

**Culturally appropriate,  
human rights compliant**

# **Police custody monitoring expectations**

**Identifying the  
root causes of ill-  
treatment**

**For members of the National Preventive Mechanism (NPM) – established, designated or nominated under the UN Optional Protocol to the Convention against Torture (OPCAT) – focusing on detained Aboriginal and/or Torres Strait Islander people while monitoring places of deprivation of liberty**



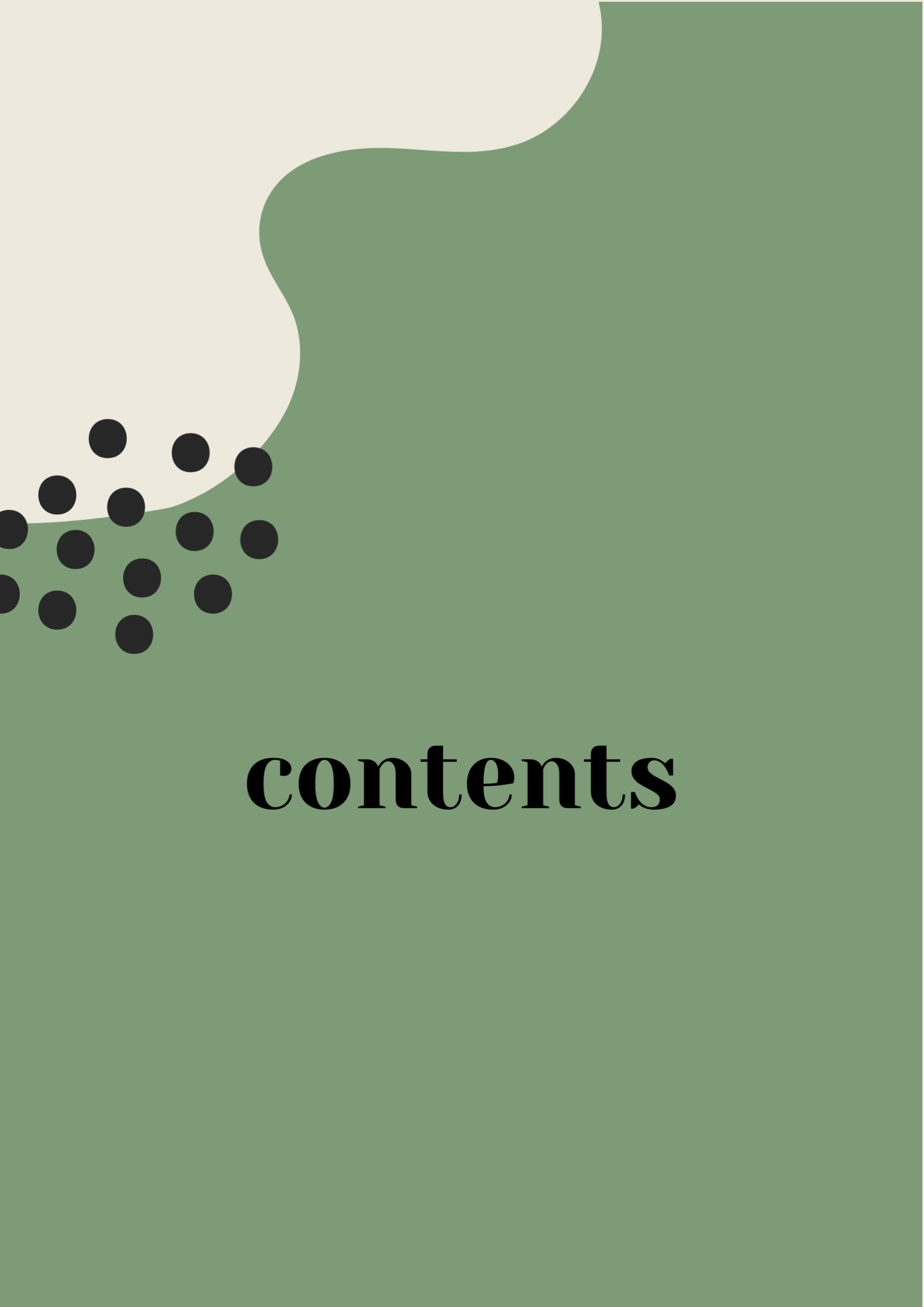
**These Expectations were prepared on unceded Darug & Gadigal Country, and I pay my respects to Elders past and present across Australia, acknowledging Aboriginal and Torres Strait Islander People's enduring connection to land, sea and culture.**

**I also acknowledge Aboriginal and Torres Strait Islander communities' resistance and resilience in the face of the harms perpetrated by historic and contemporary colonial legal systems and institutions, inclusive of law enforcement agencies.**



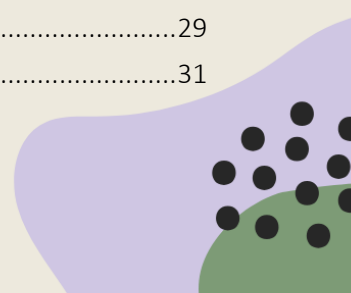
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**A warning that this document includes descriptions of violence and racist speech and conduct, and that the document includes recommendations from coronial inquests into deaths in custody of Aboriginal and/or Torres Strait Islander people, using the names of people who have passed away**





**identifying the  
root causes of  
ill-treatment**



# **how to use this section**

# 1. Identifying root causes of torture and ill-treatment for monitoring site visits and thematic monitoring

## (a) The NPM's mandate

### UN SPT advice

“The prevalence of torture and ill-treatment is influenced by a broad range of factors, including the general level of enjoyment of human rights and the rule of law, levels of poverty, social exclusion, corruption, discrimination, etc. Whilst a generally high level of respect for human rights and the rule of law within a society or community does not provide a guarantee against torture and ill-treatment occurring, it offers the best prospects for effective prevention. To that end, the Subcommittee is deeply interested in the general situation within a country concerning the enjoyment of human rights and how this affects the situation of persons deprived of their liberty.”<sup>1</sup>

To effectively exercise its preventive mandate under the OPCAT, the NPM's recommendations to detaining authorities (in this case, the police service) and governments should be 'root-cause responsive' - meaning that recommendations “should address the causes of problems, rather than the symptoms.”<sup>2</sup>

This section is intended to assist NPM bodies in their broader analysis of potential root-causes or underlying factors contributing to the risk of (or instances of) torture and ill-treatment in police custody.

## (b) Issues addressed

- \* **Prohibition of torture and ill-treatment** (criminalisation, complaints, investigations, prosecution and redress; human rights legislation; transparency)
- \* **Police culture, integrity and competency** (clear purpose and role of the police service; culture of police service; integrity of police service; record keeping and data collection)
- \* **Oversight, transparency and continuous improvement** (independent monitoring of deprivation of liberty; complaints adjudication by independent statutory body; transparency; evidence-based decision-making and continuous improvement)
- \* **Deaths in custody** (duty to investigate; initial steps; investigations; reparations and prosecution)
- \* **Rights of Aboriginal and Torres Strait Islander people under the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)** (rights to non-discrimination; cultural rights)

# 2. The NPM's policy and law reform functions (the preventive package)

Under the OPCAT, the NPM's mandate is broad, including functions beyond detention monitoring (e.g. to “submit proposals and observations concerning existing or draft legislation”<sup>3</sup>). As acknowledged by the Australian NPM itself, its mandate includes educational, advisory and cooperation functions.<sup>4</sup>

This section is also intended to assist the members of the NPM when discharging these additional functions.



**prohibition of  
torture and  
ill-treatment**

# 1. Prohibition of torture and ill-treatment

## (a) An absolute prohibition

300. *The prohibition on torture\* is absolute.*

- \* No exceptional circumstances (including war, internal political instability or any other public emergency) are invoked as a justification of torture.<sup>5</sup> An order from a superior officer or a public authority is not invoked as a justification of torture.<sup>6</sup>
- \* Because “the conditions that give rise to cruel, inhuman or degrading treatment or punishment [ill-treatment]\* frequently facilitate torture,” the measures required to prevent torture are also applied to prevent ill-treatment, and the prohibition of ill-treatment is non-derogable.<sup>7</sup>
- \* All persons deprived of their liberty are “treated with humanity and with respect for the inherent dignity of the human person,”<sup>8</sup> taking into account the person’s needs and age.<sup>9</sup>
- \* No detained person, even with their consent, is subjected to any medical or scientific experimentation which may be detrimental to their health.<sup>10</sup>

## (b) Correctly identifying torture and ill-treatment

301. *Interpretations of ‘torture’ and ‘cruel, inhuman or degrading treatment or punishment’ account for the characteristics and vulnerabilities of the individual.*

- \* In assessing the severity of treatment, considerations include “all of the circumstances of the ‘treatment’ or punishment,” “including its duration and its physical and mental effects, as well as the sex, age and health” of the detained person.<sup>11</sup> For example, children are “more vulnerable to ill-treatment and torture than adults” because of their “unique physiological and psychological needs, which render them particularly sensitive to deprivation and treatment that otherwise may not constitute torture.”<sup>12</sup>
- \* Whether discrimination is an underlying cause for treatment (e.g. gender-based harms perpetrated against transgender or intersex persons; racially, ethnically or politically motivated acts; or acts targeting people’s vulnerabilities, such as age or disability<sup>13</sup>) is also taken into consideration in assessing whether an act amounts to torture.

302. *Interpretations of ‘torture’ and ‘cruel, inhuman or degrading treatment or punishment’ account for Aboriginal and Torres Strait Islander perspectives.*

- \* “Aboriginal people may experience imprisonment differently.”<sup>14</sup>
- \* An “Aboriginal perspective of what constitutes torture, or cruel, inhuman or degrading treatment or punishment, may diverge from that of non-Aboriginal people. The suffering experienced by an individual, the significance that they attribute to particular conduct or a situation in detention, and their emotional response, will be determined in part by how their culture shapes their worldview.”<sup>15</sup>
- \* The “long-term impact of torture and ill-treatment can be shaped by survivors’ culture and the historic-

\* See glossary.

\* See glossary.



political context of the ill-treatment (including the history of colonisation).”<sup>16</sup>

## 2. Criminalisation of torture and ill-treatment

303. *Torture is defined in legislation and criminalised at Federal and State/Territory level.*<sup>17</sup>

- \* Australian governments have taken effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under their jurisdiction.<sup>18</sup>
- \* Torture is a specific offence in legislation with “proportionate penalties that reflect the gravity of the crime.” Torture is not subject to “amnesties, immunities, statutes of limitation or other such procedural restrictions, including pardons or other measures resulting in impunity.”<sup>19</sup>
- \* Police who encourage, order, tolerate or perpetrate torture are held responsible. Conversely, police officers who refuse to obey orders to engage in conduct amounting to torture are neither punished nor treated adversely.<sup>20</sup>

## 3. Complaints of torture and ill-treatment

304. *Investigations are undertaken where there are complaints, allegations or reasonable indications of torture or ill-treatment by police<sup>21</sup> (including where there has been no complaint<sup>22</sup>).*

305. *People are able to effectively exercise their right to make a complaint regarding torture or ill-treatment (including through their lawyer or other third person).*<sup>23</sup>

- \* Detained people are informed of their right to complain, the complaints process, and available remedies. They have access to a lawyer, a physician, family members, and external judicial and monitoring bodies while in detention, and are able to make confidential complaints in a timely manner.<sup>24</sup>
- \* Everyone (and particularly children) has the right to seek assistance to make a complaint, including from family members, lawyers, or organisations. Detained people are provided assistance to overcome potential barriers, such as illiteracy.<sup>25</sup>
- \* Alleged victims’ complaints are recorded, and a “forensic medical examination (including, if appropriate, by a forensic psychiatrist)” is immediately ordered.<sup>26</sup>
- \* Alleged victims are provided all relevant evidence, including video and audio recordings,<sup>27</sup> and can “challenge investigative measures, or the lack thereof,” with the assistance of legal aid (including a properly funded Aboriginal Legal Service), before an independent body. They can access relevant hearings.<sup>28</sup>

## 4. Investigations of torture and ill-treatment

306. *Wherever “there is reasonable ground to believe” that there has been an act of torture or ill-treatment, a prompt and impartial investigation is conducted by a body independent of police (and anyone who is investigating the detained person for any alleged criminal offending). The body has a statutory basis and investigatory (potentially even prosecutorial) powers.*<sup>29</sup>

- \* A prompt investigation (“within hours or, at the most, a few days”) is conducted, to protect the victim and to mitigate the risk of evidence disappearing.<sup>30</sup> Nevertheless, where a prompt and expeditious investigation has not occurred, this does not preclude an investigation proceeding at a later

date, as allegations of torture and ill-treatment are not subject to any statutes of limitation.<sup>31</sup>

- \* In assessing the body’s impartiality, “potential conflicts of interest, hierarchical relationships with potential suspects and the specific conduct of the investigators” are all considered.<sup>32</sup>

### 307. *The investigating body has the requisite resources, capacity and competency.*

#### The Istanbul Protocol

Because of the “nature of torture cases and the trauma individuals suffer as a result, often including a devastating sense of powerlessness, it is particularly important to show sensitivity to the alleged torture victim and other witnesses by putting in place measures and procedures that reduce the risk of further traumatization or retraumatization.”<sup>33</sup>

- \* Investigation methods “meet the highest professional standards.”<sup>34</sup>
- \* The investigating body reflects the diversity of the communities that it serves,<sup>35</sup> particularly Aboriginal and Torres Strait Islander communities.
- \* The investigating body has both the obligation and power “to obtain all the information necessary for the inquiry.”<sup>36</sup> This includes “the authority to oblige witnesses and all those acting in an official capacity who were allegedly involved in torture or ill-treatment to appear and testify.” The investigating body can issue summonses and demand production of evidence.<sup>37</sup>
- \* The investigating body has the budget and technical resources to conduct an effective investigation.<sup>38</sup> This includes an ability to “commission investigations by impartial medical or other experts.”<sup>39</sup>
- \* The investigating body conducts its work in a manner that protects alleged victims (ensuring their “security, privacy and physical and mental integrity”<sup>40</sup>). Its work is trauma-informed\* (e.g. in

cases involving “sexual violence or abuse of children or other vulnerable persons,” the investigating body “takes into consideration the characteristics of victims and the impact of the particular form of torture”<sup>41</sup>). Alleged victims are provided contact information, and offered warm referrals, to relevant advocacy and treatment groups/professionals.<sup>42</sup>

- \* Medical experts who are involved in the investigation conform “with the highest ethical standards,” including obtaining informed consent before carrying out an examination of the alleged victim, in private, without the presence of police (or other detaining authority).<sup>43</sup>
- \* Medical experts prepare a written report which includes the circumstances of the interview, the background, a physical and psychological examination, an opinion, and a record of authorship.<sup>44</sup> This report is “confidential and communicated to the subjects or their nominated representative.”<sup>45</sup>

### 308. *The investigating body works in a culturally appropriate way with Aboriginal and/or Torres Strait Islander people.*

- \* In conducting its work, the investigating body has “the cultural humility and transcultural perspective necessary to understand and effectively document the physical and psychological effects of the alleged torture or ill-treatment”<sup>46</sup> of Aboriginal and/or

Torres Strait Islander people. The investigating body appreciates the impact of “the interviewee’s own experience, circumstances, beliefs and cultural norms” on mental suffering.<sup>47</sup> There is an appreciation of the fact that culture and language

\* See glossary.

can influence how a specific experience is “conceptualized and described.”<sup>48</sup>

- \* Investigating body staff are also “aware of the sociocultural dynamics of their own identity and how implicit and explicit perceptions of power,

ethnicity, nationality, gender, age, sexual orientation and socioeconomic status may impact the interview.”<sup>49</sup>

- \* Interviewers “conduct themselves in a manner that does not offend cultural or religious sensibilities.”<sup>50</sup>

### 309. *The investigating body works appropriately with interpreters.*

- \* The *Istanbul Protocol* advises that the “next best thing to speaking the local language fluently is to work with a trained interpreter with experience, who is sensitive to the issue of torture and to the local culture.”<sup>51</sup>
- \* The investigating body uses professional, accredited interpreters who do not have a conflict of interest and who respect confidentiality.<sup>52</sup>
- \* Proper use of interpreters includes briefing the interpreters on the nature of the investigating body’s mandate and manner of working,<sup>53</sup> and breaking down technical and legal concepts into Easy English\*

so that the interpreters can use accurate, meaning-based interpretation.

- \* Interpreters who have not been used by police during interviews or by custodial staff are preferred, and other than in an emergency, another detained person is not used for interpreting (and where they are used in an emergency, they are a trusted person chosen by the interviewee themselves).<sup>54</sup> Of note, working with interpreters independent of police is also a fair practice for the interpreters, to avoid them being “‘debriefed’ by the facility authorities after a visit or otherwise put under pressure.”<sup>55</sup>

### 310. *The alleged victim and their lawyer are updated on the progress of the investigation (including after interviews and examinations are conducted). They are notified of all key hearings in the investigation/prosecution, and arrest of suspects.<sup>56</sup> They are given access to findings of the investigation.<sup>57</sup>*

### 311. *The alleged victim and witnesses (and their families and lawyers) are protected from reprisals.<sup>58</sup>*

- \* The investigating body takes care when interviewing people deprived of their liberty (e.g. interviewing them in private, where the detained person feels comfortable).<sup>59</sup>
- \* The investigating body pursues other forms of evidence where there is a risk of putting any witnesses in danger due to their testimony.<sup>60</sup> Alternatively, the investigating body may opt to interview all people deprived of their liberty at the place of detention “so as not to pinpoint any specific person,”<sup>61</sup> or they may move individuals to a safe location.<sup>62</sup>
- \* The investigating body keeps “a secure record of the identities of people visited,” so they can follow up on

their safety in the future during a return visit,<sup>63</sup> or a visit to a prison or other place of detention to which they have been transferred.

- \* Protections against reprisals extend to “staff who report in good faith alleged incidents;” this may potentially require the investigating body to protect “the identity of professionals and private individuals who bring cases.”<sup>64</sup>
- \* Crucially, individuals potentially implicated in torture or ill-treatment are “removed from any position of control or power, whether direct or indirect over complainants, witnesses and their families as well as those conducting investigations.”<sup>65</sup>

### 312. *Investigations consider whether discrimination was an underlying reason for the alleged torture or ill-treatment.<sup>66</sup>*

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\* See glossary.



## 5. Prosecution of torture and ill-treatment

313. *Prosecutors refuse to use any evidence obtained through torture or ill-treatment, except for the purposes of prosecuting police officers (and others) who have allegedly engaged in acts of torture.*<sup>67</sup>
314. *There are prosecutions of alleged torture, and appropriate sanctions following findings of torture.*<sup>68</sup> *Prosecutors prosecute police for the crime of torture rather than for another, lower-level criminal offence (e.g. assault), where there is sufficient evidence of torture.*<sup>69</sup>
315. *Individuals who engage in torture or ill-treatment are appropriately and adequately sanctioned (including by the criminal legal system, through termination of employment, and through workplace disciplinary measures).*<sup>70</sup>

## 6. Redress for torture and ill-treatment

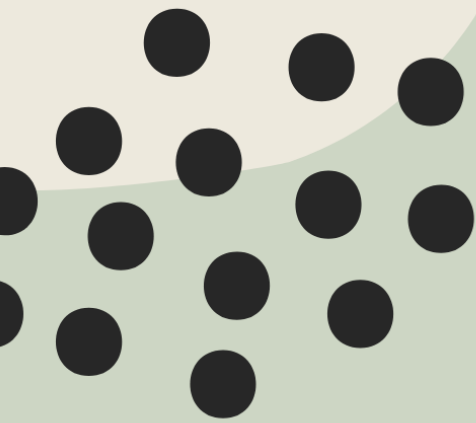
316. *Victims and/or their families are provided redress for torture and ill-treatment.*<sup>71</sup>
- \* Redress for victims of torture or other ill-treatment includes “restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.”<sup>72</sup>
  - \* People are provided adequate “information about the processes for seeking remedies and redress,”<sup>73</sup> and are provided financial aid to pursue redress if they are unable to afford the costs.<sup>74</sup>
  - \* Redress is not contingent on “the identification, investigation or prosecution of a perpetrator;” it is sufficient to establish there has been an act of torture.<sup>75</sup>
  - \* Remedies are “proportionate to the harm caused,”<sup>76</sup> are “victim-oriented, gender-sensitive, adequate, effective, prompt and comprehensive, tailored to the particular needs of the victim.”<sup>77</sup>
  - \* Victims of torture have access to rehabilitation services in all States and Territories.<sup>78</sup>
  - \* Where a victim dies as a result of an act of torture, their dependants are entitled to compensation.<sup>79</sup>

## 7. Human rights legislation prohibiting torture and ill-treatment

317. *Federal, State and Territory human rights legislation provides for humane treatment when deprived of liberty.*
318. *The prohibition of torture and ill-treatment is legislated for in Federal, State and Territory human rights acts. Human rights legislation introduces “an independent cause of action or type of relief for a person whose human rights have been breached,”<sup>80</sup> including for torture and ill-treatment while deprived of their liberty. The legislation incorporates the definition of torture found in the UN Convention against Torture.*<sup>81</sup>

## 8. Transparency regarding torture and ill-treatment by police

319. *Police “systematically collect and regularly publish disaggregated data on the number, content and outcome of complaints and investigations relating to torture or ill-treatment.”<sup>82</sup>*
320. *Governments compile and disseminate “up-to-date statistics on the number of victims of torture and ill-treatment who have obtained redress, including medical or psychosocial rehabilitation and compensation, as well as on the forms of such redress and the results achieved.”<sup>83</sup>*



**police culture,  
integrity and  
competency**

# 1. Clear purpose and role of the police service

## (a) Police maintain law, protect rights and maintain community safety

321. *The purposes of the police “in a democratic society governed by the rule of law are: to maintain public tranquillity and law and order in society; to protect and respect the individual’s fundamental rights and freedoms,” “to prevent and combat crime; to detect crime; to provide assistance and service functions to the public.”<sup>84</sup> Police functions do not include punishing people who have (or are suspected of having) offended, or have engaged in ‘unwanted’ behaviours.<sup>85</sup>*
322. *Police functions and powers are unambiguously defined in law. It is clear “when and how the Government can intervene in police operations,” and there are “clear laws on appointment and promotion processes, in particular for top ranks” of police.<sup>86</sup>*
323. *Police at all levels have a clear understanding of their role in society.*
324. *Policing is done in a cost-effective way.<sup>87</sup>*

## (b) Policing and public health/social care issues

325. *Police are not the default response to public health and social care issues. Rather than criminalising behaviour related to disability, health or social disadvantage, governments provide the necessary supports to people and communities.*
- \* There are no police-in-schools programs,<sup>88</sup> and restorative justice processes run by the schools are used for potentially unlawful behaviours at schools (rather than referral to police).<sup>89</sup>
  - \* Police are only called in response to potentially unlawful behaviour by children in out-of-home-care residential care where this is truly warranted, with the aim of reducing the criminalisation of children in residential care.<sup>90</sup>
  - \* Children who abscond from residential care do not spend “extended periods of time in police custody when they are found. There is a responsibility on Residential Care staff and... Police to avoid or reduce time spent in custody.”<sup>91</sup> Children do not spend time in police cells while they are in police custody for absconding.
  - \* People experiencing mental health crises are not “met with a police-led response.”<sup>92</sup>
  - \* Governments consider adopting a harm reduction\* response by way of decriminalisation of possession of drugs for personal use.<sup>93</sup>
  - \* Conduct for which Aboriginal and/or Torres Strait Islander people have been disproportionately criminalised is no longer a criminal offence. This includes begging, obstruction of foot paths, move on directions, and obscene/offensive language.<sup>94</sup>
  - \* Evidence-based, culturally appropriate alternative first responses for domestic and family violence are implemented and sustainably resourced by governments.<sup>95</sup>
  - \* Homelessness does not attract a policing response.<sup>96</sup>

\* See glossary.



