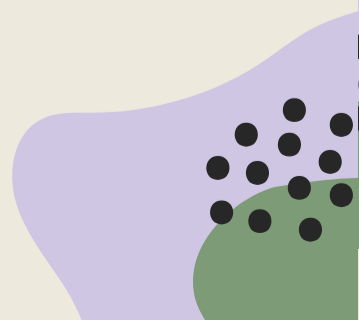


**Culturally appropriate,
human rights compliant**

Police custody monitoring expectations

Aide Memoire

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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1. Using the aide memoire

This aide memoire is a summary document intended to assist the NPM team

- ✳ during its on-site visits (particularly to provide guidance to any contracted experts joining the team)
- ✳ during its constructive dialogue with police authorities.

A series of prompting questions are included below. Further detail, and references to original sources, can be found in the *Practical detention monitoring guidance* and *Identifying the root causes of ill-treatment* documents.

As discussed in the *Introduction*, NPM monitoring is not an auditing function, and the below questions should not be used as a checklist.

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2. Practical detention monitoring

(a) Deprivation of liberty

A last resort

- * Are police avoiding unnecessary contact with Aboriginal and/or Torres Strait Islander people?
- * Are police engaging in racial profiling? Are there structures and safeguards in place to identify and deter profiling?
- * Are police competently using de-escalation and conflict-resolution techniques?
- * Is deprivation of liberty a last resort, for the shortest possible time? Including in relation to 'stop and search' and kettling?

Alternatives to detention

- * Do police officers give proper consideration to alternatives to detention, including cautions, warnings, diversions and summons?
- * Are there legislative, policy and procedural safeguards to ensure alternatives to detention are properly utilised?

Bail and other court-ordered conditions

- * Is there a presumption of bail for all offences?
- * In making bail decisions, are the following taken into account: Aboriginality, caring responsibilities, and best interests of the child?
- * Do bail decision-makers appreciate that certain criteria disproportionately have an adverse impact on Aboriginal and/or Torres Strait Islander people, and respond appropriately?
- * Is there sufficient culturally appropriate bail support accommodation and services for Aboriginal and/or Torres Strait Islander people?
- * Do police only impose necessary and justifiable, proportionate, least restrictive, non-discriminatory, culturally appropriate bail conditions, that are intended to mitigate specific identified risks?
- * Are breaches of bail dealt with appropriately, not resulting in automatic revocation of bail?
- * Are committing an offence while on bail, breaching bail conditions or failure to answer bail not criminal offences?
- * Are bail (and sentence) conditions explained to individuals in a manner that is understandable to them?

Arrest

- * Are people never subject to arbitrary arrest or detention?
- * Are there remedies available if people are arbitrarily/unlawfully detained?

- * Are individuals informed, in a manner that they understand, the reason for their apprehension/arrest/detention?
- * Is care for the detained individual's children (and other dependants) organised upon a person's apprehension/arrest?

(b) Use of force

General

- * Is force only used for lawful purposes, when strictly necessary for police officers to perform their duties?
- * Is the use of force proportional to lawful objectives (including in relation to public assemblies, arrests and in police transport/cells)? For those in police custody, has any use of force been made strictly necessary by the detained person's own conduct?
- * Are police competent in de-escalation techniques, including persuasion, mediation and negotiation? Do they effectively utilise these techniques?
- * Are other, non-violent means exhausted, with use of force being a last resort (this includes considering alternatives such as retreating, withdrawing, ending a pursuit, attending another day, containment or posting summons)?
- * Do police avoid 'Officer Induced Jeopardy', particularly for planned actions?
- * Do police give a warning before using force, and allow sufficient time for people to obey the warning?
- * Do police take the necessary precautions for planned actions, to facilitate alternatives to using force?
- * Is intentional lethal use of firearms only permissible when strictly unavoidable in order to protect life?
- * Do police take extra precautions with regards to vulnerable individuals or groups when using force?
- * When arresting children, are police prohibited from using firearms (unless the child has a firearm) and electric shock weapons?
- * Do police use force on a child only when they pose an imminent threat of injury to themselves or others?
- * Is the use of force that is humiliating, degrading, or involves deliberate infliction of pain prohibited?
- * Is the use of force non-discriminatory, with police paying attention to potentially discriminatory impacts of certain tactics, weapons and restraints?
- * Is use of force regulated by clear, widely disseminated law, that accords with international human rights?
- * Are only authorised weapons, restraints and related equipment used, and are they used in a way to minimise injury?
- * Are personal weapons, chemical agents and electrical discharge weapons prohibited in places of detention? Is the use of any weapons against children in places of detention prohibited?
- * Do police have appropriate, regular training on using force (including weapons and restraints)?
- * Are medical professionals never involved in decision making about use of restraints (where their use is not on medical grounds)?
- * Are people not subject to restraint on medical grounds in police custody, but are instead transferred to a healthcare facility?

