Law*, 19(1).

Human Rights Law Centre. (2025a). *Victorian Coroner finds that trans and gender-diverse people face discrimination in healthcare*. <https://www.hrlc.org.au/case-summaries/2025-2-7-inquest-into-the-death-of-as/>

Human Rights Law Centre. (2025b). *Mandatory minimum sentences will not keep communities safe from acts of hate and racism*. <https://www.hrlc.org.au/news/mandatory-minimum-sentences-will-not-protect-against-hate-crimes/>

Huppert, D., & Griffiths, M. (2015). Police Mental Health Partnership project: Police Ambulance Crisis Emergency Response (PACER) model development. *Australasian Psychiatry*, 23(5), 520–523. <https://doi.org/10.1177/1039856215597533>

International Covenant on Civil and Political Rights (ICCPR) (1966).

<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966).

<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

Kesic, D., Thomas, S. D. M., & Ogloff, J. R. P. (2010). Mental Illness Among Police Fatalities in Victoria 1982–2007: Case Linkage Study. *Australian & New Zealand Journal of Psychiatry*, 44(5), 463–468. <https://doi.org/10.3109/00048670903493355>

Making Queensland Safer Act 2024 (Qld). Retrieved October 21, 2025, from <https://www.legislation.qld.gov.au/view/whole/html/asmade/act-2024-054>

McGlade, H., & Davis, M. (2025). *Early warning and urgent action – Submission to United Nations Committee on the Elimination of Racial Discrimination*.

https://www.hrlc.org.au/app/uploads/2025/04/United-Nations-CERD-complaint_youth-justice-in-Australia.pdf

McIntyre, G. (2025, May 27). You know what creates unsafe communities? Mandatory sentencing. *Law Council*. <https://lawcouncil.au/media/news/you-know-what-creates-unsafe-communities-mandatory-sentencing>

Mental Health Cognitive Impairment (Forensic Provisions) Act, § 14 (2020).
https://classic.austlii.edu.au/au/legis/nsw/consol_act/mhacifpa2020574/s14.html

Mitchell, M., McCrory, A., Skaburskis, I., & Appleton, B. (2022). Criminalising Gender Diversity: Trans and Gender Diverse People’s Experiences with the Victorian Criminal Legal System. *International Journal for Crime, Justice and Social Democracy*, 11(2).
<https://doi.org/10.5204/ijcjsd.2225>

National Justice Project. (2025). *Alternative First Responders Position Paper*.
https://www.justice.org.au/wp-content/uploads/NJP_AFR_PositionPaper2025-1.pdf

National Spit Hoods Coalition. (2022, October). A Bill to ban spit hoods Briefing note for governments & legislators. *Ban Spit Hoods Coalition*.
<https://img1.wsimg.com/blobby/go/7e318996-95ff-449c-80c8-2eb13dd9168c/BRIEFING%20NOTE%20A%20Bill%20to%20ban%20spit%20hoods.pdf>

Office of the NT Children’s Commissioner. (2023). *Use of spit hoods and restraint chairs on children: Position paper*. Office of the NT Children’s Commissioner.
<https://share.google/IYNarjLezhEnv4sxx>

Office of the United Nations High Commissioner for Human Rights. (2021). *Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers*. <https://docs.un.org/en/A/HRC/47/53>

OHCHR. (2024). *Fact Sheet No. 26 Rev. 1: Working Group on Arbitrary Detention*.
<https://www.ohchr.org/en/publications/fact-sheets/fact-sheet-no-26-rev-1-working-group-arbitrary-detention>

Open letter to NSW Premier Minns and the Labor Government from 560 lawyers, community workers and academics. (2024). <https://www.alsnswact.org.au/open-letter-from-lawyers-community-workers-and-academics>

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2002). <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-against-torture-and-other-cruel>

People with Disabilities Australia, Women with Disabilities Australia, Gooding, P., Loughnan, C., Steele, L., Swaffer, K., & Wadiwel, D. (2025). *Arbitrary Detention of People with Disability*

– *Submission to the United Nations Working Group on Arbitrary Detention.*

https://pwd.org.au/wp-content/uploads/2025/09/PWDA.SB_.UN_.Working.Group_.Arbitrary.Detention.2025-07-30v2.pdf

Phillips, T., Clark, K. A., Brömdal, A., Mullens, A. B., Sanders, T., Halliwell, S., Gildersleeve, J., Daken, K., Debattista, J., Du Plessis, C., Leslie Simpson, P., & Hughto, J. M. W. (2024). “I Know the Degradation, the Humiliation around Being Incarcerated and Ostracized, and Marginalized, and Sexualized.” In M. Maycock, S. O’Shea, & V. Jenness, *Transgender People Involved with Carceral Systems* (1st ed., pp. 21–45). Routledge.

<https://doi.org/10.4324/9781003169796-3>

RACGP. (2024). *Healthcare for people from refugee backgrounds and people seeking asylum.* <https://www.racgp.org.au/advocacy/position-statements/view-all-position-statements/health-systems-and-environmental/healthcare-for-refugees-and-asylum-seekers#ref-num-17>

RANZCP. (2017, November). *Involuntary mental health treatment in custody.* https://www.ranzcp.org/clinical-guidelines-publications/clinical-guidelines-publications-library/involuntary-mental-health-treatment-in-custody?utm_source=chatgpt.com

Riseman, N. (2023). *Transgender Australia: A History Since 1910.* Melbourne University Press.