326. *Police do not have the power to take people under the influence of alcohol or other drugs into ‘protective custody’ in police cells.*

- \* ‘Public intoxication’ is not a criminal offence.<sup>97</sup>
- \* First responders other than police may take people under the influence of alcohol or other drugs “home or to a facility established for the care of intoxicated persons,”<sup>98</sup> or another appropriate location, but not to a police station/cell. Any transport does not entail detention, and people who use alcohol or other drugs are not arbitrarily detained.<sup>99</sup>
- \* There are “adequately funded programs to establish and maintain non-custodial facilities for the care and treatment of” people under the influence of alcohol or other drugs,<sup>100</sup> and other harm reduction services,<sup>101</sup> and these are voluntary programs.

## **(c) Policing and public assemblies\***

327. *Governments “avoid and actively counter stigmatising narratives against protesters and civil society, which permeate into law enforcement and judicial institutions.”<sup>102</sup>*

328. *Police respect the rights of organisers and participants of peaceful assemblies, and facilitate such assemblies. They protect participants, observers, media and others from harm.<sup>103</sup> The obligation extends to “spontaneous assemblies, simultaneous assemblies and counter-protests.”<sup>104</sup>*

- \* In the event of unlawful, but peaceful, assemblies, police refrain from actions (e.g. dispersal) that “are likely to lead to an unnecessary escalation of the situation, which may involve a high risk of injury, loss of life and damage to property.”<sup>105</sup>
- \* Police have a recognised “duty to protect peaceful assemblies against violent acts committed by others,” such as “in the course of violent counter-demonstrations.”<sup>106</sup>
- \* Police fulfil their duty to “protect participants in peaceful assemblies from threats and physical abuse... [aimed] at disrupting assemblies or harassing those who might hold opposing views.” This is a particularly important protection for minorities, including Aboriginal and/or Torres Strait Islander people.<sup>107</sup>
- \* Police are proficient in negotiation and de-escalation techniques, and have adequate communication equipment.<sup>108</sup>

## **(d) Unsworn police officers**

329. *Unsworn police officers do not have powers of arrest or detention, nor to carry weapons such as hand-held chemical irritants.<sup>109</sup> This includes public transport officers.*

330. *Delegation of police functions (particularly deprivation of liberty, use of force and caring for people detained in police watch houses) to private security guards is prohibited.*

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\* See glossary for descriptions of assemblies and peaceful assemblies. Particularly highlighting consultation feedback that “‘peaceful’ is an undefined term and a subjective one, the subjectivity of which is frequently weaponised by police and the state to justify the use of [unjustified] violence against protesters.”

## 2. Culture of the police service

### (a) The broader social and political context

#### Unequal power structures

The UN Special Rapporteur on Health has encouraged monitoring bodies to “consider structural barriers, such as the disproportional detention of people in situations of vulnerability, including medical vulnerability, the existence of unequal power structures, often rooted in racist and violent pasts, and the little to no access to channels through which to voice demands.”<sup>110</sup> “The Special Rapporteur has encouraged NPMs to “give attention to those structural challenges,” working with people “formerly or currently deprived of liberty or confined, their families and civil society.”<sup>111</sup>

331. *Governments take a human rights, evidence-based and strengths-based approach\* to community safety, rather than a politically motivated, ‘tough on crime’ or ‘law and order’ approach.*

- \* Governments do not have “cultural dependence on confinement and incarceration,”<sup>112</sup> recognising that, in detention, even “with noble efforts to establish a strong culture of respect and care, violence and humiliation usually prevails, adversely affecting the development of healthy relationships.”<sup>113</sup>
- \* Governments consider strategies that move “towards ending children’s imprisonment.”<sup>114</sup>

#### Are these considerations within an NPM’s mandate?

Yes. Consideration of the broader social and political context enables an NPM to interrogate root causes of ill-treatment in police custody. Law and order politics is a risk for torture by police.

It often fuels “public fear of crime, which in turn may create a high tolerance of police misconduct (such as brutality and illegal arrests, detention and searches) and lower levels of accountability if the public believe (or are led to believe) that this will help to restore order. Police and the general public alike frequently raise the concern that enhancing police accountability will hinder the police force from using its powers and tactics effectively.”<sup>115</sup>

332. *Governments have public health responses to public health and social issues.<sup>116</sup> Governments do not divert resources away from programs related to healthcare and schools to detention.<sup>117</sup>*

333. *Governments support and fund Aboriginal community-led alternatives to policing and support programs and services to prevent contact with the criminal legal system.*

- \* Governments fund “Aboriginal-led, on-Country programs and services to support people who come into contact with or are at risk of coming into contact with the criminal legal system;” they “fund the operation of community-led programs which improve access to justice for Indigenous people and assist with de-escalation prior to police intervention.”<sup>118</sup>
- \* Governments “support the development of community-led alternatives to police;” they “co-

\* See glossary.

design a best practice, effective community policing model which includes a multidisciplinary approach to policing in Aboriginal communities with a focus on

collaboration, cultural safety and a trauma-informed approach.”<sup>119</sup>

**334. *As a sign of a healthy democracy, governments respect and facilitate peaceful assemblies.***

✱ Governments respect the right to peaceful assembly, making efforts “to ensure the equal and effective facilitation and protection of the right of peaceful assembly of individuals who are members of groups that are or have been subjected to discrimination,” including Aboriginal and/or Torres

Strait Islander people. They ensure that there is no discrimination in the application of relevant laws (including on the basis of Indigenous status).<sup>120</sup>

✱ Governments protect “participants from all forms of discriminatory abuse and attacks.”<sup>121</sup>

**335. *Media coverage of issues relating to criminal offending and the criminal legal system is evidence-based, accurate, non-discriminatory and non-stigmatising. It adequately protects the privacy of people who are, or have been, in contact with the criminal legal system.***

Children who commit offences are often subjected to negative publicity in the media, which contributes to a discriminatory and negative stereotyping of those children. This negative presentation or criminalization of children is often based on a misrepresentation and/or misunderstanding of the causes of crime, and regularly results in calls for tougher approaches (zero-tolerance and “three strikes” approaches, mandatory sentences, trial in adult courts and other primarily punitive measures). States parties should seek the active and positive involvement of Members of Parliament, non-governmental organizations and the media to promote and support education and other campaigns to ensure that all aspects of the Convention are upheld for children who are in the child justice system. It is crucial for children, in particular those who have experience with the child justice system, to be involved in these awareness-raising efforts.<sup>122</sup> **UN Committee on the Rights**

**of the Child**

✱ Media conduct proper fact checks prior to publishing their stories, and are transparent about any subsequent corrections that they make.<sup>123</sup>

✱ Media provide the historical context when reporting on Aboriginal and/or Torres Strait Islander people’s experiences of, and treatment by, the criminal legal system.<sup>124</sup>

✱ Media avoid “deficit-based narratives by showcasing strengths and contributions alongside struggles,” properly address power dynamics in their reporting, and provide a platform for voices of Aboriginal and Torres Strait Islander communities<sup>125</sup> and people who have lived experience of the criminal legal system.

✱ Media use language that avoids stereotypes,<sup>126</sup> and ensures that the composition of photos respects people’s dignity and humanity, “avoiding sensationalism or stereotypes.”<sup>127</sup>

✱ Media avoid using “clickbait titles and images that sensationalise or misrepresent stories about race and diversity.”<sup>128</sup>

✱ “When reporting on issues relating to systemic or structural problems, such as youth crime,” rather than blaming specific communities, the media focuses on the issue, safeguarding “against racist narratives that portray criminal activity as an ethnic trait and prevent moral panic and the stigmatisation of certain racialised groups.”<sup>129</sup>

✱ Media are “aware of how passive and active language choices can shape narratives and influence public perception.” Particularly, media appreciates how active language “creates transparency and accountability in reporting, and helps to prevent the perpetuation of inaccurate or harmful narratives”<sup>130</sup> (e.g. ‘police shot someone’, as opposed to ‘a person was shot’).

✱ Social media is monitored and moderated to remove racist and other harmful comments.<sup>131</sup>

- \* Media respects cultural protocols, such as obtaining permission to use the photo of an Aboriginal and/or Torres Strait Islander person who has died in police custody.<sup>132</sup>
- \* There are Aboriginal and/or Torres Strait Islander staff working at media outlets (including staff who make editorial decisions).<sup>133</sup>

## **(b) Police service's relationships with community**

**336. *Police understand their role as serving the community, to whom they are accountable.<sup>134</sup> Police prioritise, develop and maintain genuine partnerships with the community.***

- \* Police effectively cooperate with “local communities, non-governmental organisations and other representatives of the public, including ethnic minority groups.”<sup>135</sup> Examples of community-oriented policing\* include “holding regular meetings outside police premises and appointing liaison officers,” some of whom focus on improving relationships with Aboriginal and Torres Strait Islander communities “as part of systematic day-to-day policing,” rather than through short-term projects.<sup>136</sup>
- \* Police develop relationships with other government agencies, including corrections, youth justice, child protection, and health agencies.<sup>137</sup>
- \* Police engage in successful public order policing\* whereby they do not only engage with the public “in times of tension or disorder,” but as “an on-going process,” in order to develop “durable relationships.”<sup>138</sup>
- \* Police understand that public order policing and community policing are closely linked, with the former being the “day-to-day reality” and the latter supporting it.<sup>139</sup> For example, in advance of public assemblies, police “inform, as far as possible, the public of their plans, so that the scope for misunderstanding police action is reduced.” Police also ensure that their communications with public assembly participants are in Easy English,\* planned and coordinated.<sup>140</sup>

**337. *The community has confidence in and is satisfied with policing.<sup>141</sup>***

- \* Public satisfaction “measures the quality of service delivered, as experienced by the public.”<sup>142</sup>
- \* Public confidence “is about whether the public generally believes police will operate in the public interest and with integrity.”<sup>143</sup>

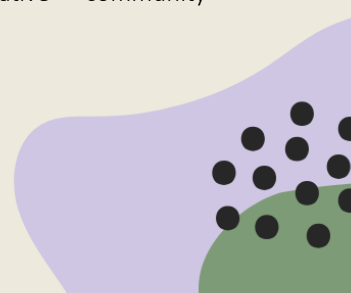
**338. *Police build strong, respectful relationships with the Aboriginal and Torres Strait Islander communities that they serve.***

- \* Police officers are familiar with the community they serve, meet with leaders and representatives of Aboriginal and Torres Strait Islander communities,<sup>144</sup> and are sensitive and responsive to Aboriginal and Torres Strait Islander communities’ needs, complaints and suggestions.<sup>145</sup> For example, police meet with the community every two months, and informally when requested to do so.<sup>146</sup>
- \* Police develop procedures, in consultation with relevant local ACCOs and community leaders, to enable negotiations between Aboriginal and Torres Strait Islander communities and police concerning police activities. Issues discussed include policing methods, perceived harassment or discrimination by police, and any concerns on the part of the communities or the police. Negotiations are conducted “with representative community

\* See glossary.

\* See glossary.

\* See glossary.



organisations, not Aboriginal people selected by police,” and are “frank and open, and with a willingness to discuss issues notwithstanding the absence of formal complaints.”<sup>147</sup>

- \* All Aboriginal and/or Torres Strait Islander people “who are involved in community and police-initiated schemes” are properly remunerated.<sup>148</sup>
- \* Police place appropriate emphasis on community policing, do not engage in “over-policing or inappropriate policing of Aboriginal people in any

city or regional centre or country town.” Policing places “sufficient emphasis on crime prevention and liaison work and training directed to such work.”<sup>149</sup>

- \* Aboriginal community leaders and police develop place-based approaches, such as developing a Mutual Respect Agreement.<sup>150</sup>
- \* There are current Aboriginal Justice Agreements\* with governments<sup>151</sup> and police have current Reconciliation Action Plans\*.<sup>152</sup>

339. *Aboriginal Night Patrols,\* which have cultural and “extensive local family knowledge which is not necessarily available to police” are sustainably funded and supported (where desired by local communities), with the view to reduce contact between Aboriginal and/or Torres Strait Islander people and police.<sup>153</sup> Police develop effective and respectful relationships with local Night Patrols.<sup>154</sup>*

340. *Police services aim to engage and operate in ways that are respectful and grounded in Aboriginal communities’ perspectives and protocols relevant to the individual communities<sup>155</sup>*

341. *Police services (and governments) welcome external, independent scrutiny, and properly implement, in a timely manner, non-coercive recommendations from NPM members, coronial inquests into Aboriginal deaths in custody and relevant Inquiries, Royal Commissions and complaints outcomes. Police respect court orders.<sup>156</sup>*

- \* Police are held accountable to the government and the public. Performance appraisal goes beyond looking at “crime rates and arrest figures,” and includes a consideration of whether police are responsive to community needs.<sup>157</sup>
- \* Leadership has established positive relationships with independent oversight organisations<sup>158</sup> and “advisory groups who have an interest in police custody,” with the objective of improving outcomes

for detained people.<sup>159</sup> Police leadership considers complaints and other oversight mechanisms as providing an opportunity to evaluate performance of their reports and the agency, the quality of the agency’s relationship with the public, identifying areas for improvement, and increasing public trust and confidence in police.<sup>160</sup>

- \* Leadership has an internal communication plan on the roles and functions of oversight bodies.<sup>161</sup>

342. *Police services collaborate “with partner agencies and organisations to enhance custody arrangements. There is regular senior-level liaison and collaboration with key partner agencies and service providers to improve custody arrangements. This includes exploring opportunities to reduce the incidence and impact of custody.”<sup>162</sup>*

343. *Police do not have paramilitary units.<sup>163</sup>*

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\* See glossary.  
\* See glossary.

\* See glossary.



## (c) Policing and human rights (general)

344. *In performing their duties, police respect and protect the human rights of all people.*

### A police force or a police service?

Police organisations usually present themselves as a service, force or a combination of the two. The distinction between a service and force can be described as follows: The “‘force perspective’, or vertical perspective, is clearly seen in authoritarian policing styles employed by many police agencies. The other perspective is that of police as a service provider to communities in their own areas. This ‘service’, or horizontal, perspective is seen in ‘community policing’ and its derivatives: problem oriented and intelligence led policing”... The police – whether perceived by the public as a service or as a force – should play an essential role in protecting human rights. The police are responsible for ensuring the security and safety of individuals through enforcing the law; under international law, police officers are obliged to fully respect human rights, but they are also obligated to protect human rights against violations by other individuals. In essence, their key functions call on them to be active agents for the enjoyment of human rights.”<sup>164</sup> - The Association for the Prevention of Torture

345. *Police “respect and protect human dignity,” and “maintain and uphold the human rights of all persons.”<sup>165</sup>*

- ✱ A human rights culture is achieved by “example and good command and management practice.”<sup>166</sup>
- ✱ Police leadership fosters this culture through “policies, procedures, operations and management,” ensuring that police training materials are compatible with human rights.<sup>167</sup> Leadership ensures that all strategies and “orders to subordinates take into account the requirement to protect and promote human rights,”<sup>168</sup> and it enforces “standing orders incorporating international human rights standards.”<sup>169</sup> There is
- ✱ “an ethical code of conduct” which incorporates international human rights standards.<sup>170</sup> All “reports and complaints of human rights violations are fully and properly investigated.”<sup>171</sup> There is an anti-racism strategy.<sup>172</sup>
- ✱ There is “a clear and sustained commitment and obligation at all levels” to prevent and address violence against children,<sup>173</sup> and other marginalised, racialised and vulnerable groups, including Aboriginal and/or Torres Strait Islander people.

## (d) Policing and human rights (children)

346. *Key human rights of children are upheld, including the best interests of the child being a primary consideration in all matters.<sup>174</sup> All engagements with and decisions about children are age-appropriate.<sup>175</sup> Children have the right to be heard and to have their views taken into account.<sup>176</sup>*

347. *The minimum age of criminal responsibility is at least 14, and the age at which children can be detained is at least 16. There are no exceptions for alleged serious offending to the age of criminal responsibility.<sup>177</sup>*

348. *“Children with developmental delays or neurodevelopmental disorders or disabilities” are “automatically excluded” from the criminal legal system, even if they are of the age of criminal responsibility. At the very least, they are individually assessed. This includes children with autism spectrum disorders, FASD and acquired brain injuries.<sup>178</sup>*

## (e) Policing and human rights (purpose of interviews)

349. *Police do not solely rely, in conducting investigations, on confessions from accused during interviews.<sup>179</sup> Police appreciate that there is a risk of torture if they were to rely on confessions during interviews, as well as a risk of confirmation bias (that may result in wrongful convictions).<sup>180</sup>*

- \* Legislation provides “a clear basis for modern investigative methods and forensic services,” and police have the resources to gather evidence in accordance with these methods.<sup>181</sup>
- \* Police have developed investigation methods that reduce reliance on confessions and evidence obtained during interviews,<sup>182</sup> and seek “corroborative evidence through all available modern, scientific methods of crime investigation.”<sup>183</sup> They have invested in the necessary equipment and skilled workforce.<sup>184</sup>
- \* Police policies and procedures make clear that police are not to rely on confessions,<sup>185</sup> and police receive “training on effective scientific techniques for investigation” and legal standards relating to interviews.<sup>186</sup>
- \* There are systemic reviews of “interviewing rules, instructions, methods, and practices to ensure rigorous implementation.”<sup>187</sup> There are strict, enforced penalties for any violations of interviewing protocols.<sup>188</sup>
- \* When in doubt about the legality of an interview, police officers seek guidance from their superiors before proceeding, considering (among other factors) whether the interview would be admissible in court.<sup>189</sup>

## (f) The police service is free from all forms of discrimination

350. *The police service is free from all forms of discrimination, especially racism, with respect to how its staff carry out their duties and functions in the community, and with regards to the police service’s treatment of its own staff. No one is discriminated against on the basis of their Aboriginality, race, colour, sex, gender, sexuality, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth or other status.<sup>190</sup>*

- \* There are no laws, regulations or policies that create or perpetuate racial discrimination.<sup>191</sup>
- \* Commonwealth, State and Territory governments regularly “review police procedures and practices so that the law is enforced fairly, equally and without discrimination” with respect to Aboriginal and/or Torres Strait Islander people.<sup>192</sup>
- \* “Staff are confident to challenge and report disrespectful, unfair or discriminatory treatment,” and police leadership responds appropriately.<sup>193</sup>
- \* It is not “considered unlawfully discriminatory for the police to enforce certain special measures\* designed to address the special status and needs of” certain groups (e.g. women, children, Aboriginal and/or Torres Strait Islander people) “in accordance with international human rights standards.”<sup>194</sup>
- \* “The recruitment, hiring, assignment and promotion policies of police agencies... are free from any form of unlawful discrimination.”<sup>195</sup>

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\* See glossary.

## Coronial Inquest into the death of Kumanjayi Walker

- \* The Coroner found that Mr Rolfe [the police officer] was racist and that his racist views increased the likelihood of a fatal confrontation with Kumanjayi Walker.<sup>196</sup> The Coroner found that racism influenced Mr Rolfe's failure to take steps to mitigate the risk of a fatal interaction (racism was not a motivation, but a relevant circumstance).<sup>197</sup>
- \* The Coroner accepted evidence relating to the Northern Territory (NT) Police not taking steps to prevent the formation of racist views among its members.<sup>198</sup>
- \* The Coroner considered root causes of racist conduct in police services, including recruiting police officers with pre-existing racist attitudes,<sup>199</sup> a work environment that tolerated, or normalised, racism (including racist language<sup>200</sup> and racist awards ceremonies<sup>201</sup>), the influence of institutional or structural racism,<sup>202</sup> police developing negative race-based generalisations while on the job,<sup>203</sup> police developing an "us and them" mentality,<sup>204</sup> and vicarious trauma.<sup>205</sup>
- \* The NT Commissioner of Police conceded that he heard about racist conduct in the NT Police, in serious breach of the Code of Conduct, and he had never taken any steps to investigate. "He agreed that was a catastrophic failure of the Code of Conduct. That no police member, including no senior police, who knew of these [racist] awards reported them is clear evidence of entrenched systemic and structural racism within NT Police."<sup>206</sup> The Commissioner acknowledged failures in the disciplinary responses to racist behaviour, including in relation to penalties imposed.<sup>207</sup> Ultimately, the Commissioner agreed that previous comments he had made with regards to not knowing about racist behaviour in the NT Police "gaslit members of the Aboriginal community who had experienced and complained of racism. He ultimately conceded on the record that racism in the NT Police was not merely historic, "It's recent your Honour"."<sup>208</sup>

### 351. *Police services are free from systemic racism,\* working with ACCOs and Aboriginal and Torres Strait Islander communities "to systematically assess and overcome racism at an individual and systemic level."*<sup>209</sup>

- \* There is consistency in definitions, categories and methodologies used to report on racist policing (e.g. having "incidents of alleged racist policing as a dedicated category" in police records, as well as "consistency in definition of racial profiling,\* criteria for reasonable, necessary or proportionate stop and search or identity checks, and understanding of what is considered excessive use of force"<sup>210</sup>).

## Leadership attributes for effectively tackling systemic racism in the police service

- \* "Knowledge, experience, skills and commitment to changing the mindset and culture of... Police, to end systemic racism and to ensure the human rights of First Peoples are respected, protected and promoted in all aspects of police operations;
- \* understanding of the history of colonisation and in particular the role of... Police in the dispossession, murder and assimilation of First Peoples, and the ongoing, intergenerational trauma and distrust of police this has caused;
- \* recognition of ongoing systemic racism within... Police and the need for this to be identified, acknowledged and resisted;
- \* experience, skills in, and commitment to, changing the culture of... Police to end systemic racism and to ensure the human rights of First Peoples are respected, protected and promoted in all aspects of police operations and the organisation."<sup>211</sup>

– Yoorrook Truth and Justice Commission

\* See glossary.

\* See glossary.

352. *An intersectional\* approach is adopted when analysing police services for discriminatory structures, policies, procedures and practices.*

353. *Predictive profiling is prohibited,<sup>212</sup> and police officers are held accountable for unlawful profiling.<sup>213</sup>*

### What is profiling?

Profiling means “any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person’s performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements.”<sup>214</sup>

“In the context of policing, profiling has two main purposes: to identify known individuals based on intelligence concerning a specific individual, and as a predictive method to identify unknown individuals who may be of interest to the police.”<sup>215</sup> Both purposes “may include conscious or unconscious biases\* that may discriminate against individuals,”<sup>216</sup> and profiles “can create harmful stereotypes and lead to discrimination.”<sup>217</sup>

- ✱ Engaging in unlawful profiling has legal and financial consequences, with police who act unlawfully being held accountable.<sup>218</sup>
- ✱ Police “make public information about its past and current use of predictive tools,” “including demographic data on the people identified and targeted by police as a result of using of such tools.”<sup>219</sup>
- ✱ Any processing of data has a specific purpose. Individuals have a right to be informed regarding the personal data being collected, stored and processed, the related purpose, and their rights. Police keep records of any processing of data.<sup>220</sup>

354. *Police do not engage in racial profiling.\**

### What is racial profiling?

Racial profiling “is primarily concerned with the motivation of the police. It occurs when race or racial stereotypes about offending or dangerousness are used, consciously or unconsciously, to any degree in suspect selection or subject treatment.”<sup>221</sup>

- ✱ Police “address racial profiling by developing and delivering, in partnership with Aboriginal and Torres Strait Islander communities and ACCOs, a policy on racial profiling and training materials on preventing racial profiling.”<sup>222</sup>

355. *Aboriginal and/or Torres Strait Islander staff are not discriminated against. Staff are not discriminated against on any other grounds, including on the basis of their gender or sexuality.*

- ✱ Aboriginal and/or Torres Strait Islander staff are not required to take on the cultural load\* for the police service. The cultural rights of Aboriginal and/or Torres Strait Islander staff are respected, including participation in cultural activities. Broader cultural obligations to their communities are respected, and

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\* See glossary.  
\* See glossary.  
\* See glossary.  
\* See glossary.

the police service understand that Aboriginal and/or Torres Strait Islander staff are often themselves impacted by intergenerational trauma and racism.<sup>223</sup>

- \* Staff surveys are conducted to determine views on “policies, practices, behaviour or attitudes which are gender-specific” or directed at Aboriginal and/or Torres Strait Islander people.<sup>224</sup>

- \* There are “open channels of communication for complaints or recommendations by female officers on issues of gender bias,” and Aboriginal and/or Torres Strait Islander people on racism.<sup>225</sup>

- \* There are policies prohibiting discrimination against police (e.g. “on the basis of pregnancy or maternity” or Aboriginality<sup>226</sup>).

## (g) Respect for the human rights of police officers

356. *The human rights of police officers are respected.*

“While police officers have a duty to protect and respect individuals’ fundamental rights, their own rights should be respected and fulfilled on an equal basis. Thus, while police officers may be responsible for human rights violations, including ill-treatment, monitors should keep in mind that they may be victims of abuses themselves. When this is the case, it often has a major impact on the treatment of [detained people]. For instance, very poor material and working conditions are not only an infringement of police officers’ economic and social rights, but may increase corruption or contribute to other behaviour detrimental to those in their custody.”<sup>227</sup> - Association for the Prevention of Torture

## (h) Management prioritises safe custody

357. *Leadership prioritises and promotes safe and respectful custody.*<sup>228</sup>

- \* “Custody management forms part of the Service’s risk management framework and is closely monitored by senior management.”<sup>229</sup>
- \* Leadership promotes safe and respectful custody “corporate policy, education and training,” and they take “timely and effective remedial action” “when poor or discriminatory practice is identified.”<sup>230</sup>
- \* The police service’s “corporate performance reporting framework includes key custody-related

indicators and, where relevant, organisational performance targets. This data and information are analysed and used to improve custody management”<sup>231</sup>

- \* “Custodial facilities are appropriately resourced. This includes the provision of adequate staffing to effectively operate rosters.”<sup>232</sup>

## 3. Integrity of police services

358. *Police services are free from corruption, \*<sup>233</sup> in recognition of the need for “effective measures for combating corruption” as a safeguard against torture.*<sup>234</sup>

- \* Police corruption “necessarily involves an abuse of position, an abuse of being a police official.”<sup>235</sup> Examples of police corruption include, but are not limited to, the following: “bribery, fabrication or destruction of evidence, favouritism, nepotism;”<sup>236</sup>

police improperly using “public moneys, property, services or information acquired in the performance of, or as a result of, their official duties for activities not related to their official work;”<sup>237</sup> police disclosing “confidential information that they learned of in the

\* See glossary.

performance of their duties, unless national legislation, the performance of duty or the needs of justice strictly require otherwise;<sup>238</sup> police using “their official authority for the improper advancement of their own or their family’s personal or financial interest.”<sup>239</sup> Corruption may occur through the use of “incentives to deprive children of their liberty,” or in relation to detained people’s placement, or the “provision of goods and services or contact with family.”<sup>240</sup>

- \* There is a clear definition in legislation of corruption, the causes for corruption in police are studied, and there are effective structures and mechanisms in place to combat corruption<sup>241</sup> in police at all levels.<sup>242</sup>

- \* Police do not engage in corruption, “rigorously oppose” it,<sup>243</sup> and “inform superiors and other appropriate bodies of corruption within the police.”<sup>244</sup>

- \* The law is enforced against any police officer who engages in corruption,<sup>245</sup> with zero tolerance of corruption being demonstrated by “cleaning up the top ranks if necessary” and potentially using “vetting as a tool to identify current superiors above a certain rank who have engaged or are engaging in corrupt activities.”<sup>246</sup>

- \* In combatting corruption, police have extra consideration for vulnerable groups with whom police engage.<sup>247</sup>

**359. *Police services are transparent at “individual, supervisory and organisational levels,”<sup>248</sup> making publicly available<sup>249</sup> disaggregated data and internal policies and procedures.*<sup>250</sup>**

- \* Police make data relating to Aboriginal and/or Torres Strait Islander people available, such as the disaggregated data on people who received diversion,<sup>251</sup> bail and remand data, and reasons for refusing bail,<sup>252</sup> the number of people who pass through police cells, including relevant information, such as Aboriginality,<sup>253</sup> the reason for their detention (e.g. fine default, breach of court orders, protective custody).<sup>254</sup> Police data and information systems have the capabilities to enable entering, storing and accessing the relevant qualitative and quantitative data.<sup>255</sup>

- \* There is consistency in approach to data collection on police custody across all jurisdictions.<sup>256</sup> Coroners “maintain a uniform database to record details of Aboriginal and non-Aboriginal deaths in custody” and comprehensive, regularly updated publicly available records are maintained.<sup>257</sup> Statistics on deaths in police custody are monitored on a national level, reported annually to the Federal Parliament, with information disaggregated by

Aboriginal deaths in custody and Torres Strait Islander deaths in custody, there being “a nationally agreed standard form of statistical input and a standard definition of deaths in custody.”<sup>258</sup>

- \* Police are transparent about “regulation of the use of less-lethal weapons and related equipment and the policies on and criteria for their lawful use,”<sup>259</sup> information on the types of weapons at police disposal, risks relating to the weapons or equipment and guidance provided by manufacturers.<sup>260</sup>

- \* Police are also transparent about lessons learned from successful cooperation and community engagement initiatives between police and Aboriginal and Torres Strait Islander communities.<sup>261</sup>

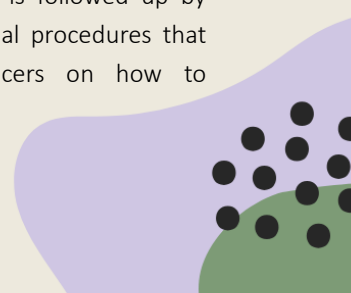
- \* Anonymity of police and victims is not “used as a justification for suppressing” publication of disaggregate data and information.<sup>262</sup>

- \* Data collection facilitates “comparisons between Australian and other jurisdictions,” and research findings are communicated.<sup>263</sup>

**360. *Police leadership and management promote a culture of integrity, inclusivity and accountability, and take steps to prevent the development of a culture of impunity.*<sup>264</sup>**

- \* Police leadership ensures that there is “a clear line of command; clear and unambiguous instructions and orders; transparency of decision-making;” “an

effective reporting system that is followed up by supervisors; standard operational procedures that give guidance to police officers on how to



implement laws and policies and carry out certain actions;” “unequivocal support for the independent oversight body and its authority regarding the handling of complaints;” “a mechanism for police officers to file a complaint against... a colleague or a superior;” “a procedure for whistle-blowing; a structure for effectuating disciplinary proceedings; corrective measures following proven neglect of duty or criminal offences.”<sup>265</sup>

- ✱ Police leadership “convey firm and unambiguous messages of zero tolerance of police ill-treatment.”<sup>266</sup>
- ✱ There are “periodic, unannounced spot checks” on police detention facilities and on weapons and ammunition, to ensure that police are complying with policies and procedures.<sup>267</sup>
- ✱ Leadership punishes “discriminatory, insensitive or otherwise inappropriate professional behaviour,” and rewards “officer initiatives supportive of better community relations.”<sup>268</sup>
- ✱ Leadership organises training to sensitise police to the importance of good relationships with Aboriginal and Torres Strait Islander communities,<sup>269</sup> and has a plan of action for working in a non-

discriminatory manner that has been developed in consultation with Aboriginal and Torres Strait Islander communities.<sup>270</sup> It has established “mechanisms to receive, continuously, the complaints and suggestions of” Aboriginal people,<sup>271</sup> and issues “clear orders on appropriate comportment, language and attitudes” with regards to Aboriginal and Torres Strait Islander communities.<sup>272</sup>

- ✱ Leadership has appointed a coordinator for work with Aboriginal and Torres Strait Islander communities<sup>273</sup> and has established fair recruitment and promotion policies, actively recruiting Aboriginal and/or Torres Strait Islander people.<sup>274</sup>
- ✱ Police leadership appraises performance with reference not only to crime and arrest rates, but also the level of trust between police and communities and police responsiveness to community needs.<sup>275</sup>
- ✱ Leadership understands police complaints as a mechanism by which to identify areas for improvement,<sup>276</sup> and to determine whether individual police officers are “suited to custodial duties.”<sup>277</sup>

### The challenge of the ‘blue wall of silence’

“Police supervisors at any level need to be aware that their behaviour has a strong impact on the organizational culture, which in turn contributes to police behaviour. Worldwide, the police culture is often characterized by what is referred to as the “blue wall of silence.” Such a culture, valuing loyalty over integrity, facilitates misconduct by keeping it concealed. Any attempt to enhance police integrity needs to be accompanied by measures to enhance transparency and stimulate a culture of openness, in other words, a professional ethos in which awareness of and respect for accountability during police actions is fully ingrained. Police leadership will have to take the lead in realizing this.”<sup>278</sup>

“It is all too easy for “the end justifies the means” attitudes to be adopted in an environment in which serious crimes have been committed and where the difficulties of working in such an environment contribute to the development of group ethics and individual sets of standards. The leadership of law enforcement agencies therefore needs to be aware of the inherent risk of such group ethics fostering ‘grey policing’\* that may not always comply fully with the law.”<sup>279</sup>

### 361. *Leadership is held to the same high standards as the rest of the police service.*

- ✱ Police leadership is appraised on whether it meets its obligation to “take the lead in developing a

professional ethos.”<sup>280</sup> Current leaders “provide public explanations when they fail to take measures

\* See glossary.

aimed at promoting integrity and when they allow unethical behaviour under their command,” and line managers are investigated in instances of police misconduct. Conversely, supervisors and managers are rewarded for fostering a culture of integrity and addressing unethical behaviour promptly and appropriately.<sup>281</sup>

- \* The effectiveness of the chain of command is regularly reviewed and improved as needed.<sup>282</sup>
- \* There is a program in place to “develop future leadership allowing new leaders to grow and mature before they are appointed to top positions.” This may include coaching or mentoring and training, international networking.<sup>283</sup>

**362. *There is a clear chain of command, effective supervision, debriefing following incidents, and reporting of concerns to superiors.***

- \* Regardless of whether police services have a “hierarchical and centralized structure” or a “decentralized structure,” leadership is responsible for ensuring that, at a local level, policing is compliant with the law and human rights.<sup>284</sup> There is a clear chain of command, so it may “always be possible to determine which superior is ultimately responsible for the acts or omissions of police personnel.”<sup>285</sup> As supervisors bear responsibility for actions of individual police officers, supervisors are aware of the conduct of their reports.<sup>286</sup> Nevertheless, individual, subordinate police officers are also held personally responsible for their own conduct.<sup>287</sup>
- \* Police are provided with the requisite framework and tools and appropriate supervision (including during particular operations, and through subsequent internal review and evaluation).<sup>288</sup>
- \* There is an effective management structure providing appropriate governance and oversight of police custody (including of “services provided externally under contract,” such as healthcare)<sup>289</sup> and police officers who are responsible for

“apprehensions, arrests, detentions, custody, transfers and imprisonment,” and who are authorised to use force and firearms.<sup>290</sup>

- \* Where police officers do not follow policies and procedures, action is taken,<sup>291</sup> with ‘grey policing’\* not being tolerated.<sup>292</sup>
- \* Within the police service, there is “a culture of transparency and trust,” such that police officers respect the chain of command and feel confident reporting violations of law and policies,<sup>293</sup> immediately reporting any suspicion of ill-treatment of detained people.<sup>294</sup> This extends to officers self-reporting.<sup>295</sup>
- \* Debriefs are encouraged. This includes “‘hot’ (or immediate), formal, thematic and multi-agency” debriefs. All relevant police officers are involved in debriefs. Police make publicly available any ‘lessons learned’ where there have been human rights violations, ensuring to also directly share feedback with people and communities who have been impacted by police actions. These lessons learned guide future policy and practice.<sup>296</sup>

**363. *There is an effective code of conduct/ethics, to which staff adhere.***<sup>297</sup>

- \* Leadership appreciates that an inclusive process of developing a Code of Conduct, in and of itself, can support the development of a positive culture.<sup>298</sup> Codes are guided by the values of “honesty, integrity, non-discrimination and respect for human rights.”<sup>299</sup>

- \* Police performance is measured against the Code of Conduct,<sup>300</sup> including through audits, with breaches of the Code attracting disciplinary action.<sup>301</sup>
- \* Issues canvassed by the Code of Conduct include “the use of police powers;” “standards related to the use of information (privacy issues, confidentiality of information and whistleblowing\*);” “the acceptance of gifts and/or money;” “conduct among colleagues;”

\* See glossary.

\* See glossary.



reporting and investigating misconduct, and “receiving, recording and investigating complaints by members of the public.”<sup>302</sup>

**364. Both internal and external police communication is anti-racist\*, inclusive and non-stigmatising,<sup>303</sup> and respects the human rights of Aboriginal and/or Torres Strait Islander people in contact with police and the criminal legal system.**

- \* Police do not “promote or incite racial discrimination.”<sup>304</sup>
- \* Police consult with people with lived experience of police custody, ACCOs and other relevant civil society organisations on appropriate terminology being used in police “policies, programs, legislation and statements concerning people... who are justice system involved.”<sup>305</sup>
- \* Police are comfortable discouraging and calling out colleagues’ bad behaviour, including sexist language and comments,<sup>306</sup> and “ethnic or racial stereotyping or slurs.”<sup>307</sup>

**365. There are robust internal reporting mechanisms, both mandatory and voluntary (including regarding allegations or suspicions of torture, ill-treatment and other human rights violations, corruption and violence against children). Non-compliance with mandatory reporting is sanctioned, and voluntary reporting does not attract reprisals.<sup>308</sup>**

**366. There are robust protections for whistleblowers.\*<sup>309</sup>**

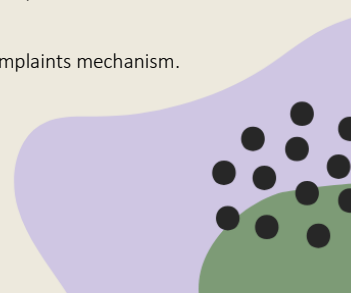
**367. There are robust mechanisms by which detained people can make a complaint internally.\*<sup>310</sup>**

- \* Complaints systems are accessible, free of obstacles “preventing the public from filing complaints (such as distance, fees, discrimination).”<sup>311</sup> The public is willing and confident to use the complaint system, and can make anonymous complaints if they wish to.<sup>312</sup>
- \* Members of the public know how to make a complaint, and are able to do so at all police stations and via “toll-free numbers or free postal addresses.” All police officers are required to accept complaints, with a refusal to do so (or rude behaviour<sup>313</sup>) being a disciplinary offence. Records of all complaints are kept.<sup>314</sup> Robust record keeping practices are used to discourage police officers from dismissing complaints, with failure to keep records being a disciplinary offence.<sup>315</sup>
- \* Classifications of complaints made by Aboriginal and/or Torres Strait Islander people reflect “the seriousness of the alleged misconduct.”<sup>316</sup> To support culturally appropriate complaints handling for Aboriginal and/or Torres Strait Islander people, there may be the “creation of a specialised role to advise on classification and investigation of complaints from Aboriginal people, and to link Aboriginal complainants with available services to support them during the complaints process.” The roles are filled by Aboriginal and/or Torres Strait Islander people. Development of this role/unit is in consultation with ACCOs.<sup>317</sup> Complainants and their representatives are provided regular updates on the investigation and a clear and detailed outcome,<sup>318</sup> including any disciplinary outcomes for police.<sup>319</sup>
- \* Patterns of complaints by Aboriginal and/or Torres Strait Islander people against individual police officers are identified and addressed appropriately.<sup>320</sup>
- \* Complaints statistics are made publicly available,<sup>321</sup> and police appreciate that having only a few complaints lodged is not determinative of positive police performance; it may, in fact, “indicate a lack

\* See glossary.

\* See glossary.

\* Noting that this is additional to an independent complaints mechanism.



of faith in the effective handling of complaints.”<sup>322</sup> Publicly available statistics make a clear “distinction between filed, substantiated and unsubstantiated complaints.”<sup>323</sup> Where alternative conflict resolution methods are pursued, this is also recorded.<sup>324</sup>

- \* There are additional safeguards in place for complaints about police made to an internal police complaints mechanism, rather than to an independent body (which is discussed below), including ensuring that investigating officers are “from a different branch or region and a higher rank

than the officer or officers under investigation,” to prevent the police officer being investigated “from influencing, monitoring or enquiring about the investigation.”<sup>325</sup>

- \* To strengthen safeguards, there may be a separate unit to carry out investigations into more serious offences, “with minor infractions (such as rudeness or lack of punctuality) left to the discretion of the officer’s supervisor.”<sup>326</sup> If there is a separate unit, it “is well-resourced and has well-trained staff of high integrity.”<sup>327</sup>

### 368. *There are fair and effective internal disciplinary processes, that accord with the principles of natural justice.*

- \* The disciplinary system is “fair, transparent, timely and just.”<sup>328</sup>
- \* This includes a right to legal defence and appeal,<sup>329</sup> with police unions potentially providing legal representation or advice, and the accused being able to choose their defence counsel.<sup>330</sup> Disciplinary decisions can be challenged “by an independent body, preferably a court of law,” providing police officers protections against arbitrary decision-making, while also promoting transparency of internal disciplinary processes to the public.<sup>331</sup>
- \* Misuse of disciplinary processes (e.g. unlawful punishment or bullying by superiors) is itself a disciplinary offence.<sup>332</sup>
- \* Where police conduct amounts to a criminal offence or breach of duty, further accountability measures are taken.<sup>333</sup> However, “information from disciplinary investigations is used only in criminal proceedings in so far as it respects the rights of the suspect.”<sup>334</sup>

## 4. Competency of police service

### (a) Appropriate recruitment

#### 369. *There is appropriate and non-discriminatory screening at, and selection criteria for, recruitment, which supports recruitment of people of diverse backgrounds and qualifications (especially the recruitment of Aboriginal and/or Torres Strait Islander people).*<sup>335</sup>

- \* Background checks are conducted for: criminal records (taking into consideration the nature/seriousness of the offending, the time that has lapsed etc), human rights violations, gender-based violence, discriminatory behaviour,<sup>336</sup> offending against a child,<sup>337</sup> and suitability to carry a weapon.<sup>338</sup>
  - \* Selection is transparent, fair and based on merit, taking into account skill and integrity.<sup>339</sup> Criteria go beyond physical criteria, to consider education,<sup>340</sup> qualifications and experience,<sup>341</sup> “sound judgment,
- an open attitude, maturity, fairness, communication skills and, where appropriate, leadership and management skills,” and “a good understanding of social, cultural and community issues.”<sup>342</sup> Recruitment criteria also considers whether individuals can work effectively with children, and in a humane manner.<sup>343</sup>
- \* Recruitment processes and standards are regularly reviewed to ensure they reflect the genuine occupational requirements of the role and do not

unlawfully discriminate against police from diverse backgrounds.<sup>344</sup>

- ✳ Recruitment procedures are objective and non-discriminatory,<sup>345</sup> aimed at ensuring that recruitment at all levels of police reflects the diversity of the community that the police serve.<sup>346</sup> Police recruitment includes people from “underrepresented groups,” with targets set for Aboriginal and/or Torres Strait Islander people, “ethnic groups, minorities and women.” Where recruitment of underrepresented groups is low, there is evaluation of, and revision where necessary, of human resources policies to ensure that they are “non-discriminatory, gender-sensitive and family-friendly,” and accessible.<sup>347</sup> Where Aboriginal and/or Torres Strait Islander police officers leave the service, information is gathered on the reasons.<sup>348</sup> Policies and procedures are improved accordingly.
- ✳ Police Services actively recruit Aboriginal and/or Torres Strait Islander police officers (in particular women). Police services consider conducting recruitment in groups,<sup>349</sup> and supporting applicants to undergo training or bridging courses where there

are educational barriers to otherwise suitable applicants meeting criteria.<sup>350</sup> Targeted efforts are made to recruit Aboriginal and/or Torres Strait Islander people to custody roles at police watchhouses.<sup>351</sup>

- ✳ Leadership ensures that there is “careful and timely succession planning for the replacement of key personnel with effective relationships with Aboriginal and Torres Strait Islander communities.”<sup>352</sup>
- ✳ Police recruitment strategies to improve relationships with local communities are tailored (e.g. aides, police liaison officers), “experimenting and adjusting in the light of the experience of other services and applying what seems to work best in particular circumstances.”<sup>353</sup> While recruitment of Aboriginal and/or Torres Strait Islander police officers may be part of a broader strategy to change culture within police and reduce overincarceration of Aboriginal and/or Torres Strait Islander people,<sup>354</sup> leadership has a responsibility to ensure that Aboriginal and/or Torres Strait Islander police officers have a safe and respectful workplace.

370. *Police services “consider setting up policy and development units within their structures to deal with developing policies and programs that relate to” Aboriginal and/or Torres Strait Islander people. Where these units exist, they are led by Aboriginal and/or Torres Strait Islander managers, who have “full access to senior management of the service and report directly to the Commissioner or [their] delegate.”<sup>355</sup>*

371. *Police services may include a specialist children’s unit.<sup>356</sup>*

372. *To support recruitment of appropriate individuals for law enforcement work (including leadership), police are properly remunerated for their work (including where they take on specialist roles, such as working with children).<sup>357</sup>*

## **(b) Regular assessment of competency and suitability**

373. *Police officers are regularly assessed for their ongoing suitability.*

- ✳ Performance appraisals are not limited to crimes detected, “as this can be counterproductive and promote unethical conduct;” appraisals also consider police officers’ “responsiveness to community needs, responsiveness to gender issues and respect for human rights.”<sup>358</sup>



374. *Allegations of domestic violence against police officers are properly handled.*

- \* This extends to non-operational roles within the police service. Following allegations/findings of guilt for domestic and family violence, police officers are suspended or have their employment terminated.<sup>359</sup>

## **(c) Training and professional development opportunities**

375. *Police undergo rigorous initial training, which is supplemented by regular refresher and professional development training. Training opportunities are offered and provided without discrimination.<sup>360</sup>*

- \* There is consistency across the guidance provided to police, including in training, policies and procedures (e.g. guidance on how often to conduct observations of people in custody is consistent across the Standard Operating Procedures and any Custody Manual).<sup>361</sup>

376. *Training is delivered by appropriate, qualified professionals, there is transparency regarding the training undertaken,<sup>362</sup> and the training is evaluated.<sup>363</sup>*

- \* The evaluation of the police training curriculum includes consideration of “how well it meets modern policing needs and identification of potential areas for improvement, ensuring police trainers are of high integrity and setting the right example; rigorous selection criteria for police trainers; involvement of civilian trainers in police training; integration of ethics and human rights into training modules, relating them to police practice; and civilian oversight over police training.”<sup>364</sup>

377. *Training covers technical aspects of police roles and duties, is delivered in-person (not only online), incorporates practical components, and is tailored for specialised units and/or police working with vulnerable and marginalised people, such as those who work with children,<sup>365</sup> Aboriginal and/or Torres Strait Islander people, people with disabilities<sup>366</sup> and women.<sup>367</sup>*

(i) *Technical training*

- \* Technical training addresses conducting interviews, use of force, restraints and weapons, “interpersonal communication, the prevention of disorder, non-violent conflict management, and stress management,” and de-escalation skills.<sup>368</sup>

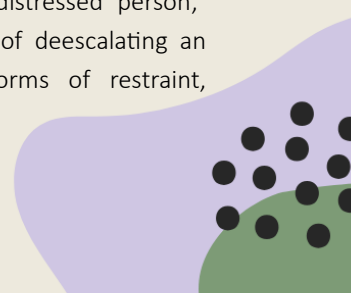
(ii) *Training on working with children*

- \* Training addresses how to work effectively with vulnerable and marginalised groups. For example, training relating to working with children includes, “childhood and adolescent brain development, the impact of cognitive and intellectual disabilities including FASD and the effects of trauma, including intergenerational trauma,”<sup>369</sup> and “disparities that minorities or Indigenous peoples,” and “the culture and the trends in the world of young people.”<sup>370</sup>

- \* Training also relates to alternatives to judicial proceedings, such as diversion,<sup>371</sup> legal obligations and exercising police discretion with regards to alternatives to detention,<sup>372</sup> laying charges against children,<sup>373</sup> and children’s international human rights.<sup>374</sup>

(iii) *Training on working with people with mental ill-health*

- \* Training related to working with people with mental health issues addresses “communication strategies with mentally ill persons, including how to establish a rapport and calm down a distressed person,” “using distraction as a means of deescalating an aggressive situation, verbal forms of restraint,



containment strategies,” and “identifying symptoms and understanding changes in behaviour of mentally ill persons to be able to respond appropriately.”