Rossoni, I., & Van Der Woude, M. (2025). Resisting “Manufactured” Vulnerability: Discretionary Policing and Migrant Sex Workers’ Resistance Strategies in Malta. *International Journal for Crime, Justice and Social Democracy.* <https://doi.org/10.5204/ijcjsd.3909>

Roth, L. (2014). *Mandatory sentencing laws.* <http://www.nswbar.asn.au/circulars/2014/jan/ebrief.pdf>

Sargeant, C. (2025, October 15). NT Govt Bans Trans Women From Women’s Prisons in “Nation-First” Move. *The Star Observer.* <https://www.starobserver.com.au/news/nt-govt-bans-trans-women-from-womens-prisons-in-nation-first-move/239202>

Scarlet Alliance. (2025). *Policing of Asian Migrant Sex Workers.* <https://scarletalliance.org.au/library/briefing-paper-policing-of-asian-migrant-sex-workers/>

Scarlet Alliance. (n.d.). *End racist immigration raids.* <https://scarletalliance.good.do/endborderprofiling/dignity/>

Simpson, P. L., Stardust, Z., Dodd, L., Cook, T., Sotiri, M., Zinnetti, K., Sanders, T., Brömdal, A., & Hardiman, D. (2024). Prioritising the rights of incarcerated trans and gender diverse people. In M. Maycock, S. O’Shea, & V. Jenness, *Transgender People Involved with Carceral Systems* (1st ed., pp. 388–412). Routledge. <https://doi.org/10.4324/9781003169796-20>

The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (2015). https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf

Torre, G. (2025). First People's Disability Network condemns NT's spit hood reintroduction: "a dehumanising policy of torture." *National Indigenous Times*. <https://nit.com.au/31-07-2025/19380/first-peoples-disability-network-condemns-nts-spit-hood-reintroduction-a-dehumanising-policy-of-torture>

UN Convention on the Rights of the Child (1989). <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

UN Human Rights Council. (2011). *Report of the United Nations High Commissioner for Human Rights: Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity (A/HRC/19/41)*. <https://undocs.org/A/HRC/19/41>

United Nations Committee on the Rights of the Child (UNCRR). (2019). *General Comment, No. 24*. <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-24-2019-childrens-rights-child>

United Nations Declaration on the Rights of Indigenous Peoples (2007). <https://share.google/MBQNI6eMkYI2LLNz5>

United Nations High Commissioner for Human Rights. (2025). *Mental Health and Human Rights Report of the United Nations High Commissioner for Human Rights*. <https://docs.un.org/en/A/HRC/58/38>

United Nations Human Rights Council. (n.d.). *UNHCR Global Strategy: Beyond Detention 2014-2019. A Global Strategy to Support Governments to End the Detention of Asylum Seekers and Refugees*. <https://www.unhcr.org/au/media/engaging-working-group-arbitrary-detention>

Universal Declaration of Human Rights (1948). <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

Walters, R., Antojado, D., Maycock, M., & Bartels, L. (2024). LGBT people in prison in Australia and human rights: A critical reflection. *Alternative Law Journal*, 49(1), 40–46. <https://doi.org/10.1177/1037969X241231007>

Winter, C. (2024). Correctional policies for the management of trans people in Australian prisons. *International Journal of Transgender Health*, 25(2), 130–148. <https://doi.org/10.1080/26895269.2023.2246953>

Women with Disabilities Australia, & People with Disabilities Australia. (2024). *Joint Submission Issues Paper 49 –Justice Responses to Sexual Violence Submission to the Australian Law Reform Commission*. <https://share.google/3SBL3C2NYk8yaHFUi>

APPENDIX

Examples of organisations or groups that may be consulted in relation to topics covered in this submission.

First Nations communities facing arbitrary detention

- [Aboriginal Legal Service NSW/ACT](#)
- [The National Peak Body of Aboriginal and Torres Strait Islander Legal Services](#)
- [Wirringa Baiya](#), a NSW legal centre supporting First Nations women and children.
- [Change the Record](#), a coalition of First Nations-led organisations with legal, health and family violence prevention expertise.

People with disabilities facing arbitrary detention

- Intellectual Disability Rights Service ([IDRS](#))
- [First Peoples Disability Network Australia](#), a national human rights Network of and for Australia's First Peoples with disability, their families and communities.
- [Women with Disabilities Australia](#)
- [People with Disability Australia](#)

Trans and gender diverse communities facing arbitrary detention

- [Beyond Bricks and Bars](#), Flat Out (Victoria), a service supporting trans and gender diverse people who have been incarcerated.
- Trans and Gender Diverse Criminal Justice System Advisory Council (NSW). Contact Rory Gillard, Community Restorative Centre's representative on the Committee: arpu.team@crcnsw.org.au.
- [Scarlet Alliance](#) (national), a sex worker advocacy organisation. Scarlet Alliance also hosts an Asian Migrant Sex Worker Advisory Council.

Raising the Age of Criminal Responsibility to combat arbitrary detention

- [Raise the Age NSW](#) (NSW focus)
- [Raise The Age](#) (national)

Spit hoods as a deprivation of liberty

[Ban Spit Hoods Coalition](#) (national network)

Experiences of arbitrary detention in the prison system broadly

- [Community Restorative Centre](#) (NSW)
- [Sisters Inside](#) (Queensland)
- [Flat Out](#) (Victoria)
- [VACRO](#) (Victoria)
- [Outcare](#) (Western Australia)
- [OARS community transition](#) (South Australia)