- \* Police are trained on how to work with Mental Health Services (to obtain field assessments or assistance, how to locate the nearest place of treatment and how to identify the appropriate form of transport (e.g. whether an ambulance could be

requested, or whether Mental Health Services could provide transport). Police are trained to promptly take a person “to the most appropriate place of assessment by the most direct route”, advising the place in advance of their presentation and the person’s symptoms. Training covers “when it is appropriate for police members to remain at the place of treatment and when they should leave.”<sup>375</sup>

**378. *Police (including all custodial staff, staff involved in arrests, and staff involved in interviewing) and contracted workers receive regular human rights training<sup>376</sup> (to be delivered by external experts<sup>377</sup>) including with regards to the prohibition of (and reporting obligations for) torture and ill-treatment<sup>378</sup> (with medical staff being trained on the Istanbul Protocol<sup>379</sup>); and anti-discrimination<sup>380</sup> and anti-racism training.\*<sup>381</sup>***

- \* Training addresses human rights relating to specific police powers, such as use of force,<sup>382</sup> human rights of particular groups, such as women<sup>383</sup> and children,<sup>384</sup> and human rights in relation to

particular operations (e.g. sexual orientation and gender identity in detention;<sup>385</sup> or vulnerable groups, such as people with disabilities, participating in peaceful assemblies<sup>386</sup>).

**379. *Police participate in cultural awareness training,<sup>387</sup> which includes information on historic police treatment of Aboriginal and/or Torres Strait Islander people. However, leadership understands that such training cannot, in and of itself, address racism on an individual or systemic level.<sup>388</sup>***

*(i) Development and delivery of training*

- \* Police partner with ACCOs “to develop and implement a strategy for ongoing cultural awareness training, monitoring and performance review for all members.”<sup>389</sup> Aboriginal and/or Torres Strait Islander people are involved in delivering training, and participants can subsequently demonstrate “a well-developed understanding of Aboriginal issues and the skills to deal effectively with Aboriginal communities.”<sup>390</sup>

- \* Initial and ongoing training are delivered face-to-face,<sup>391</sup> enabling trainers the “opportunity to assess competence,” and “if necessary, recommend appropriate interventions to ensure that police officers not only learn culturally relevant

information, but that they also demonstrate the requisite attitudes and skills.”<sup>392</sup>

- \* Training is tailored to the specific location/context of police stations, including “contemporary and community-specific information,”<sup>393</sup> with it being “a standard procedure for all police officers transferred to a location with a significant Aboriginal population to receive comprehensive cultural [awareness] training, tailored to reflect the specific issues, challenges and health concerns relevant to the location.” Local community members are involved in training delivery. Training is “ongoing to reflect the changing circumstances of the location.”<sup>394</sup>

*(ii) Content of training*

- \* “A substantial component of training both for recruits and as in-service training relates to interaction between police and Aboriginal people,” including “the social and historical factors which have contributed to the disadvantaged position in society of many Aboriginal people,” the “social and

historical factors which explain the nature of contemporary Aboriginal and non-Aboriginal relations in society today,” the “history of Aboriginal police relations and the role of police as enforcement agents of previous policies of expropriation, protection, and assimilation.”<sup>395</sup> e.g.

\* See glossary.



Training includes information about the Queensland Native Mounted Police.<sup>396</sup>

- \* Training includes “information concerning Aboriginal persons’ higher rates of common medical illnesses and susceptibility to illnesses” in order to prevent police assuming “that apparently unusual, aberrant or atypical behaviour must be due to [drug use] or drug withdrawal.” Training includes “social and behavioural determinants of health, geographical location and distribution of Aboriginal

and non-Aboriginal population, information on the mental and physical health status of Aboriginal persons generally,” and of detained Aboriginal people, “mental health, respiratory diseases, cardiovascular diseases, diabetes, chronic kidney disease... life expectancy and mortality rates for Indigenous persons,” contact with the criminal legal system, and “duty of care in police custodial settings.”<sup>397</sup>

### 380. *Police participate in working with interpreters training.*<sup>398</sup>

- \* Police and are trained and competent in using Easy English,\* particularly when working with interpreters, using “a style of English that closely matches the lexicon (words), syntax (grammar) and discourse (genre & logic) of Aboriginal languages,” avoiding “words that will cause confusion or ambiguity,” expressing legal concepts “in a way that makes the most logical sense,” and using “definitions that will be relatively easy to interpret into Aboriginal languages.”<sup>399</sup>
- \* Particularly, police are trained in how to properly administer a caution prior to interview.<sup>400</sup>
- \* Police are trained in how to determine an interpreter might be needed, and to appropriately offer the use of an interpreter. This entails explaining the role of an interpreter (where possible) and the fact that an interpreter is available free of charge; and taking steps to avoid shaming the person about their English.<sup>401</sup>

### 381. *Police participate in bystander training (bystander intervention can assist in mitigating harmful behaviours and supporting accountability). Police services cultivate a culture that supports police officers speaking up, by developing the tools and resources necessary to assist police to intervene safely when they witness discrimination or harmful behaviours. This includes specific training on managing resistance and calling out inappropriate behaviour.*<sup>402</sup>

### 382. *Promotion selection criteria and policies and guidance materials that relate to career advancement are regularly reviewed to ensure they do not unlawfully discriminate against police from diverse backgrounds.*<sup>403</sup>

## (d) **Police resourcing**

### 383. *Police have sufficient resources to operate in a human-rights complaint way.*<sup>404</sup> *Nevertheless, there is zero “tolerance of attribution of misconduct to a lack of resources.”*<sup>405</sup>

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\* See glossary.

## 5. Record keeping and data collection

384. *Standardised police systems of record-keeping (including data retention, storage and protection<sup>406</sup>) are secure, accurate, precise, updated,<sup>407</sup> and respect the human rights of detained people, including their privacy. Records are accessible to detained people (inclusive of an entitlement to an official record upon release), their lawyers,<sup>408</sup> and oversight bodies.\* Detained people can contest the accuracy of records.<sup>409</sup> Non-compliance in police record-keeping is sanctioned.*

### (i) *Quality and integrity of records*

- \* Police have accurate record keeping practices for all types of custody (including protective custody\*), “in a manner that allows for searching and retrieval.”<sup>410</sup>
- \* Recordkeeping is of sufficient quality to enable accountability, “early identification of risk, performance planning, resource allocation, audit processes and research.”<sup>411</sup>
- \* Individual custody records, “opened as soon as practicable,” are available in electronic form.<sup>412</sup>
- \* There are procedures ensuring “a secure audit trail and to prevent unauthorized access to or modification of any information contained in the system.”<sup>413</sup>
- \* Deliberate manipulation of data is a disciplinary offence.<sup>414</sup>

### (ii) *Content of records*

- \* The type of information in records relating to detained people includes precise information which enables determination of their identity (including their gender); details of the lawful basis for their arrest/apprehension (including any relevant warrant or court order), the responsible authority, the date, time and place of arrest/apprehension, reason(s) for their detention, and the date and time of their admission, release and any transfers. Records also include “visible injuries and complaints about prior ill-treatment,” an inventory of the detained person’s personal property, family members’ names, children’s details (including “ages, location and custody or guardianship status”), next of kin’s emergency contact details and information,<sup>415</sup> “notifications to parents and guardians on every admission, transfer or release” of children, any physical or mental health issues, and drug or alcohol use.<sup>416</sup> Police record any requests made for ambulances, when either community members or other services request police attendance at a scene.<sup>417</sup> Details of detained people’s “first appearance before a judicial or other authority,” and the police officer’s identity are recorded.<sup>418</sup> Records include details of unconditional release.<sup>419</sup>
- \* Records relating to the conditions and treatment in detention are also maintained (e.g. medical and disciplinary proceeding records).<sup>420</sup>

### (iii) *Confidentiality*

- \* Records are kept confidential, protecting people’s right to privacy, “unless the performance of duty or the needs of justice strictly require otherwise.”<sup>421</sup>
- \* Confidential files are “accessible only to authorized persons and classified in such a way as to be easily understood.”<sup>422</sup>

### (iv) *Transparency and oversight*

- \* Police are, to an appropriate degree, transparent, “ready to give objective information on their activities to the public, without disclosing confidential information.”<sup>423</sup> To support this, police develop guidelines relating to media engagement<sup>424</sup> and policies relating to use of social media.\*
- \* Records are maintained in a manner that is useful for oversight bodies, with registers being regularly inspected.<sup>425</sup> For example, there is a system enabling “a third party to follow the movements, location and well-being of a person in detention without the need

\* See further guidance on oversight.

\* See glossary.

\* See further guidance on media.

to locate and examine numerous files, papers or slips.”<sup>426</sup>

(v) *Contesting records*

- \* There are procedures in place to allow detained people to contest and rectify records that include “inaccurate, unfounded or unfair statements,” and

(vi) *Disciplinary sanctions*

- \* Breaches of the requirement to maintain accurate, complete, up-to-date, confidential files and registers attracts “disciplinary and other sanctions.”<sup>428</sup>

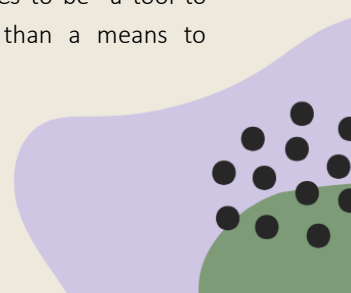
to allow third parties, where appropriate, to access relevant records.<sup>427</sup>

**385. *Police establish a “robust procedure for the independent gathering, storage and preservation of evidence, including digital evidence.”<sup>429</sup>***

- \* CCTV and other video footage is retained for an appropriate period of time and where there is a death in custody, all potentially relevant footage (not only footage immediately proximate to the time of death) is retained until the finalisation of all legal matters before the courts.<sup>430</sup>
- \* All footage in relation to children and people with intellectual disabilities or mental health diagnoses are retained indefinitely.<sup>431</sup>
- \* All footage is retained for a minimum of 6 years, or longer where required by legislation (e.g. to reflect time limits to commence civil litigation against police).<sup>432</sup>

**386. *Video and audio footage incentivises good police practices and improves police accountability, strengthening protections for detained people (while also respecting detained people’s right to privacy).***

- \* There is robust legal regulation of Body-Worn Cameras (BWCs), in accordance with human rights, providing guidance on when BWCs are switched on/off and the consequences of non-compliance.<sup>433</sup>
- \* It is mandated that BWCs are activated whenever a police officer uses their statutory powers (e.g. use of force, arrest, apprehension), and “when it is likely that an interaction may lead to the exercise of statutory powers.”<sup>434</sup> Police are not relieved from the obligation of activating BWCs because other cameras (e.g. on a police car dashboard) are activated.<sup>435</sup>
- \* Private companies providing BWC services are prohibited from processing footage “for their own purposes.”<sup>436</sup>
- \* Footage from BWCs is authentic (e.g. the images are “clearly tied to the incident,” with accurate timestamping and GPS location). It is reliable (e.g. images are stored “in the central system in a rigorous, safe and confidential way,” complying with data protection and privacy rules, such as lawful retention periods). BWC footage is admissible in court (e.g. police avoid “continuous video recording, which constitutes unacceptable interference with the right to privacy of both police officers and the individuals filmed;” police inform people who might be filmed, and obtain consent where relevant; images are stored securely, “keeping track of access to images by both police officers and citizens”).<sup>437</sup>
- \* Police provide, in a timely manner, copies of footage, on request, to complainants and their legal representatives.<sup>438</sup>
- \* Because of the chilling effects and risk of erosion to democratic participation, there is a “presumption of non-retention” for digital data gathered in relation to public assemblies. Any retention of data, including in relating to use of force, detention or arrest, is exceptional, robustly regulated and is solely for the purposes of pursuing accountability.<sup>439</sup>
- \* Police consult with local Aboriginal and Torres Strait Islander communities to develop policies and safeguards that will enable BWCs to be “a tool to improve accountability rather than a means to stigmatise minority groups.”<sup>440</sup>





**oversight,  
transparency,  
accountability &  
continuous  
improvement**

# 1. Independent monitoring of deprivation of liberty

## (a) Monitoring bodies

387. *There is regular announced and unannounced monitoring<sup>441</sup> of police deprivation of liberty by independent monitors<sup>442</sup> that have the requisite competencies,<sup>443</sup> resources, powers,<sup>444</sup> privileges and immunities to effectively exercise their mandate.*
388. *After completing a monitoring visit, monitors submit a report with findings and recommendations to police and government, who “indicate, within a reasonable time, whether they will implement the recommendations.”<sup>445</sup>*
389. *The Australian NPM has the requisite resources, power, privileges and immunities to exercise its mandate in a culturally appropriate way with regards to all Australian places of detention\* (as defined in the OPCAT) where police/law enforcement is the detaining authority.<sup>446</sup> The NPM has unfettered access to all police custody at any time of day or night.*
390. *The UN SPT has access to all Australian places of detention\* (as defined in the OPCAT) where police/law enforcement is the detaining authority.<sup>447</sup>*
391. *Independent oversight bodies have Aboriginal and Torres Strait Islander concerns among their priorities, including (but not limited to) individual and systemic racism\* within police services. This entails consideration of not only ‘serious incidents’, but also patterns of misconduct.<sup>448</sup>*
392. *Police inform the NPM of their risk assessment in advance of each public assembly, to allow the NPM to decide whether to conduct monitoring activities.<sup>449</sup>*

## (b) Civil society

393. *There is independent monitoring by legal observers, human right defenders and journalists of deprivation of liberty by police at public assemblies. Monitors do not face reprisals, and their equipment is not confiscated or damaged. “Even if an assembly is declared unlawful or is dispersed, that does not terminate the right to monitor.”<sup>450</sup>*

\* “Monitors are not physically hindered by police, and lower ranking officers facilitate communications with forward commanders and other officers in charge of operations at protests.”<sup>451</sup>

\* “Monitors’ independence from the protest is recognised and respected.”<sup>452</sup>

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\* See glossary.

\* See glossary.

\* See glossary.



394. *Monitoring may include an Aboriginal monitoring scheme (e.g. Aboriginal Visitors Scheme<sup>453</sup> or Aboriginal Community Justice Panels (ACJP) Program<sup>454</sup>) that is focused on police stations/cells.*

- \* “In consultation with Aboriginal communities and their organisations, cell visitor schemes (or schemes serving similar purposes),” may be “introduced to service police watch-houses.” Governments work with local Aboriginal and Torres Strait Islander communities and ACCOs to establish the visitor schemes where there is community interest in establishing such a scheme. The local Aboriginal or Torres Strait Islander community is involved in the scheme’s management and operation. Visitors are nominated/approved by Aboriginal and Torres Strait Islander communities and ACCOs, and are provided adequate funding and training. Police officers understand that scheme does not reduce their duty of care to detained people.<sup>455</sup>
- \* Options may include having “independent community members monitoring youth justice systems, including being granted access to check on young people- not to expect young people to speak up, especially if they are in a custodial setting.”<sup>456</sup>

## 2. Complaints adjudication by independent statutory bodies, prosecution\* and civil litigation

### (a) Complaints and prosecution

395. *There is a culturally appropriate, independent statutory body that adjudicates complaints about police.<sup>457</sup> Other functions carried out by oversight bodies include auditing and own motion investigations.*

- \* The body is adequately resourced, “headed by a statutory officer who has not been a police officer,” with a mandate to “investigate and determine all complaints about police (except for minor customer service matters),” to “investigate and report on all police contact deaths\* and serious incidents,” “on its own motion, monitor, audit, systemically review and report on the exercise of police powers and interactions with the public including customer service matters,” and to “undertake own motion, public interest investigations.”<sup>458</sup> The body is separate to the generalist corruption oversight body.<sup>459</sup>
- \* The independent body has oversight of the entire complaints system, including with regards to “all complaints filed directly with the police.” The body has the authority “to intervene and even repeat an investigation if this has not been satisfactorily performed by the police.”<sup>460</sup>
- \* Community oversight bodies are also considered. For example, establishing “an independent committee led by Aboriginal young people who have been affected by the criminal justice system to advocate around” both individual and systemic issues.<sup>461</sup>

396. *The complaints body is accessible, complainants are supported throughout the process, and complainants are safe from reprisals.*

(i) *Well-publicised and accessible*

- \* The process for making complaints is well-publicised.<sup>462</sup> Information about the complaints process is displayed “in public spaces managed by criminal justice agencies, including prosecution,

\* See further guidance on complaints, investigations, prosecution of and redress for torture and ill-treatment.

\* See glossary.

probation, prison and court services.”<sup>463</sup> All detained people are informed of their right to complain and how to exercise this right<sup>464</sup> (including in written format). Information on making complaints is prominently displayed throughout police stations, including in custody areas.<sup>465</sup>

- \* People are provided legal assistance and there is no financial cost for making a complaint.<sup>466</sup>
- \* The right to complain extends to an individual’s lawyer and family.<sup>467</sup>

(ii) *No police interference or reprisals*

- \* Complaints, whether made in person or in writing, to police or an independent oversight body, are made without censorship as to substance and without interference by police.<sup>473</sup> Detained people are not “discouraged or deterred in any way from complaining.”<sup>474</sup>
- \* People can make complaints confidentially and they are not at risk of, nor subject to, reprisals.<sup>475</sup> Steps to protect detained people may include removing implicated police officers “from any position of

- \* There are safe, accessible complaints processes that are child-appropriate,<sup>468</sup> accessible for people with disabilities,<sup>469</sup> and are complemented by supports (e.g. detained women reporting abuse are “provided immediate protection, support and counselling”<sup>470</sup>).
- \* Complaints are promptly dealt with.<sup>471</sup> Detained people “are informed of the outcome of their complaint and what alternative mechanisms are available if dissatisfied.”<sup>472</sup>

control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting the investigation.”<sup>476</sup> The complainant’s name is kept confidential, “except where its disclosure is warranted in the interests of justice,” and it is “a serious offence for a police officer to take any action against or detrimental to the interest of a person by reason of that person having made a complaint.”<sup>477</sup>

**397. *The complaints body has the necessary powers and capacity to effectively exercise its mandate.***

(i) *Minimum powers*

- \* The independent complaints body has the power to conduct investigations itself, rather than being limited to delegating the whole, or part of, the process to police.<sup>478</sup>
- \* The independent body has the power/capacity: “to obtain any information required” including conducting searches and seizures, “to compel the presence of witnesses including the police,” “to recommend further penal or disciplinary action,” “to make recommendations for structural change” to prevent recurrence, “to follow up on its recommendations,” “to publish its findings and recommendations, including the response received from the police,” “to compel the police to disclose

(ii) *Additional potential powers*

- \* In order to address any concerns “that the close working relationship between the police and the prosecution authority might undermine independence and impartiality,” the powers of the body may extend to prosecution.<sup>485</sup>

the reasons for not following up on the recommendations,” “to make public a failure by the police to follow up on its recommendations.”<sup>479</sup> The body has the powers to arrest,<sup>480</sup> and “subpoena powers, to enforce cooperation.”<sup>481</sup>

- \* Legislation provides for the body’s powers, particularly in relation to access to information relevant to its investigation/enquiries.<sup>482</sup> While police officers are required by legislation to answer questions, any statements made by them cannot be used in other disciplinary proceedings.<sup>483</sup>
- \* The body has the powers and resources necessary to follow up on recommendations it has made.<sup>484</sup>
- \* While it may not be necessary that the body have the power to prosecute, sentence or discipline police officers it has investigated, it does have the power to refer matters to prosecution or recommend penalties to police leadership.<sup>486</sup>



398. *Aboriginal and/or Torres Strait Islander people have confidence in the complaints process and the complaints body.*<sup>487</sup>

- \* The complaints body is independent, accountable and transparent about how it exercises its mandate.<sup>488</sup> It responds to complaints in a timely way, and it publicly reports its budget and expenses.<sup>489</sup>
- \* The complaints body reports annually to Parliament.<sup>490</sup> Information the body discloses includes “the number of complaints received, the nature of the complaints and their consequences, including numbers of officers that have been disciplined and criminally prosecuted.”<sup>491</sup> It maintains “detailed data on police abuses” and conducts “statistical or general reviews of patterns in police killings, including their causes.”<sup>492</sup> Data is disaggregated to allow comparison of complaints made by Aboriginal and non-Aboriginal people.
- \* The body’s website has “easily accessible information,”<sup>493</sup> and formal hearings are held in public.<sup>494</sup>
- \* The complaints body visits/has a presence in Aboriginal communities.<sup>495</sup>

399. *The complaints body has Aboriginal and/or Torres Strait Islander staff and decision-makers. It may also have a specialised unit dedicated to investigating complaints made by Aboriginal and/or Torres Strait Islander people, under Aboriginal leadership.*<sup>496</sup>

## **(b) Civil litigation**

400. *The time limit to commence civil litigation proceedings against police is of appropriate length (at least 3 years). Where a person decides to withdraw or loses, there is discretion regarding whether they are liable to pay the costs of the police service.*<sup>497</sup>

401. *There is no time limitation for proceedings which relate to allegations of torture or ill-treatment.*<sup>498</sup>

402. *Police are good faith actors, engaging early for joint discussions around settlement of civil litigation relating to police complaints and to provide early disclosure of any relevant information (either under FOI or informally in negotiations).*<sup>499</sup>

- \* For example, lawyers are able to view footage before a formal complaint is made.<sup>500</sup>
- \* If there are confidentiality issues making release of CCTV footage (e.g. audio or visual that identifies other children in the footage), there are options available for representatives to view the footage in a secure location.<sup>501</sup>

403. *Where a court makes a finding in a criminal matter that a police officer has used excessive force against an individual, police respect the court’s finding in related civil litigation regarding the excessive use of force.*<sup>502</sup>

404. *Aboriginal Legal Services are provided adequate, sustainable, needs-based funding to provide legal assistance and representation to Aboriginal and/or Torres Strait Islander people in complaints and civil litigation against police services.*



### 3. Transparency

#### 405. *Police officers and weapons are identifiable.*

- \* Police officers wear nametags and their service numbers (with their rank also being identifiable).<sup>503</sup> Police officers do not conceal their faces.<sup>504</sup> Police officers provide “evidence of their police status and professional identity,”<sup>505</sup> and if they are in plainclothes, they are able “to show their police status through a badge or other official identification document.”<sup>506</sup>
- \* “All weapons (and, where feasible, ammunition, munitions, batons and projectiles)” are uniquely marked.<sup>507</sup>

#### 406. *Freedom of Information (FOI) mechanisms are effective, efficient and accessible to detained/previously detained people and their representatives.*

- \* Guidance is provided to applicants on the kinds of documents available throughout the FOI process.<sup>508</sup>
- \* FOI applications are processed in a timely fashion in accordance with statutory timeframes. There are consequences for failures to comply with time limits. Police have a robust understanding of the relevant legislation, particularly in relation to exemptions.<sup>509</sup>
- \* Police facilitate viewing CCTV, BWC and Dash Cam (mounted in a police vehicle) footage to applicants/their legal representatives when it is not possible to provide copies of footage due to the presence of third parties (and accompanying privacy concerns).<sup>510</sup>

#### 407. *Disaggregated data, policies/procedures and outcomes of investigations are publicly available.*

- \* For example, findings of investigations and reports into use of force, injury and death during protests are made public,<sup>511</sup> as are plans for children deprived of liberty.<sup>512</sup>

#### 408. *Police respect the role of media in promoting transparency of policing.\**

- \* Media is inclusive of “independent media and freelance journalists and photographers.”<sup>513</sup>
- \* For example, in the context of assemblies, police give media full access “to areas where police operations are on-going, subject to safety concerns.”<sup>514</sup>
- \* Among police, there are “designated points of contact” for media, to provide information and interviews.<sup>515</sup>
- \* Police officers are told “under what circumstances they may be allowed to speak to the media.”<sup>516</sup>

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\* See further guidance on media.



## 4. Evidence-based decision-making and continuous improvement

### 409. *Accurate and disaggregated quantitative and qualitative data is collected and analysed.*<sup>517\*</sup>

- \* The data collected is “used to assess how well custody services perform, to identify trends, inform organisational learning and to improve outcomes” for detained people.<sup>518</sup> If Aboriginal and/or Torres Strait Islander people are over or under-represented in how they are treated by police, the underlying reasons are understood and addressed.<sup>519</sup>
- \* Disaggregated data includes offences committed, diversion granted,<sup>520</sup> arrests and detention (including in relation to peaceful assemblies).<sup>521</sup>

### 410. *Data is analysed with the view to support evidence-based decision-making,<sup>522</sup> and continuous improvement by police and the government.*

- \* “There are accurate data and effective monitoring systems in place to identify any unfair or potentially unfair treatment of [detained people] while in custody.”<sup>523</sup> “Quality assurance processes are used effectively to promote and ensure the safe and respectful treatment of [detained people], to improve practice and inform the continuing professional development of staff.”<sup>524</sup> “Effective mechanisms are in place to learn from adverse incidents and to establish and promote effective working practices.”<sup>525</sup>
- \* Examples include police conduct reviews of charging practices.<sup>526</sup> Where certain police grounds for/powers of arrest disproportionately impact on Aboriginal and/or Torres Strait Islander people, this informs the legislature’s decision on whether legislation should be amended or repealed in its entirety.<sup>527</sup> “There is close monitoring with partner agencies of all children who are detained in custody overnight to establish the circumstances of each case and whether overnight detention could have been avoided.”<sup>528</sup> “Police regularly analyse data on use of force, to detect unlawful use of force and patterns of non-compliance. This analysis, in turn, guides reform and training.”<sup>529</sup> Deaths in custody are surveyed in order to “systematically [monitor] and [evaluate] the degree to which needed improvements in legislation, attitudes, policies and procedures that affect police custody are implemented.”<sup>530</sup> The complaints system is “tested regularly to assess whether it meets current needs,” and “the entire complaints system, including all organs where complaints can be filed and where these can be investigated” is audited.<sup>531</sup>

### 411. *Policies, procedures and practices are regularly reviewed to reflect best practices and learnings.<sup>532</sup> Consultations are conducted and independent research is commissioned to enable planning and policy development.*<sup>533</sup>

- \* Reviews involve “consultation with social agencies, medical personnel, the judiciary and community representatives,”<sup>534</sup> includes feedback from people with lived experience of police custody,<sup>535</sup> and may be conducted by independent academic institutions<sup>536</sup> or other independent bodies, facilitated by police.<sup>537</sup>
- \* Wide-ranging evaluation is undertaken, including analysis of complaints, recruitment and training, implementation of oversight bodies’ recommendations, stop/search/arrest data; surveys to ascertain complainants’ satisfaction with the process and outcome, and the public’s confidence and satisfaction with police; and field observations

\* See further guidance on record keeping and data collection.

of police practices.<sup>538</sup> Policies (e.g. search policies) are also regularly reviewed “to assess their effectiveness and any scope for improvement.”<sup>539</sup>

- \* For example, analysis of complaints files can assist to identify causes of police misconduct, such as “lack of proper supervision, unacceptable working conditions, lack of training and equipment and

ambiguous laws and instructions.”<sup>540</sup> It can also assist to identify which operational areas or individual police officers have been subject to a disproportionate number of allegations.<sup>541</sup> Even if allegations are unsubstantiated, patterns can assist to understand the state of police relationships with Aboriginal and Torres Strait Islander communities.<sup>542</sup>

412. *Expert recommendations from independent bodies and inquiries (including detention oversight bodies,<sup>543</sup> Royal Commissions, such as RCIADIC, and coronial inquests<sup>544</sup>) are implemented. Governments properly fund implementation of recommendations,<sup>545</sup> and develop an implementation strategy.<sup>546</sup> Police receive training on findings and recommendations (including scenario-based training on previous deaths in custody<sup>547</sup>).*



**deaths in  
custody**

# 1. The duty to investigate deaths in custody

413. *It is in the public interest that there be an independent inquiry into a death in custody.<sup>548</sup> There is a duty to investigate any potentially unlawful deaths, alleged or suspected to have been caused by the State, including in police custody.<sup>549</sup> This duty extends to circumstances where the State “cannot be held responsible for failing to prevent such deaths.”<sup>550</sup>*

- \* An inquiry by the judiciary/Coroner or other authority is conducted when a detained person dies in police custody,<sup>551</sup> or if a person dies shortly after being detained.<sup>552</sup> The inquiry can be initiated on the authority’s own motion or that of a family member, and findings are made publicly available.<sup>553</sup>
- \* The law mandates that the Coroner investigate “the cause and circumstances of the death but also the quality of the care, treatment and supervision of the deceased prior to death.”<sup>554</sup>

## Family members’ rights

“Family members have the right to seek and obtain information on the causes of a killing and to learn the truth about the circumstances, events and causes that led to it. In cases of potentially unlawful death, families have the right, at a minimum, to information about the circumstances, location and condition of the remains and, insofar as it has been determined, the cause and manner of death.”<sup>555</sup> – Minnesota Protocol

414. *When a person dies in police custody, there is a presumption of responsibility of the State (and/or authorities managing privately operated facilities<sup>556</sup>). The burden of proof rests with the State to rebut this presumption.<sup>557</sup>*

- \* This is because, “when law enforcement officials deprive an individual of liberty, for instance by detaining that person,” “they assume a greater responsibility to protect that individual’s rights, in particular the rights to life and to physical integrity.”<sup>558</sup> “Owing to the control exercised by the State over those it holds in custody, there is a general presumption of state responsibility.”<sup>559</sup>

# 2. Initial steps following a death in custody

415. *The body of the deceased person is treated with dignity, returned to family (“as soon as reasonably possible, at the latest upon completion of the investigation”). Police “facilitate a culturally appropriate funeral if there is no other responsible party willing or able to do so.”<sup>560</sup>*

416. *The police immediately notify the deceased person’s family<sup>561</sup> (or other emergency contacts<sup>562</sup>) the Aboriginal Legal Service,<sup>563</sup> the Aboriginal Community Liaison Officer (ACLO),<sup>564</sup> and the Coroner<sup>565</sup> of the death of an Aboriginal and/or Torres Strait Islander person in custody.*

- \* Wherever possible, family is notified in person by an Aboriginal and/or Torres Strait Islander person who knows the family. The family is notified sensitively, in a manner that respects cultural protocols.
- \* Notification entails “full and frank reporting of such circumstances of the death as are known.”<sup>566</sup>
- \* All police officers who may be involved in notifying or maintaining contact with families have received

cultural awareness and trauma-informed\* training.<sup>567</sup>

417. *If the person is fatally injured during a police operation in a remote Aboriginal community, family members are provided the opportunity to be with the person at the time of their passing.<sup>568</sup> When the person has died, family members are advised in a timely manner that the person has passed,<sup>569</sup> using culturally appropriate protocols when naming the deceased.<sup>570</sup> Family members are allowed to attend the person's body, where it is not culturally appropriate to leave the body unattended.<sup>571</sup>*

### 3. Investigations

#### (a) General

418. *Investigators "endeavour to respect the culture and customs of all persons affected by the investigation, as well as the wishes of family members, while still fulfilling their duty to conduct an effective investigation."<sup>572</sup> This includes respecting the kinship relationships and social structures among the relevant communities.<sup>573</sup>*

419. *Family members have a right to view their loved one's body. Culturally appropriate protocols are followed in relation to viewing the body and autopsies.*

(i) *Deciding whether to conduct an autopsy*

\* Any decision not to conduct an autopsy (which "will almost always" materially assist an investigation) is "justified in writing" and "subject to judicial review."<sup>574</sup>

\* On the other hand, some Aboriginal and/or Torres Strait Islander people may "object, on cultural grounds" to an autopsy, where the Coroner has formed the view that an autopsy is urgent and in the public interest. In anticipation of such circumstances potentially arising, the Coroner develops a protocol with the Aboriginal Legal Services and Aboriginal Health Services "for the resolution of questions

involving the conduct of inquiries and autopsies, the removal and burial of organs and the removal and return of the body of the deceased." The Coroner complies with this Protocol and makes "all reasonable efforts to obtain advice from the family and community of the deceased in consultation with relevant Aboriginal organisations." Coroners understand and respect that it "is highly desirable that as far as possible no obstacle be placed in the way of carrying out of traditional rites and that relatives of a deceased Aboriginal person be spared further grief."<sup>575</sup>

(ii) *Family members' rights with regards to the autopsy*

\* Family members have a right to view their loved one's body, and accommodations are made for them to be accompanied by other family members for support. Local cultural protocols are respected.<sup>576</sup> Police receive training in relation to local protocols, and are familiar with the appropriate local contacts within the Aboriginal or Torres Strait Island community.<sup>577</sup>

\* "To the extent possible," family members are consulted prior to an autopsy. They are "entitled to have a representative present during the autopsy," and upon its completion, the deceased's body is returned to the family so they can treat the deceased according to their culture and beliefs.<sup>578</sup>

\* The family also has a right "to view the scene of death," "to engage an independent medical practitioner to be present" at the autopsy or to

\* See glossary.

conduct a further autopsy, and “to receive a copy of the post-mortem report.” The report is also sent to

the Aboriginal Legal Service representing the family.<sup>579</sup>

420. *Autopsies are “conducted by a specialist forensic pathologist wherever possible,” or “by a specialist pathologist qualified by experience or training to conduct such post-mortems.”<sup>580</sup>*

421. *Family members are treated respectfully throughout the investigation process, and participate as appropriate. They have legal standing, they are informed of progress of the investigation in a timely manner, they have access to relevant hearings and relevant information in advance of hearings, and are provided funding for legal representation (“through legal aid schemes or otherwise”<sup>581</sup>).<sup>582</sup>*

- \* Family members and the Aboriginal Legal Service are notified as soon as possible, with sufficient notice, of when the coronial inquest will be held.<sup>583</sup>
- \* Inquests do not proceed “in the absence of appearance for or on behalf of the family of the deceased unless the Coroner is satisfied that the family has been notified of the hearing in good time and that the family does not wish to appear in person or by a representative.” Where the Coroner has no clear indication of whether the family wishes to participate, the inquest does not proceed until “the Coroner is satisfied that all reasonable efforts have been made to obtain such advice from the

family, the Aboriginal Legal Service and/or from lawyers representing the family.”<sup>584</sup>

- \* Information sought by the family and their lawyers about the preparation of the brief is provided to them, unless the Coroner directs otherwise. “Frank and helpful advice” is provided “in a polite and considerate manner.”<sup>585</sup>
- \* Upon request, “all efforts” are made to allow family members “to inspect the scene of death.”<sup>586</sup>
- \* There are “clear communication protocols with families, including the provision of counselling and support services up to and including the coronial hearing.”<sup>587</sup>

422. *Cultural protocols are followed in relation to the location where the person has passed, whether this is in the community or at the police station (e.g. a traditional cleansing ceremony can be conducted).<sup>588</sup>*

423. *Cultural protocols are respected throughout the coronial inquest (e.g. families can conduct smoking ceremonies; the name or image of the person who has passed is only used with the permission of the family).*

424. *Efforts are made to minimise the harm of the investigation process.<sup>589</sup>*

- \* For example, “a specific and suitably trained and experienced family liaison expert” is appointed to provide to and collect information from the family of

the deceased. This expert “meets the family at the earliest opportunity,” provides regular updates, and addresses any of the family’s concerns.<sup>590</sup>

425. *Family members are “protected from any ill-treatment, intimidation or sanction as a result of their participation in an investigation or their search for information.” Measures are “taken to ensure their safety, physical and psychological well-being, and privacy.”<sup>591</sup>*



## (b) Investigative mechanisms

426. *Any investigative mechanism accords with the Minnesota Protocol.*

- \* A duty to investigate a death in custody does not require adherence to a particular model of investigative mechanism, but rather an obligation to meet the minimum international law requirements as set out in the Minnesota Protocol.<sup>592</sup>

427. *Investigations are prompt, without unreasonable delays. However, investigations are not unduly rushed. Where investigations are not promptly carried out, this does not relieve the State of its duty to investigate, which “does not cease even with the passing of significant time.”<sup>593</sup>*

- \* Police report a death in custody without delay “to a judicial or other competent authority that is independent of the detaining authority and mandated to conduct prompt, impartial and effective investigations into the circumstances and causes of such a death. This responsibility extends to persons detained.”<sup>594</sup>

428. *Investigations are effective and thorough,<sup>595</sup> carried out by a body that has the requisite powers. Investigations determine the cause and manner of death, and identify individual<sup>596</sup> and systemic failures.*

(i) *Effective and thorough investigations*

- \* Investigations are capable of ensuring accountability for and preventing future unlawful deaths.<sup>597</sup>
- \* Investigations “recover and preserve all material probative of the cause of death, the identity of the perpetrator(s) and the circumstances surrounding the death,” and “identify possible witnesses and obtain their evidence in relation to the death and the circumstances surrounding the death.”<sup>598</sup>
- \* For example, witnesses are prevented from communicating, with arrangements being “made for their immediate segregation, particularly any police members directly involved in the incident.”<sup>599</sup>
- \* If police seek legal advice that cannot be obtained prior to the end of their shift, they are “interviewed as soon as reasonably possible, preferably by the following day.”<sup>600</sup>

(ii) *Requisite powers and resources*

- \* The investigating mechanism has legislated power to “compel witnesses and require the production of evidence,” and can “ensure the safety and security of witnesses.”<sup>601</sup>
- \* It has “sufficient financial and human resources, including qualified investigators and relevant experts.”<sup>602</sup>

(iii) *Scope of investigations and recommendations*

- \* The investigation determines responsibility for deaths in custody, including anyone in the chain of command who was complicit, identifies failures to take measures that could have prevented the death, and identifies contributory policy and systemic failures.<sup>603</sup> It also determines whether there has been a violation of the right to life.<sup>604</sup>
- \* Coroners have the “power to make recommendations for system wide improvements.”<sup>605</sup> The investigation also takes into consideration whether implementation of past relevant inquiries, royal commissions and coronial inquests “could have reduced the risk of death.”<sup>606</sup>



429. *Investigators and investigating bodies are independent and impartial, in both practice and perception.*<sup>607</sup>

- ✱ Investigations are “independent of any suspected perpetrators and the units, institutions or agencies to which they belong,” and “are free from undue external influence, such as the interests of political parties or powerful social groups.”<sup>608</sup> This independence goes beyond “not acting on the instructions of an actor seeking to influence an investigation inappropriately,” to encompass not being influenced “by the presumed or known wishes of any party.”<sup>609</sup>
- ✱ Investigators are not subjected to “intimidation, hindrance, harassment or improper interference,” or “the threat of prosecution or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.”<sup>610</sup>

430. *The existence, procedures, findings, and outcomes of investigations are transparent.*<sup>611</sup>

- ✱ Limitations on transparency must be “strictly necessary for a legitimate purpose, such as protecting the privacy and safety of affected individuals, ensuring the integrity of ongoing investigations, or securing sensitive information about intelligence sources or military or police operations.” “In no circumstances” is transparency restricted such that it would “result in impunity for those responsible.”<sup>612</sup>
- ✱ Inquest hearings are public, and a record of evidence is taken and retained, unless “there are compelling reasons to justify a different approach.”<sup>613</sup>

431. *The Coroner’s findings and recommendations to prevent further deaths in custody and other relevant matters<sup>614</sup> are made publicly available, as is the government’s response.*

- ✱ The findings and recommendations are provided to parties to the Coronerial Inquest, the Attorney-General, the Police Minister and the police service.<sup>615</sup> They are published.
- ✱ Within three months of publication, the relevant agencies/departments provide the Coroner a written response to the findings and recommendations, including any actions already taken or proposed.<sup>616</sup> These responses are distributed to the other parties. The Coroner has the power to require further explanations or information, “including reports as to further action taken in relation to the recommendations.”<sup>617</sup>

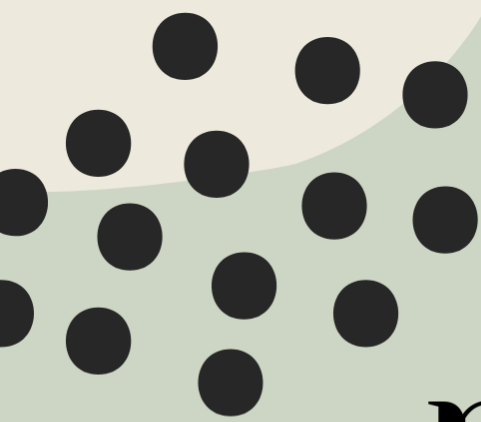
## 4. Reparations and prosecution

432. *Family members have the right to “adequate, effective and prompt reparation,” including “restitution, compensation, rehabilitation, guarantees of non-repetition, and satisfaction.” Satisfaction includes “government verification of the facts and public disclosure of the truth, an accurate accounting for of the legal violations,” and “sanctions against those responsible for the violations.”<sup>618</sup>*

433. *Where an investigation “reveals evidence that a death or injury may have been caused unlawfully,” through police use of force, the government ensures “that perpetrators are prosecuted through a judicial process and, if convicted,” appropriately punished.<sup>619</sup>*

- ✱ Matters where there is sufficient evidence are promptly referred to prosecution for criminal charges.<sup>620</sup> Where prosecution decides to not prosecute following an independent finding of police misconduct, they provide the reasons for this decision to the family of the deceased.<sup>621</sup>





**rights of**  
**Aboriginal and**  
**Torres Strait**  
**Islander people**  
**under UNDRIP**

# 1. Indigenous Peoples' right to non-discrimination

434. *Policing legislation, policies and practices respect, protect and promote Aboriginal and Torres Strait Islander Peoples' rights under international law, particularly non-discrimination and consultation rights and obligations under the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).*

## Legislative and administrative measures affecting Aboriginal and Torres Strait Islander Peoples

- ✱ "States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them."<sup>622</sup>

## Non-discrimination

- ✱ "Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law."<sup>623</sup>
- ✱ "Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their Indigenous origin or identity."<sup>624</sup>
- ✱ "States shall take effective measures, in consultation and cooperation with the Indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among Indigenous peoples and all other segments of society."<sup>625</sup>
- ✱ "Particular attention shall be paid to the rights and special needs of Indigenous elders, women, youth, children and persons with disabilities in the implementation of [UNDRIP]."<sup>626</sup>
- ✱ "States shall take measures, in conjunction with Indigenous peoples, to ensure that Indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination."<sup>627</sup>
- ✱ "Indigenous peoples and individuals have the right to belong to an Indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right."<sup>628</sup>

# 2. Indigenous Peoples' cultural rights

435. *Policing legislation, policies and practices respect, protect and promote Aboriginal and Torres Strait Islander Peoples' rights under international law, particularly the cultural rights and obligations under the UNDRIP. Although police services are inherently limited in their ability to operate in a culturally appropriate manner, they strive to provide a culturally appropriate service to the extent possible.\**

## Identity

- ✱ "Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of Indigenous individuals to obtain citizenship of the States in which they live."<sup>629</sup>
- ✱ "Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures."<sup>630</sup>

\* There were a variety of views expressed during consultation around how to word this Expectation. Particularly highlighting Dr Amanda Porter's evidence in the coronial inquest into the death of Veronica Nelson that police cannot operate in a culturally appropriate manner, and feedback that police should, nevertheless, not be absolved of making consistent efforts to provide a culturally appropriate service.

### Maintaining and revitalising culture (general)

- \* “Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.”<sup>631</sup>
- \* “Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.”<sup>632</sup> “Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.”<sup>633</sup>
- \* “States shall provide effective mechanisms for prevention of, and redress for any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities.”<sup>634</sup> “Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.”<sup>635</sup>
- \* “Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.”<sup>636</sup> “Indigenous peoples have the right to determine the responsibilities of individuals to their communities.”<sup>637</sup>
- \* “States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the [UNDRIP]. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.”<sup>638</sup>
- \* “In those States in which ethnic, religious or linguistic minorities or persons of Indigenous origin exist, a child belonging to such a minority or who is Indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.”<sup>639</sup> “States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.”<sup>640</sup>
- \* “Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.”<sup>641</sup> “States shall take effective measures to ensure that this right is protected and also to ensure that Indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.”<sup>642</sup>

### Maintaining and revitalising culture (connection to Country)

- \* “Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.”<sup>643</sup>

### Maintaining and revitalising culture (ceremonial objects, sacred sites and human remains)

- \* “Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.”<sup>644</sup>
- \* “States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with Indigenous peoples concerned.”<sup>645</sup>

## Health and healthcare

- ✱ “Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, Indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.”<sup>646</sup>
- ✱ “Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.”<sup>647</sup>
- ✱ “Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.”<sup>648</sup>

**436.** *Police engage with local community leaders on how to implement international cultural rights locally, in relation to issues including Indigenous Data Sovereignty,\* appropriate alternatives to arrest/detention, appropriate bail conditions, and minimising the impact of deprivation of liberty on ability to exercise cultural rights.*

- ✱ Legislation and policies require that Aboriginal and/or Torres Strait Islander people and ACCOs are provided access to data relating to Aboriginal and Torres Strait Islander individuals and communities. They participate “in decisions regarding the evaluation and dissemination of such data, in a manner consistent with Indigenous Data Sovereignty (IDS)\* and Indigenous Data Governance (IDG).” Both IDS and IDG require the “meaningful and effective participation” of Aboriginal and/or Torres Strait Islander people “before decisions are

made in relation to policies and legislation concerning Indigenous data.”<sup>649</sup>

- ✱ For example, police work with community leaders/Elders to identify opportunities for (and actively support) community-led, culturally appropriate dispute resolution processes for alleged offending (including, but not limited to, community courts). Police appreciate that mediation processes that are grounded in law/lore can resolve issues and prevent further escalation of community tensions and individual offending.<sup>650</sup>

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\* See glossary.

\* See glossary.

\* See glossary.

# Endnotes

- <sup>1</sup> UN SPT, *Fourth annual report of the SPT* (2011) CAT/C/46/2 [107].
- <sup>2</sup> APT *A practical guide* (2013) p86.
- <sup>3</sup> OPCAT art 19.
- <sup>4</sup> Australian NPM, *Annual Report 2022-2023* (2024) p39.
- <sup>5</sup> UN CAT art 2(1). See also *Mendez principles* (2021) [209].
- <sup>6</sup> UN CAT art 2(1); UN *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* principle 6; UN *Code of Conduct for Law Enforcement Officials* art 5; *Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests* [81]; UN *Expanded Pocket Book on Human Rights for the Police* p18; UN *Standards for UN Police* (2009) [29]; *The European Code of Police Ethics* (2001) V(A)(36).
- <sup>7</sup> UN CAT, *Concluding Observations on Australia* (2008) [18].
- <sup>8</sup> UN ICCPR Article 10(1).
- <sup>9</sup> UN *Standards for UN Police* (2009) [169]. See also UN *Standards for UN Police* (2009) [73].
- <sup>10</sup> UN *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, principle 22.
- <sup>11</sup> ECHR and Policing (2013) p35.
- <sup>12</sup> UN Special Rapporteur on torture *HRC report* (2015) [69]. See also UN Special Rapporteur on torture *HRC report* (2015) [70]; UN CROC art 19(1)(2), 37(a)(c); UN General Assembly, *Elimination of Violence against Children* [9](b).
- <sup>13</sup> UN, *Istanbul Protocol* [192].
- <sup>14</sup> Lachs (2019) rec 123.
- <sup>15</sup> *ibid* rec 121.
- <sup>16</sup> *ibid* 124.
- <sup>17</sup> UN CAT, *Concluding Observations on Australia* (2008) [8]. See also *Mendez principles* (2021) [209]. UN CAT, *Concluding Observations on Australia* (2022) [8]: While “taking note of the complex structures” in Australia’s federal system, and the fact that the UN CAT considers the “federal Government is primarily responsible for ensuring the implementation of the” CAT, UN CAT nonetheless made clear its expectation that “state and territory governments establish legal and policy measures that are fully compliant.” It also noted an expectation for consistency across jurisdictions: UN CAT, *Concluding Observations on Australia* (2022) [9].
- <sup>18</sup> UN CAT art 2(1). See also *The Yogyakarta Principles* (2006), principle 10(a). Also for ill-treatment- UN CAT art 16(1).
- <sup>19</sup> UN, *Istanbul Protocol* [186].
- <sup>20</sup> UN HRC, *General Comment 20* [12].
- <sup>21</sup> UN, *Istanbul Protocol* [22]; consultation feedback.
- <sup>22</sup> UN *Mandela Rule* rule 32(2). For example, rule 34 states that “[i]f medical professionals (either during an examination on admission or in the course of providing medical care) “become aware of any signs of torture [ill-treatment], they... document and report [it] to the competent medical, administrative or judicial authority. Proper procedural safeguards [are] followed in order not to expose the [detained person] or associated persons to foreseeable risk of harm.” See also UN, *Istanbul Protocol* [15].
- <sup>23</sup> UN *Standards for UN Police* (2009) [32].
- <sup>24</sup> UN, *Istanbul Protocol* [196].
- <sup>25</sup> Adapted from UN *Havana Rules* [78].
- <sup>26</sup> UN, *Istanbul Protocol* [196].
- <sup>27</sup> Consultation feedback.
- <sup>28</sup> UN, *Istanbul Protocol* [196].
- <sup>29</sup> UN CAT art 12; UN, *Istanbul Protocol* [193].
- <sup>30</sup> UN, *Istanbul Protocol* [193].
- <sup>31</sup> *ibid*.
- <sup>32</sup> *ibid*.
- <sup>33</sup> *ibid* [207].
- <sup>34</sup> *ibid* [193].
- <sup>35</sup> *Ibid*.
- <sup>36</sup> *ibid* [194].
- <sup>37</sup> *ibid*.
- <sup>38</sup> *ibid*.
- <sup>39</sup> *ibid* [193].
- <sup>40</sup> *ibid* [197].
- <sup>41</sup> *ibid*.
- <sup>42</sup> Adapted from UN, *Istanbul Protocol* [208].
- <sup>43</sup> UN, *Istanbul Protocol* [199].
- <sup>44</sup> *ibid*.
- <sup>45</sup> *ibid* [200].
- <sup>46</sup> *ibid* [294].
- <sup>47</sup> *ibid*.
- <sup>48</sup> *ibid*.
- <sup>49</sup> *ibid* [295].
- <sup>50</sup> *ibid*.
- <sup>51</sup> *ibid* [298].
- <sup>52</sup> *ibid* [296].
- <sup>53</sup> *Ibid*.
- <sup>54</sup> *ibid* [298].
- <sup>55</sup> *Ibid*.
- <sup>56</sup> *ibid* [208].
- <sup>57</sup> *ibid* [193].
- <sup>58</sup> UN CAT art 13; UN, *Istanbul Protocol* [186], [196], [207]; UN General Assembly, *Elimination of Violence against Children* [43](c)(d).
- <sup>59</sup> UN, *Istanbul Protocol* [211].
- <sup>60</sup> *ibid* [217].
- <sup>61</sup> *ibid* [218].
- <sup>62</sup> *ibid* [195].
- <sup>63</sup> *ibid* [217].
- <sup>64</sup> UN General Assembly, *Elimination of Violence against Children* [44](b).
- <sup>65</sup> UN, *Istanbul Protocol* [216]. See also UN *Standards for UN Police* (2009) [33].
- <sup>66</sup> ECHR and Policing (2013) p37, 38.
- <sup>67</sup> UN, *8th Congress on the Prevention of Crime* [16].
- <sup>68</sup> UN CAT, *Concluding Observations on Australia* (2008) [27].
- <sup>69</sup> ECHR and Policing (2013) p40-41.
- <sup>70</sup> UN General Assembly, *Elimination of Violence against Children* [47](c)(f); UN CAT, *Concluding Observations on Australia* (2022) [38](c).
- <sup>71</sup> UN CAT, *Concluding Observations on Australia* (2008) [27].
- <sup>72</sup> *Mendez principles* (2021) [201].
- <sup>73</sup> *The Yogyakarta Principles* (2006) principle 28(d).
- <sup>74</sup> *ibid* principle 28(e).
- <sup>75</sup> *Mendez principles* (2021) [202].
- <sup>76</sup> *ibid* [201].
- <sup>77</sup> UN, *Istanbul Protocol* [186]. See also UN CROC article 39; UN General Assembly, *Elimination of Violence against Children* [43](e); *The Yogyakarta Principles* (2006) principle 10(b), 28(a)(b)(c).
- <sup>78</sup> UN CAT, *Concluding Observations on Australia* (2008) [29].
- <sup>79</sup> UN CAT art 14(1).
- <sup>80</sup> VALS, *Submission to SPT* (2022) p12.
- <sup>81</sup> UN CAT art 1.
- <sup>82</sup> UN, *Istanbul Protocol* [193].
- <sup>83</sup> UN CAT, *Concluding Observations on Australia* (2022) [46].
- <sup>84</sup> *The European Code of Police Ethics* (2001) I(1). See also ECHR and Policing (2013) p24.
- <sup>85</sup> ECHR and Policing (2013) p26; UN General Assembly, *Elimination of Violence against Children* [34](h).
- <sup>86</sup> UNODC, *Handbook on police accountability, oversight and integrity*, p112.
- <sup>87</sup> *ibid* p11.
- <sup>88</sup> VALS *Inquiry into Victoria’s Criminal Justice System* (2021) rec 58. Noting a departure from RCIADIC rec 227. See also VALS *Inquiry into Victoria’s Criminal Justice System* (2021) rec 48.
- <sup>89</sup> For example, NAAJA, *Proposal to establish a Student Court program in the Northern Territory*.
- <sup>90</sup> VALS *Inquiry into Victoria’s Criminal Justice System* (2021) rec 53.
- <sup>91</sup> *ibid* rec 57.
- <sup>92</sup> *ibid* rec 86.

- <sup>93</sup> *ibid* rec 80, 85. See, for example, ACT Government, *Drug law reform*.
- <sup>94</sup> VALS *Inquiry into Victoria's Criminal Justice System* (2021) rec 91. See also RCIADIC rec 87(a); ALRC, *Pathways to Justice* (2017) rec 12-4; NSW Select Committee, *Deaths in Custody* (2021) rec 10; Mounty Yarns, *Lived Experiences of Aboriginal young people in Mt Druitt* p41.
- <sup>95</sup> Consultation feedback; e.g. Beyond Safety, Flat Out, RMIT University, *Harm in the name of safety* (2025): "1. Build alternative family violence first responder initiatives, including allocating funding for research and establishing a pilot program. 2. Invest in community-based family violence responses, including strengthening existing community-led services, funding new community-led services, and investing in affordable housing. 3. Build and strengthen community-based and non-carceral violence prevention, early intervention and accountability initiatives, including community-based violence prevention and education programs, early intervention programs, non-carceral accountability pathways, behaviour change programs, peer-led support groups and culturally specific healing and support programs."
- <sup>96</sup> Consultation feedback.
- <sup>97</sup> RCIADIC rec 79.
- <sup>98</sup> Adapted from RCIADIC rec 81; Consultation feedback.
- <sup>99</sup> Consultation feedback.
- <sup>100</sup> RCIADIC rec 80.
- <sup>101</sup> Consultation feedback.
- <sup>102</sup> United Against Torture, *A policy framework to end torture and ill-treatment in the context of protests* (2025) 15.
- <sup>103</sup> UN HRC, *GC 37 on the right of peaceful assembly* (2020) [74].
- <sup>104</sup> UN Special Rapporteur on the rights to freedom of peaceful assembly, *Checklist: 10 principles for the proper management of assemblies* (2016).
- <sup>105</sup> ICRC, *International rules and standards for policing* (2015) p24.
- <sup>106</sup> *ibid*.
- <sup>107</sup> Adapted from United Against Torture, *A policy framework to end torture and ill-treatment in the context of protests* (2025) p6.
- <sup>108</sup> ICRC, *International rules and standards for policing* (2015) p24.
- <sup>109</sup> VALS *Inquiry into Victoria's Criminal Justice System* (2021) rec 110.
- <sup>110</sup> UN SR on Health, *Report* (2018) [44].
- <sup>111</sup> *ibid* [45].
- <sup>112</sup> *ibid* [16].
- <sup>113</sup> *ibid* [33].
- <sup>114</sup> *ibid* [13].
- <sup>115</sup> UNODC, *Handbook on police accountability, oversight and integrity* p57.
- <sup>116</sup> UN SR on Health, *Report* (2018) [95], [96], [98](b) and (d).
- <sup>117</sup> *ibid* [19](c).
- <sup>118</sup> NAAJA, *Submissions to the coronial inquest into the death of Kumanjaya Walker*. See also NT Coroner, *Inquest into the death of Kumanjaya Walker* [2025] NTLC 8 rec 3, 4, 5, 6, 7, 8, 10.
- <sup>119</sup> *ibid*.
- <sup>120</sup> UN HRC, *GC 37 on the right of peaceful assembly* (2020) [25].
- <sup>121</sup> *ibid*.
- <sup>122</sup> UN CRC, *General Comment 24* [111].
- <sup>123</sup> AHRC, *Race Reporting Handbook* (2024) p29.
- <sup>124</sup> *ibid* p15.
- <sup>125</sup> *ibid* p24.
- <sup>126</sup> *ibid* p15.
- <sup>127</sup> *ibid* p17.
- <sup>128</sup> *ibid* p18.
- <sup>129</sup> *ibid* p18-19.
- <sup>130</sup> *ibid* p19.
- <sup>131</sup> *ibid* p17.
- <sup>132</sup> *ibid*.
- <sup>133</sup> *ibid* p15.
- <sup>134</sup> UN *Expanded Pocket Book on Human Rights for the Police* p59.
- <sup>135</sup> *The European Code of Police Ethics* (2001) IV(A)(18).
- <sup>136</sup> *Addressing Racism in Policing* (2024) p9.
- <sup>137</sup> UN *Expanded Pocket Book on Human Rights for the Police* p42.
- <sup>138</sup> *ECHR and Policing* (2013) p105.
- <sup>139</sup> *ibid* p105-106.
- <sup>140</sup> *ibid* p106.
- <sup>141</sup> UNODC, *Handbook on police accountability, oversight and integrity*, p92.
- <sup>142</sup> *ibid* p87.
- <sup>143</sup> *ibid*.
- <sup>144</sup> UN *Expanded Pocket Book on Human Rights for the Police* p8.
- <sup>145</sup> Adapted from UN *Expanded Pocket Book on Human Rights for the Police* p8.
- <sup>146</sup> Mounty Yarns, *Lived Experiences of Aboriginal young people in Mt Druitt* p42.
- <sup>147</sup> RCIADIC rec 215(a-c). See also RCIADIC rec 215, 223(c).
- <sup>148</sup> *ibid* rec 221.
- <sup>149</sup> Adapted from RCIADIC rec 88(a-c).
- <sup>150</sup> NT Coroner, *Inquest into the death of Kumanjaya Walker* [2025] NTLC 8 rec 11.
- <sup>151</sup> ALRC, *Pathways to Justice* (2017) rec 16-2.
- <sup>152</sup> *ibid* rec 14-4.
- <sup>153</sup> NT Coroner, *Inquest into the death of Andrew Ross* (1999) p15. See also NT Coroner, *Inquest into the death of Kumanjaya Walker* [2025] NTLC 8 rec 1.
- <sup>154</sup> NT Coroner, *Inquest into the death of Clifton Wayne Pamkal* [2009] NTMC 046 [113].
- <sup>155</sup> Consultation feedback.
- <sup>156</sup> HMICFRS & CQC, *Expectations for police custody* (2022) [1.3], [1.4]; NT Coroner, *Inquest into the death of Terence Daniel Briscoe* [2012] [191].
- <sup>157</sup> ICRC, *International rules and standards for policing* (2015) p53.
- <sup>158</sup> UN *Expanded Pocket Book on Human Rights for the Police* p22.
- <sup>159</sup> HMICFRS & CQC, *Expectations for police custody* (2022) [1.4].
- <sup>160</sup> ICRC, *International rules and standards for policing* (2015) p54.
- <sup>161</sup> UNODC, *Handbook on police accountability, oversight and integrity* p73.
- <sup>162</sup> Tasmanian NPM, *Expectations* (2024) 9.3.
- <sup>163</sup> NAAJA, *Submissions to the coronial inquest into the death of Kumanjaya Walker*.
- <sup>164</sup> APT, *Monitoring Police Custody* (2013) p4.
- <sup>165</sup> UN *Expanded Pocket Book on Human Rights for the Police* p59. See also UN *Code of Conduct for Law Enforcement Officials* art 2, Article 2 Commentary (a); *The European Code of Police Ethics* (2001) V(A)(35) and (43); UN *Expanded Pocket Book on Human Rights for the Police*, p17; Tasmanian NPM, *Expectations* (2024) 9.5.
- <sup>166</sup> UN *Expanded Pocket Book on Human Rights for the Police* p3.
- <sup>167</sup> VALS *Inquiry into Victoria's Criminal Justice System* (2021) rec 9.
- <sup>168</sup> UN *Expanded Pocket Book on Human Rights for the Police* p3.
- <sup>169</sup> *ibid*.
- <sup>170</sup> *ibid*.
- <sup>171</sup> *ibid*.
- <sup>172</sup> NT Coroner, *Inquest into the death of Kumanjaya Walker* [2025] NTLC 8 rec 19 and 20.
- <sup>173</sup> UN General Assembly, *Elimination of Violence against Children* [46].
- <sup>174</sup> UN *CROC* art 2(2); UN Special Rapporteur on torture *HRC report* (2015) [76]; UN General Assembly, *Elimination of Violence against Children* [7](b); UN *Standards for UN Police* (2009) [174].
- <sup>175</sup> UN *ICCPR* art 14(4); UN Special Rapporteur on torture *HRC report* (2015) [40], [73]; UN *Beijing Rules*, Commentary [10], [10.3]; UN *CROC* art 40(1); UN General Assembly, *Elimination of Violence against Children* [6](d), [38](a); UN *Standards for UN Police* (2009) [160], [162], [163], [166].
- <sup>176</sup> UN *CROC* art 12(1); UN General Assembly, *Elimination of Violence against Children* [7](d).
- <sup>177</sup> UN *Expanded Pocket Book on Human Rights for the Police* p39; UN Special Rapporteur on torture *HRC report* (2015) [85](g); UN SPT, *Visit to Australia* [28]; UN CAT, *Concluding Observations on Australia* (2022) [38](a); UN *Beijing Rules* [4.1]; UN *Beijing Rules*, Commentary [4]; UN *CROC*, *General Comment 24* [21], [22], [25], [89]; UN *CROC* art 40(3)(a); UN General Assembly, *Elimination of Violence against Children* [30]; NSW Select Committee, *Deaths in Custody* (2021) rec 11; VALS *Inquiry into Victoria's Criminal Justice System* (2021) rec 20, 41, 42; *Yoorrook For Justice Report* (2023) rec 35.
- <sup>178</sup> UN *CROC*, *General Comment 24* [28].
- <sup>179</sup> UN *Expanded Pocket Book on Human Rights for the Police* p12.
- <sup>180</sup> *Mendez principles* (2021) [26], [187]; UN *Manual on Investigative Interviewing for Criminal Investigation* [4.4].

<sup>181</sup> UN *Manual on Investigative Interviewing for Criminal Investigation* p45.

<sup>182</sup> CPT, *General Report* (2002) [35].

<sup>183</sup> UN *Safeguards to prevent torture during police custody and pretrial detention* [10]. See also UN *Manual on Investigative Interviewing for Criminal Investigation* p45.

<sup>184</sup> ECHR and Policing (2013) p38-39.

<sup>185</sup> UN *Expanded Pocket Book on Human Rights for the Police*, p12, p13.

<sup>186</sup> *ibid* p13.

<sup>187</sup> UN *Manual on Investigative Interviewing for Criminal Investigation* p45.

<sup>188</sup> UN *Expanded Pocket Book on Human Rights for the Police* p13.

<sup>189</sup> *ibid* p12.

<sup>190</sup> UN *ICCPR* articles 2(1), 26; UN *ICERD* (1965) articles 2(1)(a), 5(a); UN *Havana Rules* [4]; UN *CROC* art 2(2); UN General Assembly, *Elimination of Violence against Children* [7](c); *The European Code of Police Ethics* (2001) V(A)(40); UN *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, principle 5(1); UN *Expanded Pocket Book on Human Rights for the Police* p7; Tasmanian NPM, *Expectations* (2024) 5.1.

<sup>191</sup> UN *ICERD* (1965) art 2(1)(c).

<sup>192</sup> ALRC, *Pathways to Justice* (2017) rec 14-1.

<sup>193</sup> HMICFRS & CQC, *Expectations for police custody* (2022) [1.3].

<sup>194</sup> UN *Expanded Pocket Book on Human Rights for the Police* p7. See also UN *Mandela Rules* rule 2(2); UN *Bangkok Rules* rule 1.

<sup>195</sup> UN *Expanded Pocket Book on Human Rights for the Police* p8.

<sup>196</sup> NT Coroner, *Inquest into the death of Kumanjaya Walker* [2025] NTLC 8. [211]: "I find that he engaged in "everyday" or "interpersonal" racism and that he worked in, and was the beneficiary of, an organisation with significant hallmarks of institutional racism." [212]: "... those racist views affected his interactions with the remote Aboriginal community of Yuendumu, his entry into their houses and his perception of, and response to, the young Aboriginal man he shot and killed, in ways that increased the likelihood of a fatal outcome... I am not making a finding that Mr Rolfe shot Kumanjaya because he was motivated by racism. Rather, that his racist attitudes may have influenced (consciously or unconsciously) his failure to take adequate steps to minimise the risk of a fatal interaction, and his perception of the risk posed."

<sup>197</sup> NT Coroner, *Inquest into the death of Kumanjaya Walker* [2025] NTLC 8. [198]: "I am not making a finding that Mr Rolfe shot Kumanjaya because he was motivated by racism. Rather, that his racist attitudes may have influenced (consciously or unconsciously) his failure to take adequate steps to minimise the risk of a fatal interaction, and his perception of the risk posed. Although that is not a positive finding as to the "cause" of death, the existence of this risk is undoubtedly a relevant circumstance connected with the death."

<sup>198</sup> NT Coroner, *Inquest into the death of Kumanjaya Walker* [2025] NTLC 8. [200]: "... racism is interpersonal, and the likelihood that someone will make racist comments, or hold racist views, increases in a context where racism is condoned or, at least, not actively discouraged. In turn, the evidence was relevant to the steps NT Police might take to prevent the formation of racist views in officers like Mr Rolfe in the future (for example, by rooting out workplace cultures that are tolerant of racism)." [204]: "It is not my function to conduct an inquiry, of any breadth or intensity, into racism within... NT Police that is unconnected with Kumanjaya's death. Nevertheless, I accept that Mr Rolfe's evidence on this topic was relevant to the cause and relevant circumstances of Kumanjaya's death in some limited respects."

<sup>199</sup> NT Coroner, *Inquest into the death of Kumanjaya Walker* [2025] NTLC 8. [233]: "First, some individual officers may come to the NT Police with pre-existing racist attitudes, or develop those attitudes independently of their work as a police officer. As Supt Nobbs pointed out, in what I consider to have been some of the most thoughtful evidence in the Inquest, the police are "a microcosm of society" and it would be "naïve to say that there's not some people that hold inappropriate and racist views", or who don't come to NT Police holding those views." [234] "As a theory of why racism might develop in a station like the [NT Police], the so called "bad apples" theory is clearly incomplete. Nevertheless, preventing racism requires a police force to reckon with the fact that, from time to time, it may recruit or retain officers who are racist (the bad apples). In those circumstances, I accept NAAJA's submission that

there is a need to "build anti-racism considerations into [NT Police's] recruitment processes, with a view to identifying and screening out applicants...who pose an inappropriate risk of holding racist attitudes".

<sup>200</sup> NT Coroner, *Inquest into the death of Kumanjaya Walker* [2025] NTLC 8. [235]: "... the evidence received by the Inquest confirms that the open use of racist or dehumanising language by groups of police officers, without disciplinary or other consequence, normalised racist attitudes. As one officer noted, hearing, participating in, and being on the receiving end of racist remarks so frequently meant that he no longer had an emotional response to it, and "allowed myself to use that kind of language without holding myself accountable". In addition, and although I do not accept that there is such a thing as an "innocuous" or "harmless" racist remark, Ms Campagnaro's evidence demonstrates that even casual participation in these exchange by more senior officers created an environment in which more junior officers felt unable to report racist behaviour. And, as former Commissioner Murphy conceded, leniency in the face of racist messages between police officers was likely to communicate to police officers a tolerance for racism. Hence, whether "sincere" or an attempt at "black humour", and whether in "public" or in "private", a zero-tolerance policy is necessary in the case of racist language and behaviour." [215]: "... as NAAJA submitted, racist language and actions were not confined to Mr Rolfe, and this was not a case of one "bad apple". Instead, the evidence at Inquest suggested that racist behaviour or language, although not uniform, was normalised within the ASPs during Mr Rolfe's time there as a junior police officer." [218]: "While working at the Alice Springs Police Station, Ms Campagnaro said she heard derogatory terms about Aboriginal people... and though it was "incredibly dehumanising", she became desensitised to that language... she did not raise it as a problem with her "seniors" because "when the seniors are doing it, you have no one to turn to". Ms Campagnaro explained that when "superiors are using those words" it became normalised and it "had an impact on the whole culture of the workplace"." [220]: "I am comfortably satisfied that racist language was normalised within the [NT Police] during Mr Rolfe's time as a police officer. That this was the context in which he was working demonstrates that his racist messages were not aberrations, but were reflective of a work culture that tolerated, and, indeed, tacitly endorsed, racism. That context supports the inference (if support were necessary), that Mr Rolfe himself held and expressed racist attitudes towards Aboriginal people."

<sup>201</sup> NT Coroner, *Inquest into the death of Kumanjaya Walker* [2025] NTLC 8 [221-222].

<sup>202</sup> NT Coroner, *Inquest into the death of Kumanjaya Walker* [2025] NTLC 8 [229-230]. [231]: "For my part, I find that structural and institutional racism permitted a work environment to exist which not only tolerated Mr Rolfe's racism but allowed it to go unchecked and permitted others to actively engage in it with him. To be clear: (a) Mr Rolfe's use of racist language and therefore his racist attitudes were shared with some colleagues, including supervisors, and instead of being challenged or corrected they were tacitly or overtly endorsed; (b) when Mr Rolfe openly shared his BWV of forceful interactions with Aboriginal persons as a source of amusement, this conduct was tacitly or overtly endorsed by some of his colleagues who found the content amusing and never challenged or corrected it; (c) in the Alice Springs Police Station racist language was freely used, was tolerated and went unchecked. The participation of "superiors" not only represented a failure of the institution to intervene, but created a culture that discouraged intervention, because more junior officers who might have been troubled by overtly racist language (like Ms Campagnaro) felt like they had no one to turn to; (d) although Mr Rolfe was not in the [Territory Response Group] TRG, it is clear that he, and other likeminded officers, lionised the NT Police's elite tactical unit. The example the TRG set would, I find, have been influential to the culture of the NT Police more broadly. The fact that its members were so senior, and participated in this racism unchecked, would have conveyed to more junior officers elsewhere that NT Police tolerated that conduct (which they did); and (e) when complaints were made about his use of force against Aboriginal persons Mr Rolfe's account was preferred and the accounts of Aboriginal persons were rejected without proper interrogation... This would have created in Mr Rolfe a sense of impunity in the context of complaints regarding his use of force. It gives rise to a justifiable

concern that these accounts or complaints were dismissed, because generalisations based on race were being made about the credibility of the Aboriginal complainants, as previously identified in the Galliot Report.” [236]: “... institutional racism is likely to foster, or compound, more overt forms of interpersonal racism... NT Police had consistently failed to adequately investigate complaints alleging inappropriate or excessive use of force by Aboriginal complainants. A feature of these inadequate investigations included a consistent, and uncritical, preference for the versions of NT Police officers over Aboriginal complainants... whether or not that preference was the result of a conscious or unconscious racial bias, its product was very likely to have been to create in an officer like Mr Rolfe a sense of impunity when using force against Aboriginal men (the very men about whom I have found Mr Rolfe to hold racist views).”

<sup>203</sup> NT Coroner, *Inquest into the death of Kumanjayi Walker* [2025] NTLC 8 [201]: “... evidence also highlighted the potential links between the formation of racial biases and an officer’s conduct when policing persons of a particular race, including their threat perception when using force or their perceptions of the credibility of complainants of a particular race (that is, consequences of racism). Finally, this evidence identified less overt, but still pernicious, ways in which racism might be present in, and be reinforced by, the institution of the NT Police itself (that is, institutional racism).”

<sup>204</sup> NT Coroner, *Inquest into the death of Kumanjayi Walker* [2025] NTLC 8. [238]: “As Mr Rolfe’s evidence makes clear, that “us and them” mentality was clearly not limited to persons of a particular race. But in a policing context where over 90% of a police officer’s interactions were with Aboriginal people, the reality is that this “us and them” approach to policing was overwhelmingly directed towards Aboriginal people and often expressed in overtly racial terms... In other words, when these NT Police officers spoke in a way that “othered” the population they were policing, the point of difference they emphasised was not criminality, or lack of hygiene or drunkenness – it was Aboriginality itself.” [239]: “... policing cultures that emphasise conflict with, or opposition to, a community that is being policed are likely to foster racism. Although it will not solve the problem, overtly racist attitudes are less likely to develop where the dominant policing philosophy is a community-based policing model that emphasises positive and co-operative relationships with the community that is being policed. Experienced officers gave evidence of the shift in perspective that moving from the urban to the remote environment brought.” [240]: “In part, this shift in perspective was the result of a need to develop new skills that leveraged local knowledge and relationships. But in equal part, the shift in perspective appears to have resulted from the exposure of the officer to life in Aboriginal communities that had nothing to do with policing or offending. These positive interactions with Aboriginal people, whether as a part of, or outside, their official duties as a police officer, appear to have challenged generalisations that had been permitted to form in the urban context, where an officer might have had no interactions with Aboriginal people beyond their official duties (where interactions were overwhelmingly negative). The language used by officers who had served for significant periods in remote contexts was telling: whether victims or offenders or arrest targets, the people these officers were policing were their “clients.””

<sup>205</sup> NT Coroner, *Inquest into the death of Kumanjayi Walker* [2025] NTLC 8. [243]: “In the case of sensitisation, a potential consequence was that a police officer who was exposed to traumatising behaviours by a person who was a member of a particular cohort (whether defined by race or otherwise) might develop a psychological bias that causes the officer to perceive situations involving members of that cohort “as more stressful or distressing or more threatening”. Accordingly, consistent, negative, interactions between law enforcement officers and a “particular cultural or racial group” were liable to increase the likelihood that officers will “anticipate a negative interaction” when dealing with that group.” [244]: “In the case of desensitisation, Mr Van Haeften noted that repeat exposure to trauma—for instance, the aftermath of domestic violence—combined with a sense of helplessness experienced by an officer who was powerless to address the underlying causes of that violence, was likely to create a tension between “how [the officer] think[s] they can uphold their own values with the tasks or the situations that have been placed in.””

<sup>206</sup> NT Coroner, *Inquest into the death of Kumanjayi Walker* [2025] NTLC 8 [223-224].

<sup>207</sup> *ibid* [225].

<sup>208</sup> *ibid* [227].

<sup>209</sup> VALS *Inquiry into Victoria’s Criminal Justice System* (2021) rec 7. See NT Coroner, *Inquest into the death of Kumanjayi Walker* [2025] NTLC 8 [198-246].

<sup>210</sup> *Addressing Racism in Policing* (2024) p6.

<sup>211</sup> *Yoorrook For Justice Report* (2023) rec 31.

<sup>212</sup> Consultation feedback. Noting departure from *Preventing unlawful profiling today and in the future: a guide* (2018) p10-12 and *Addressing Racism in Policing* (2024) p20, which focus on limitations to profiling—such as a prohibition on profiling “based solely or mainly on one or more protected characteristics,” a requirement that profiling by police is based on objective and reasonable grounds, and a requirement that algorithmic profiling respects specific data protection safeguards, including being “legitimate, necessary and proportionate”.

<sup>213</sup> *Preventing unlawful profiling today and in the future: a guide* (2018) p12.

<sup>214</sup> *ibid* p17.

<sup>215</sup> *Addressing Racism in Policing* (2024) p20.

<sup>216</sup> *Preventing unlawful profiling today and in the future: a guide* (2018) p16.

<sup>217</sup> *ibid* p16-17.

<sup>218</sup> *ibid* p12.

<sup>219</sup> VALS *Inquiry into Victoria’s Criminal Justice System* (2021) rec 134.

<sup>220</sup> *Preventing unlawful profiling today and in the future: a guide* (2018) p12.

<sup>221</sup> *R v Le* [2019] 2 SCR 692 [76].

<sup>222</sup> VALS *Inquiry into Victoria’s Criminal Justice System* (2021) rec 131; see also rec 132.

<sup>223</sup> Consultation feedback.

<sup>224</sup> Adapted from UN *Expanded Pocket Book on Human Rights for the Police* p45-46.

<sup>225</sup> Adapted from UN *Expanded Pocket Book on Human Rights for the Police* p47.

<sup>226</sup> Adapted from UN *Expanded Pocket Book on Human Rights for the Police* p47.

<sup>227</sup> APT *Monitoring Police Custody* (2013) p5.

<sup>228</sup> Tasmanian NPM *Expectations* (2024) 9.1.

<sup>229</sup> *ibid*.

<sup>230</sup> *ibid*.

<sup>231</sup> *ibid* 9.2.

<sup>232</sup> *ibid* 9.1.

<sup>233</sup> UN *Standards for UN Police* (2009) [8], [9]; UN *Code of Conduct for Law Enforcement Officials*, art 7, commentary (b), (c).

<sup>234</sup> UN *Safeguards to prevent torture during police custody and pretrial detention* [15].

<sup>235</sup> *The European Code of Police Ethics* (2001) p44.

<sup>236</sup> *ibid*.

<sup>237</sup> UN *Standards for UN Police* (2009) [10].

<sup>238</sup> *ibid* [12].

<sup>239</sup> *ibid* [11].

<sup>240</sup> UN CRC, *General Comment 24* [95](k).

<sup>241</sup> *The European Code of Police Ethics* (2001) p44.

<sup>242</sup> *ibid* IV(A)(21); see also (20).

<sup>243</sup> UN *Code of Conduct for Law Enforcement Officials* art 7. See also UN General Assembly, *Elimination of Violence against Children* [32]; UN *Standards for UN Police* (2009) [13].

<sup>244</sup> *The European Code of Police Ethics* (2001) V(A)(46).

<sup>245</sup> UN *Code of Conduct for Law Enforcement Officials* art 7, commentary (a).

<sup>246</sup> UNODC, *Handbook on police accountability, oversight and integrity* p91.

<sup>247</sup> *The European Code of Police Ethics* (2001) p59, V(A)(44).

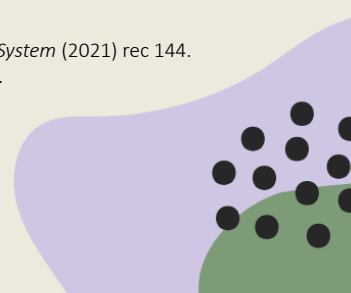
<sup>248</sup> *Mendez principles* (2021) [170].

<sup>249</sup> See also UN OHCHR, *Guidance on less-lethal weapons in law enforcement* (2020) [4.4.3].

<sup>250</sup> *Mendez principles* (2021) [171].

<sup>251</sup> VALS *Inquiry into Victoria’s Criminal Justice System* (2021) rec 144.

<sup>252</sup> *Yoorrook For Justice Report* (2023) rec 32(f).



- 253 RCIADIC rec 42.
- 254 *ibid* rec 47.
- 255 Consultation feedback.
- 256 RCIADIC rec 45.
- 257 Updated from RCIADIC rec 40.
- 258 RCIADIC rec 41(a-c).
- 259 UN OHCHR, *Guidance on less-lethal weapons in law enforcement* (2020) [4.4.1].
- 260 *ibid*.
- 261 ALRC, *Pathways to Justice* (2017) rec 14-4.
- 262 UN OHCHR, *Guidance on less-lethal weapons in law enforcement* (2020) [4.4.2].
- 263 RCIADIC rec 46.
- 264 APT *Monitoring Police Custody* (2013) p6; UN OHCHR *Guidance on less-lethal weapons in law enforcement* (2020) [3.2].
- 265 UNODC, *Handbook on police accountability, oversight and integrity* p89-90. See also ICRC, *International rules and standards for policing* (2015) p51.
- 266 CPT, *General Report* (2019) [71].
- 267 UN *Expanded Pocket Book on Human Rights for the Police* p62.
- 268 *ibid* p9.
- 269 Adapted from UN *Expanded Pocket Book on Human Rights for the Police* p8.
- 270 Adapted from UN *Expanded Pocket Book on Human Rights for the Police* p8.
- 271 Adapted from UN *Expanded Pocket Book on Human Rights for the Police* p9.
- 272 Adapted from UN *Expanded Pocket Book on Human Rights for the Police* p9.
- 273 Adapted from UN *Expanded Pocket Book on Human Rights for the Police* p9.
- 274 Adapted from UN *Expanded Pocket Book on Human Rights for the Police* p9.
- 275 ICRC, *International rules and standards for policing* (2015) p53.
- 276 *ibid* p54.
- 277 Tasmanian NPM *Expectations* (2024) 7.2.
- 278 UNODC *Handbook on police accountability, oversight and integrity* p75-76.
- 279 ICRC, *International rules and standards for policing* (2015) p19.
- 280 UNODC, *Handbook on police accountability, oversight and integrity* p91.
- 281 *ibid* p90-91.
- 282 UN *Expanded Pocket Book on Human Rights for the Police* p61.
- 283 UNODC *Handbook on police accountability, oversight and integrity* p90-91.
- 284 ICRC *International rules and standards for policing* (2015) p50.
- 285 *The European Code of Police Ethics* (2001) IV(A)(17). See also *The European Code of Police Ethics* (2001) IV(A)(16).
- 286 UNODC *Handbook on police accountability, oversight and integrity* p11.
- 287 *The European Code of Police Ethics* (2001) IV(A)(16).
- 288 UNODC *Handbook on police accountability, oversight and integrity* p112.
- 289 HMICFRS & CQC *Expectations for police custody* (2022) [1.1].
- 290 UN *Standards for UN Police* (2009) [28]. See also UN *Declaration on the Protection of all Persons from Enforced Disappearance* art 12(2); HMICFRS & CQC, *Expectations for police custody* (2022) [1.2].
- 291 ICRC *International rules and standards for policing* (2015) p51.
- 292 ICRC *International rules and standards for policing* (2015) p51. See also UN *Expanded Pocket Book on Human Rights for the Police* p42.
- 293 ICRC *International rules and standards for policing* (2015) p51.
- 294 UN *Expanded Pocket Book on Human Rights for the Police* p20.
- 295 *Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests* [86], [87].
- 296 *ibid* [84], [85].
- 297 UNODC *Handbook on police accountability, oversight and integrity*, p77; *The European Code of Police Ethics* (2001) VI(63).
- 298 UNODC *Handbook on police accountability, oversight and integrity* p78.
- 299 *ibid* p79.
- 300 APT *Monitoring Police Custody* (2013) p161.
- 301 UNODC *Handbook on police accountability, oversight and integrity* p92.
- 302 *ibid* p79.
- 303 VALS *Inquiry into Victoria's Criminal Justice System* (2021) rec 226.
- 304 UN ICERD (1965) art 1; see also art 7.
- 305 VALS *Inquiry into Victoria's Criminal Justice System* (2021) rec 226.
- 306 UN *Expanded Pocket Book on Human Rights for the Police* p45.
- 307 *ibid* p8.
- 308 UN *Code of Conduct for Law Enforcement Officials* article 8, commentary (a) and (b); UN *Safeguards to prevent torture during police custody and pretrial detention* [12](f); UN *Havana Rules* [87](b) and (c); UN General Assembly, *Elimination of Violence against Children* [44](c); Tasmanian NPM *Expectations* (2024) 2.11.
- 309 UN *Code of Conduct for Law Enforcement Officials* article 8, commentary (d) and (e); UNODC *Handbook on police accountability, oversight and integrity* p86-87; CPT *General Report* (2019) [71]; *Addressing Racism in Policing* (2024) p7.
- 310 UN *Expanded Pocket Book on Human Rights for the Police* p41; UN *Havana Rules* [75]; UNODC *Handbook on police accountability, oversight and integrity* p36.
- 311 UNODC *Handbook on police accountability, oversight and integrity* p45.
- 312 *ibid*.
- 313 *ibid*.
- 314 *ibid*; see also p36.
- 315 *ibid* p35, p46.
- 316 IBAC *Victoria Police handling of complaints made by Aboriginal people* (2022) rec 1.
- 317 *ibid* rec 5.
- 318 *ibid* rec 7.
- 319 Consultation feedback.
- 320 IBAC *Victoria Police handling of complaints made by Aboriginal people* (2022) rec 9.
- 321 UNODC *Handbook on police accountability, oversight and integrity* p45.
- 322 *ibid* p36.
- 323 *ibid* p46.
- 324 *ibid* p35.
- 325 *ibid* p41.
- 326 *ibid* p42.
- 327 *ibid* p46.
- 328 ICRC *International rules and standards for policing* (2015) p53.
- 329 UNODC *Handbook on police accountability, oversight and integrity* p46. See also *The European Code of Police Ethics* (2001) (33).
- 330 UNODC *Handbook on police accountability, oversight and integrity* p40.
- 331 *The European Code of Police Ethics* (2001) p51.
- 332 UNODC, *Handbook on police accountability, oversight and integrity* p47.
- 333 *ibid* p39.
- 334 *ibid* p47.
- 335 UN *Safeguards to prevent torture during police custody and pretrial detention* [15]; UN *Beijing Rules* [22.2]; *Addressing Racism in Policing* (2024) p7.
- 336 UNODC *Handbook on police accountability, oversight and integrity*, p80. See also *The European Code of Police Ethics* (2001) IV(B)(24), *The European Code of Police Ethics* (2001) p46; UN *Expanded Pocket Book on Human Rights for the Police* p62.
- 337 UN General Assembly, *Elimination of Violence against Children* [40](b).
- 338 *ECHR and Policing* (2013) p29.
- 339 UNODC *Handbook on police accountability, oversight and integrity* p80.
- 340 ICRC *International rules and standards for policing* (2015) p51-52.
- 341 *The European Code of Police Ethics* (2001) IV(B)(22).
- 342 *ibid* IV(B)(23).
- 343 UN *Expanded Pocket Book on Human Rights for the Police*, p41; UN *Havana Rules* [82].
- 344 Consultation feedback.
- 345 *The European Code of Police Ethics* (2001) IV(B)(25).
- 346 CPT *General Report* (2019) [71].

- <sup>347</sup> Adapted from UNODC *Handbook on police accountability, oversight and integrity* p80.
- <sup>348</sup> Adapted from *Addressing Racism in Policing* (2024) p9.
- <sup>349</sup> RCIADIC rec 229. See also UN *Expanded Pocket Book on Human Rights for the Police* p44, p46.
- <sup>350</sup> RCIADIC rec 230.
- <sup>351</sup> NT Coroner *Inquest into the death of Andrew Ross* (1999) p34.
- <sup>352</sup> ALRC *Pathways to Justice* (2017) rec 14-4.
- <sup>353</sup> RCIADIC rec 231.
- <sup>354</sup> ALRC *Pathways to Justice* (2017) rec 14-4.
- <sup>355</sup> RCIADIC rec 225.
- <sup>356</sup> NTRC (2017) rec 25.1.2; UN *Expanded Pocket Book on Human Rights for the Police* p42; UN CRC *General Comment 24* [106]; UN *Standards for UN Police* (2009) [165].
- <sup>357</sup> UN *Havana Rules* [83]; CPT *General Report* (2019) [71]; NTRC (2017) rec 25.1.4.
- <sup>358</sup> UNODC *Handbook on police accountability, oversight and integrity* p84.
- <sup>359</sup> Consultation feedback.
- <sup>360</sup> *The European Code of Police Ethics* (2001) IV(C)(28); UNODC *Handbook on police accountability, oversight and integrity* p84; APT *Monitoring Police Custody* (2013) p165; UN *Bangkok Rules* rule 32.
- <sup>361</sup> NT Coroner, *Inquest into the death of Terence Daniel Briscoe* [2012] [187 – 188].
- <sup>362</sup> *The European Code of Police Ethics* (2001) IV(C)(27) p48.
- <sup>363</sup> UNODC, *Handbook on police accountability, oversight and integrity* p84; UN CRC *General Comment 24* [112]; UN CAT *Concluding Observations on Australia* (2022) [52](c).
- <sup>364</sup> UNODC *Handbook on police accountability, oversight and integrity* p92.
- <sup>365</sup> UN *Expanded Pocket Book on Human Rights for the Police* p39, p40; NTRC (2017) rec 25.1.3; UN *Beijing Rules* [12.1] and [22.1]; UN General Assembly *Elimination of Violence against Children* [35](e), [40](c), [45].
- <sup>366</sup> UN *CRPD* (2006) art 13(2).
- <sup>367</sup> UN *Bangkok Rules* rule 33(2).
- <sup>368</sup> APT *Monitoring Police Custody* (2013) p165. See also CPT, *General Report* (2019) [77].
- <sup>369</sup> NTRC (2017) rec 25.1.5; NAAJA *Submissions to the coronial inquest into the death of Kumanjaya Walker*. See also NT Coroner *Inquest into the death of Kumanjaya Walker* [2025] NTLC 8 rec 22.
- <sup>370</sup> UN CRC *General Comment 24* [112].
- <sup>371</sup> *ibid*.
- <sup>372</sup> NTRC (2017) rec 25.2.1.
- <sup>373</sup> *ibid* rec 25.2.4.
- <sup>374</sup> UN *Havana Rules* [85].
- <sup>375</sup> NT Coroner *Inquest into the death of Robert Plasto-Lehner and David Gurrappa aka Moscow* [2009] [196- 197].
- <sup>376</sup> *The European Code of Police Ethics* (2001) IV(C)(26).
- <sup>377</sup> Consultation feedback.
- <sup>378</sup> UN CAT art 10(1) and (2); UN CAT *Concluding Observations on Australia* (2022) [52](a); Tasmanian NPM *Expectations* (2024) 9.3.
- <sup>379</sup> UN *Safeguards to prevent torture during police custody and pretrial detention* [14]; *The Yogyakarta Principles* (2006) principle 10(c); UN HRC *General Comment 20* [10].
- <sup>380</sup> UN CAT *Concluding Observations on Australia* (2022) [52](b).
- <sup>381</sup> HMICFRS & CQC, *Expectations for police custody* (2022) [1.3]; *The Yogyakarta Principles* (2006) principle 7(c).
- <sup>382</sup> *Addressing Racism in Policing* (2024) p7; UN *Expanded Pocket Book on Human Rights for the Police* p3; NAAJA *Submissions to the coronial inquest into the death of Kumanjaya Walker*.
- <sup>383</sup> CPT *General Report* (2019) [71]; *The European Code of Police Ethics* (2001) IV(C)(29).
- <sup>384</sup> UN *Bangkok Rules* rule 32 and 33(1).
- <sup>385</sup> UN CRC, *General Comment 24* [112].
- <sup>386</sup> *The Yogyakarta Principles* (2006) principle 9(g).
- <sup>387</sup> UN HRC *GC 37 on the right of peaceful assembly* (2020) [80].
- <sup>388</sup> ALRC *Pathways to Justice* (2017) rec 14-4; Tasmanian NPM *Expectations* (2024) 2.8. See also NT Coroner, *Inquest into the death of Kumanjaya Walker* [2025] NTLC 8 rec 23.
- <sup>389</sup> Cunneen and Porter *Indigenous Peoples and the Criminal Justice System*, in *The Palgrave Handbook of Australian and New Zealand Criminology, Crime and Justice* (2017) p675.
- <sup>390</sup> Victoria Coroner *Inquest into the death of Veronica Nelson* (2023) rec 9. See also IBAC *Victoria Police handling of complaints made by Aboriginal people* (2022) rec 2.
- <sup>391</sup> WA Coroner *Inquest into the death of Julieka Ivanna Dhu* (2016) rec 3(2) and (3).
- <sup>392</sup> Adapted from WA Coroner *Inquest into the death of Julieka Ivanna Dhu* (2016) rec 4(3).
- <sup>393</sup> WA Coroner *Inquest into the death of Julieka Ivanna Dhu* (2016) [742-759].
- <sup>394</sup> WA Coroner *Inquest into the death of Julieka Ivanna Dhu* (2016) [742-759]. See also NAAJA *Submissions to the coronial inquest into the death of Kumanjaya Walker*.
- <sup>395</sup> WA Coroner *Inquest into the death of Julieka Ivanna Dhu* (2016) rec 4(1-2).
- <sup>396</sup> RCIADIC rec 228(a-c). See also IBAC *Victoria Police handling of complaints made by Aboriginal people* (2022) rec 2.
- <sup>397</sup> RCIADIC rec 228(a-c). See also IBAC, *Victoria Police handling of complaints made by Aboriginal people* (2022) rec 2.
- <sup>398</sup> WA Coroner *Inquest into the death of Julieka Ivanna Dhu* (2016) [742-759].
- <sup>399</sup> e.g. NT Aboriginal Interpreter Service *Working With Interpreter Training*.
- <sup>400</sup> ARDS, NAAJA & AIS *The Plain English Legal Dictionary: Northern Territory Criminal Law* (2015) p5.
- <sup>401</sup> Commonwealth Ombudsman *Accessibility of Indigenous Interpreters: Talking in Language Follow Up Investigation* (2016) rec 5.
- <sup>402</sup> AIS, *When to use an Aboriginal interpreter*.
- <sup>403</sup> Consultation feedback.
- <sup>404</sup> Consultation feedback.
- <sup>405</sup> UN Special Rapporteur on Torture *HRC report* (2015) [71] and [86](k).
- <sup>406</sup> UNODC *Handbook on police accountability, oversight and integrity* p91.
- <sup>407</sup> *The European Code of Police Ethics* (2001) V(A)(42).
- <sup>408</sup> UN SPT, *Visit to Australia* [51]; UN *Mandela Rules* rule 2(2).
- <sup>409</sup> *Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests* [89]; UN *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* principle 12(2).
- <sup>410</sup> UN *Mandela Rules* rule 9.
- <sup>411</sup> NT Coroner *Inquest into the death of Marianne Fire Tikalaru Munkara* [2016] [43 – 50].
- <sup>412</sup> *Mendez principles* (2021) [174].
- <sup>413</sup> Adapted from *Mendez principles* (2021) [175].
- <sup>414</sup> UN *Mandela Rules* rule 2(2).
- <sup>415</sup> UNODC *Handbook on police accountability, oversight and integrity* p92.
- <sup>416</sup> UN *Mandela Rules* rule 7. See also UN *Havana Rules* [21].
- <sup>417</sup> Adapted from UN *Havana Rules* [21].
- <sup>418</sup> NT Coroner *Inquest into the death of John Benedict Munkara* [2017] NTLC [44 – 50].
- <sup>419</sup> UN *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* principle 12(1). See also UN SPT, *Visit to Australia* [51].
- <sup>420</sup> Tasmanian NPM, *Expectations* (2024) 2.2.
- <sup>421</sup> UN *Havana Rules* [19].
- <sup>422</sup> UN *Code of Conduct for Law Enforcement Officials* art 4, commentary. See also *The European Code of Police Ethics* (2001) V(A)(41); *Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests* [89]; UN *Havana Rules* [87](e); UN *ICCPR* article 17(1); UN *CROC* art 16(1), 16(2), 40(2)(b)(vii).
- <sup>423</sup> UN *Havana Rules* [19].
- <sup>424</sup> *The European Code of Police Ethics* (2001) IV(A)(19). See also Mounty Yarns, *Lived Experiences of Aboriginal young people in Mt Druitt* p42.
- <sup>425</sup> *ibid*.
- <sup>426</sup> UN SPT *Visit to Australia* [51].
- <sup>427</sup> *ibid*.
- <sup>428</sup> UN *Havana Rules* [19].

- <sup>428</sup> UN SPT *Visit to Australia* [51].
- <sup>429</sup> *Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests* [89].
- <sup>430</sup> NSW Coroner *Inquest into the death of David Dungay* (2019) [19.4 – 19.6].
- <sup>431</sup> Consultation feedback.
- <sup>432</sup> Consultation feedback.
- <sup>433</sup> *Preventing unlawful profiling today and in the future: a guide* (2018) p89.
- <sup>434</sup> LECC *Review of NSW Police Force body-worn video policy and practice* (2025) rec 4.
- <sup>435</sup> *ibid* rec 10.
- <sup>436</sup> *Preventing unlawful profiling today and in the future: a guide* (2018) p89.
- <sup>437</sup> *ibid*. See also p90.
- <sup>438</sup> Consultation feedback. Noting a departure from LECC *Review of NSW Police Force body-worn video policy and practice* (2025) rec 15.
- <sup>439</sup> *Human rights compliant uses of digital technologies by law enforcement for the facilitation of peaceful protests* [34].
- <sup>440</sup> Adapted from *Preventing unlawful profiling today and in the future: a guide* (2018) p88.
- <sup>441</sup> UN Special Rapporteur on torture *HRC report* (2015) [83] and [85](r); CPT *General Report* (2002) [50].
- <sup>442</sup> UN General Assembly *Elimination of Violence against Children* [42](a), (b) and (c).
- <sup>443</sup> UN *Havana Rules* [14], [72]; UN CRC, *General Comment 24* [95](j); *The Yogyakarta Principles* (2006) principle 9(f); *The additional Yogyakarta Principles (YP+10)* (2017) principle 9(j); UN *Mandela Rules* rule 84(2); UN *Havana Rules* [73]; UN *Bangkok Rules* rule 26, 28.
- <sup>444</sup> UN *Mandela Rules* rule 84(1)(a-d); UN General Assembly *Elimination of Violence against Children* [37](c).
- <sup>445</sup> UN *Havana Rules* [74]; UN *Mandela Rules* rule 85(1) and (2).
- <sup>446</sup> See relevant sections of the OPCAT art 17-23; Also UN *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* principle 29(1) and (2); UN *Expanded Pocket Book on Human Rights for the Police* p39; UN *Safeguards to prevent torture during police custody and pretrial detention* [16]; UN CAT *Concluding Observations on Australia* (2022) [42](a) and (b); UN *Istanbul Protocol* [153] and [262]; Tasmanian NPM *Expectations* (2024) 9.5.
- <sup>447</sup> OPCAT articles 12, 14, 15 and 16.
- <sup>448</sup> VALS *Inquiry into Victoria's Criminal Justice System* (2021) rec 114, 115, 116; *Addressing Racism in Policing* (2024) p6.
- <sup>449</sup> Consultation feedback.
- <sup>450</sup> *Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests* [81]. See also UN HRC, *GC 37 on the right of peaceful assembly* (2020) [30]; MALS *Legal Observer Team Report: The Policing of the DLF Protests* (2025) rec 5.
- <sup>451</sup> Consultation feedback.
- <sup>452</sup> Consultation feedback.
- <sup>453</sup> WA Coroner *Inquest into the death of Julieka Ivanna Dhu* (2016) rec 9.
- <sup>454</sup> Victoria Coroner *Inquest into the death of Tanya Louise Day* (2020) rec 7.
- <sup>455</sup> RCIADIC rec 145(a-d). See also VALS *Inquiry into Victoria's Criminal Justice System* (2021) rec 138 regarding existing Aboriginal Community Justice Panels in Victoria.
- <sup>456</sup> Mounty Yarns *Lived Experiences of Aboriginal young people in Mt Druitt* p45.
- <sup>457</sup> UN *Safeguards to prevent torture during police custody and pretrial detention* [12](f); ALRC *Pathways to Justice* (2017) rec 14-2; UN *Havana Rules* [77]; UN CAT *Concluding Observations on Australia* (2022) [36](g).
- <sup>458</sup> *Yoorrook For Justice Report* (2023) rec 27(a-g); Mounty Yarns *Lived Experiences of Aboriginal young people in Mt Druitt* p42.
- <sup>459</sup> Consultation feedback.
- <sup>460</sup> UNODC *Handbook on police accountability, oversight and integrity* p36.
- <sup>461</sup> Mounty Yarns *Lived Experiences of Aboriginal young people in Mt Druitt* 45.
- <sup>462</sup> UN *Expanded Pocket Book on Human Rights for the Police* p60.
- <sup>463</sup> UNODC *Handbook on police accountability, oversight and integrity* p34.
- <sup>464</sup> UN SPT *Visit to Australia* [53].
- <sup>465</sup> UNODC *Handbook on police accountability, oversight and integrity* p34-35.
- <sup>466</sup> RCIADIC rec 226(f) and (g); UN *Bangkok Rules* rule 25(2).
- <sup>467</sup> UN *Mandela Rules* rule 56(4).
- <sup>468</sup> UN General Assembly, *Elimination of Violence against Children* [34](i). See also [43](a). See also UN CRC *General Comment 24* [95](i); Tasmanian NPM, *Expectations* (2024) 2.11.
- <sup>469</sup> UN *CRPD* (2006) art 13(1).
- <sup>470</sup> UN *Bangkok Rules* rule 25(1).
- <sup>471</sup> UN *Mandela Rules* rule 57(1).
- <sup>472</sup> Tasmanian NPM *Expectations* (2024) 2.11. See also Mounty Yarns *Lived Experiences of Aboriginal young people in Mt Druitt* p42.
- <sup>473</sup> UN *Havana Rules* [76]; UN *Mandela Rules* rule 56(2) and (3).
- <sup>474</sup> HMICFRS & CQC, *Expectations for police custody* (2022) [3.7].
- <sup>475</sup> UN *Bangkok Rules* rule 25(1). See also UN *Mandela Rules* rule 57(2); Tasmanian NPM *Expectations* (2024) 2.11.
- <sup>476</sup> UN General Assembly *Elimination of Violence against Children* [34](j).
- <sup>477</sup> RCIADIC rec 226(b). See also Tasmanian NPM *Expectations* (2024) 2.11.
- <sup>478</sup> Adapted from UNODC *Handbook on police accountability, oversight and integrity* p42.
- <sup>479</sup> UNODC *Handbook on police accountability, oversight and integrity* p53.
- <sup>480</sup> *Yoorrook For Justice Report* (2023) rec 27(a-g).
- <sup>481</sup> UNODC *Handbook on police accountability, oversight and integrity* p46.
- <sup>482</sup> RCIADIC rec 226(k).
- <sup>483</sup> *ibid* rec 226(j).
- <sup>484</sup> Consultation feedback.
- <sup>485</sup> UNODC *Handbook on police accountability, oversight and integrity* p54.
- <sup>486</sup> *ibid* p53.
- <sup>487</sup> Mounty Yarns *Lived Experiences of Aboriginal young people in Mt Druitt* p42.
- <sup>488</sup> ALRC, *Pathways to Justice* (2017) rec 14-2.
- <sup>489</sup> UNODC *Handbook on police accountability, oversight and integrity* p70.
- <sup>490</sup> RCIADIC rec 226(d).
- <sup>491</sup> UNODC, *Handbook on police accountability, oversight and integrity* p36.
- <sup>492</sup> *ibid* p70.
- <sup>493</sup> *ibid*.
- <sup>494</sup> RCIADIC rec 226(c).
- <sup>495</sup> Consultation feedback.
- <sup>496</sup> RCIADIC rec 226(e) and (h); *Yoorrook For Justice Report* (2023) rec 27(h).
- <sup>497</sup> Consultation feedback.
- <sup>498</sup> CAT *General Comment No. 3 on Article 14* [40].
- <sup>499</sup> Consultation feedback.
- <sup>500</sup> NT Coroner *Inquest into the death of Kumanjayi Walker* [2025] NTL 8 [1641].
- <sup>501</sup> Consultation feedback.
- <sup>502</sup> Consultation feedback.
- <sup>503</sup> UN OHCHR *Guidance on less-lethal weapons in law enforcement* (2020) [3.3]. See also CPT, *General Report* (2019) [71]; UN HRC, *GC 37 on the right of peaceful assembly* (2020) [89]; APT, *Monitoring Police Custody* (2013) p167; Tasmanian NPM, *Expectations* (2024) 7.2.
- <sup>504</sup> CP, *General Report* (2019) [64].
- <sup>505</sup> *The European Code of Police Ethics* (2001) V(A)(45).
- <sup>506</sup> APT *Monitoring Police Custody* (2013) p166.
- <sup>507</sup> UN OHCHR *Guidance on less-lethal weapons in law enforcement* (2020) [3.3].
- <sup>508</sup> Consultation feedback.
- <sup>509</sup> Consultation feedback.
- <sup>510</sup> Consultation feedback.
- <sup>511</sup> *Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests* [89].
- <sup>512</sup> UN Special Rapporteur on Torture *HRC report* (2015) [85](t).
- <sup>513</sup> Consultation feedback.

- <sup>514</sup> ECHR and Policing (2013) p107.
- <sup>515</sup> Ibid.
- <sup>516</sup> Ibid.
- <sup>517</sup> HMICFRS & CQC, *Expectations for police custody* (2022) [1.2]; UN Special Rapporteur on Torture *HRC report* (2015) [85](t).
- <sup>518</sup> HMICFRS & CQC, *Expectations for police custody* (2022) [1.2].
- <sup>519</sup> Adapted from HMICFRS & CQC, *Expectations for police custody* (2022) [1.3].
- <sup>520</sup> UN CRC *General Comment 24* [113].
- <sup>521</sup> *Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests* [81].
- <sup>522</sup> UN *Mandela Rules* rule 10.
- <sup>523</sup> HMICFRS & CQC *Expectations for police custody* (2022) [1.3].
- <sup>524</sup> Ibid [1.2].
- <sup>525</sup> Ibid.
- <sup>526</sup> NTRC (2017) rec 25.2.5.
- <sup>527</sup> NT Coroner, *Inquest into the death of Perry Jabanangka Langdon* [2015] [79], [87 – 90], [92].
- <sup>528</sup> HMICFRS & CQC *Expectations for police custody* (2022) [4.6].
- <sup>529</sup> *Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests* [87]. See also NSW Coroner *Inquest into the death of David Dungay* (2019) [17.35]; NT Coroner *Inquest into the death of Terence Daniel Briscoe* [2012] [104]; Tasmanian NPM *Expectations* (2024) 6.2.
- <sup>530</sup> RCIADIC rec 43. See also RCIADIC rec 44; NTRC (2017) rec 25.5.1, rec 25.5.2.
- <sup>531</sup> UNODC *Handbook on police accountability, oversight and integrity* p36; see also p46. See also Tasmanian NPM *Expectations* (2024) 2.11.
- <sup>532</sup> Tasmanian NPM *Expectations* (2024) 9.3.
- <sup>533</sup> UN *Beijing Rules* [30.1]
- <sup>534</sup> UN *Expanded Pocket Book on Human Rights for the Police* p42.
- <sup>535</sup> UN CRC *General Comment 24* [115].
- <sup>536</sup> Ibid [114].
- <sup>537</sup> UN *Beijing Rules* Commentary [30].
- <sup>538</sup> UNODC *Handbook on police accountability, oversight and integrity*, p69.
- <sup>539</sup> Tasmanian NPM, *Expectations* (2024) 6.4.
- <sup>540</sup> UNODC *Handbook on police accountability, oversight and integrity*, p43.
- <sup>541</sup> Ibid p43-44.
- <sup>542</sup> Adapted from UNODC *Handbook on police accountability, oversight and integrity*, p44.
- <sup>543</sup> WA Coroner *Inquest into the death of Ian Ward* (2009) p131-132.
- <sup>544</sup> NT Coroner *Inquest into the death of Andrew Ross* (1999) p39; NT Coroner *Inquest into the death of Terence Daniel Briscoe* [2012] [184 – 186]; Victoria Coroner *Inquest into the death of Tanya Louise Day* (2020) rec 4.
- <sup>545</sup> Victoria Coroner *Inquest into the death of Veronica Nelson* (2023) rec 1.
- <sup>546</sup> Ibid rec 2; NT Coroner *Inquest into the death of Terence Daniel Briscoe* [2012] [221].
- <sup>547</sup> NT Coroner *Inquest into the death of Terence Daniel Briscoe* [2012] [206 – 208].
- <sup>548</sup> UN *Minnesota Protocol* [13].
- <sup>549</sup> UN *Minnesota Protocol* [16]. See also UN *Standards for UN Police* (2009) [23].
- <sup>550</sup> UN *Minnesota Protocol* [18].
- <sup>551</sup> UN *Standards for UN Police* (2009) [89].
- <sup>552</sup> UNODC *Handbook on police accountability, oversight and integrity* p26.
- <sup>553</sup> Adapted from UNODC *Handbook on police accountability, oversight and integrity* p26.
- <sup>554</sup> RCIADIC rec 12.
- <sup>555</sup> UN *Minnesota Protocol* [11].
- <sup>556</sup> Ibid [17].
- <sup>557</sup> UN OHCHR, *Guidance on less-lethal weapons in law enforcement* (2020) [3.9].
- <sup>558</sup> Ibid.
- <sup>559</sup> UN, *Minnesota Protocol* [17].
- <sup>560</sup> UN *Mandela Rules* rule 72.
- <sup>561</sup> Ibid rule 69.
- <sup>562</sup> RCIADIC rec 19.
- <sup>563</sup> RCIADIC rec 20.
- <sup>564</sup> NSW Coroner *Inquest into the death of Jordan Wayne Cruickshank* (2019) [33- 34].
- <sup>565</sup> RCIADIC rec 10.
- <sup>566</sup> RCIADIC rec 19. See also UN *Expanded Pocket Book on Human Rights for the Police* p40.
- <sup>567</sup> Adapted from NSW Select Committee, *Deaths in Custody* (2021) rec 23.
- <sup>568</sup> NT Coroner, *Inquest into the death of Kumanjayi Walker* [2025] NTLC 8 [1305], [1342], [1344], [1345], [1346].
- <sup>569</sup> Ibid [1342], [1344], [1345], [1350], [1390].
- <sup>570</sup> Ibid [1389].
- <sup>571</sup> Ibid [1346].
- <sup>572</sup> UN *Minnesota Protocol* [43].
- <sup>573</sup> Consultation feedback.
- <sup>574</sup> Ibid [25].
- <sup>575</sup> RCIADIC rec 38.
- <sup>576</sup> NSW Coroner *Inquest into the death of Jordan Wayne Cruickshank* (2019) [7], [25], [29- 31], [35- 38].
- <sup>577</sup> NSW Coroner *Inquest into the death of Jordan Wayne Cruickshank* (2019) [39], p9.
- <sup>578</sup> UN *Minnesota Protocol* [37].
- <sup>579</sup> RCIADIC rec 25. See also UN *Havana Rules* [57].
- <sup>580</sup> RCIADIC rec 37.
- <sup>581</sup> Ibid rec 23.
- <sup>582</sup> UN *Minnesota Protocol* [35].
- <sup>583</sup> RCIADIC rec 21.
- <sup>584</sup> Ibid rec 22.
- <sup>585</sup> Ibid rec 24.
- <sup>586</sup> Ibid.
- <sup>587</sup> Ibid rec 19. See also UN *Expanded Pocket Book on Human Rights for the Police* p40.
- <sup>588</sup> NT Coroner *Inquest into the death of Kumanjayi Walker* [2025] NTLC 8 [1405].
- <sup>589</sup> UN *Minnesota Protocol* [42].
- <sup>590</sup> Ibid [67].
- <sup>591</sup> Ibid [36].
- <sup>592</sup> Ibid [38].
- <sup>593</sup> Ibid [23].
- <sup>594</sup> Ibid [17].
- <sup>595</sup> Ibid [24].
- <sup>596</sup> Ibid [25].
- <sup>597</sup> Ibid [24].
- <sup>598</sup> NSW Select Committee *Deaths in Custody* (2021) rec 34.
- <sup>599</sup> NT Coroner *Inquest into the death of Robert Plasto-Lehner and David Gurrappa aka Moscow* [2009] [154-155].
- <sup>600</sup> Ibid [157 – 159], [198].
- <sup>601</sup> UN *Minnesota Protocol* [27].
- <sup>602</sup> Ibid.
- <sup>603</sup> Ibid [26].
- <sup>604</sup> Consultation feedback.
- <sup>605</sup> NSW Select Committee *Deaths in Custody* (2021) rec 33.
- <sup>606</sup> Ibid rec 34.
- <sup>607</sup> UN, *Minnesota Protocol* [29]. Noting a departure from a number of relevant RCIADIC recommendations which relate to police investigations forming part of the coronial inquest process: RCIADIC, rec 29, 30, 31, 32, 33, 34, 35(a-e).
- <sup>608</sup> UN *Minnesota Protocol* [28].
- <sup>609</sup> Ibid [29].
- <sup>610</sup> Ibid [30].
- <sup>611</sup> Ibid [32].
- <sup>612</sup> Ibid [33].
- <sup>613</sup> RCIADIC rec 11.
- <sup>614</sup> Ibid rec 13.
- <sup>615</sup> Ibid rec 14.
- <sup>616</sup> Ibid rec 15.
- <sup>617</sup> Ibid rec 16.
- <sup>618</sup> UN *Minnesota Protocol* [10]. See also VALS *Inquiry into Victoria's Criminal Justice System* (2021) rec 118.

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<sup>619</sup> UN OHCHR *Guidance on less-lethal weapons in law enforcement* (2020) [3.10].

<sup>620</sup> VALS *Inquiry into Victoria's Criminal Justice System* (2021) rec 118.

<sup>621</sup> *ibid* rec 120.

<sup>622</sup> UNDRIP art 19.

<sup>623</sup> *ibid* art 1.

<sup>624</sup> *ibid* art 2.

<sup>625</sup> *ibid* art 15(2).

<sup>626</sup> *ibid* art 22(1).

<sup>627</sup> *ibid* art 22(2).

<sup>628</sup> *ibid* art 9.

<sup>629</sup> *ibid* art 33(1).

<sup>630</sup> *ibid* art 33(2).

<sup>631</sup> *ibid* art 5.

<sup>632</sup> *ibid* art 8(1).

<sup>633</sup> *ibid* art 11(1).

<sup>634</sup> *ibid* art 8(2)(a).

<sup>635</sup> *ibid* art 15(1).

<sup>636</sup> *ibid* art 34.

<sup>637</sup> *ibid* art 35.

<sup>638</sup> UN *CROC* art 4.

<sup>639</sup> *ibid* art 30.

<sup>640</sup> *ibid* art 31(2).

<sup>641</sup> UNDRIP art 13(1).

<sup>642</sup> *ibid* art 13(2).

<sup>643</sup> *ibid* art 25.

<sup>644</sup> *ibid* art 12(1).

<sup>645</sup> *ibid* art 12(2).

<sup>646</sup> *ibid* art 23.

<sup>647</sup> *ibid* art 24(1).

<sup>648</sup> *ibid* art 24(2).

<sup>649</sup> VALS *Inquiry into Victoria's Criminal Justice System* (2021) rec 6.

<sup>650</sup> *Principles of Warlpiri conflict resolution* p1, 9.