Weapons

- ✱ Is it prohibited for police carry firearms in police stations and in remote Aboriginal communities?
- ✱ Are prohibited weapons never issued, nor available to, nor used by, police?
- ✱ Are controlled weapons only used in a lawful, human rights-compliant manner, with police being aware of the associated risks and how to minimise them? Do police ensure access to care for individuals (including medical care) after their use?
- ✱ Is there strict regulation for the control, storage, issuing and use of weapons and ammunition?
- ✱ Have staff who are issued weapons and restraints been trained in their use and have they passed proficiency standards?

Restraints

- ✱ Is the use of restraints proportionate?
- ✱ Are instruments of restraint never used for a longer period of time than is strictly necessary?
- ✱ Is the routine use of mechanical restraints, including handcuffs, in police custody management prohibited?
- ✱ Are instruments of restraint not used on patients in hospital beds? Nor on people during labour or immediately after childbirth?
- ✱ Are inherently degrading/painful instruments of restraint (e.g. spit hoods/chemical restraints) prohibited?
- ✱ Are only approved restraints kept at places of detention?

Searches

- ✱ Are searches never routine? Are searches subject to the principles of legality (including non-discrimination), necessity, proportionality and accountability?
- ✱ Are searches conducted with the person being searched out of sight of cameras, for privacy?
- ✱ Are accommodations made for searching people with disabilities?
- ✱ Are searches regulated by legislation?
- ✱ Are searches conducted with an individual's 'consent' prohibited?
- ✱ Are body cavity searches, the use of emetic agents and strip searches prohibited?
- ✱ Is technology utilised in searches used in a human rights-compliant manner?
- ✱ Are searches conducted in a humane, dignified, culturally appropriate and gender sensitive manner?
- ✱ Prior to searches being conducted, are individuals given information about the purpose of the search and the way in which the search will be carried out, in a manner and a language they understand?
- ✱ Have police developed local protocols with Aboriginal and Torres Strait Islander communities on conducting searches, seizures and return of cultural objects?
- ✱ Do police maintain accurate and up-to-date records of all searches?

Use of dogs

- ✳ Is the use of police dogs against children, people who are fleeing police, and drug detention ('sniffer') dogs at festivals prohibited?
- ✳ Is the use of dogs in cell extractions prohibited?
- ✳ Are police dogs not used in remote Aboriginal communities without community endorsement?

Barriers used during kettling at public assemblies

- ✳ Do physical barriers used at public assemblies not pose a risk to safety?
- ✳ Is the use of police vehicles at public assemblies safe?
- ✳ Are mounted police never deployed?
- ✳ Are prohibited barriers, such as dogs, not used?

Positions, holds and using force to move people

- ✳ Are people never dragged when being moved by police? Instead, are they provided assistance and mobility aids where needed?
- ✳ Is there a prohibition on the use of dangerous positions and stress positions (positional torture)? Is the prone position prohibited?

Testing, procuring and monitoring weapons and equipment

- ✳ Before procuring weapons and equipment, is a review into their legality (internationally and domestically, including with reference to human rights) conducted?
- ✳ Are the effects of all restraints, weapons and related equipment monitored?

Processes following use of force (including restraint)

- ✳ Following a use of force, do police ensure that assistance and medical attention are rendered at the earliest possible moment?
- ✳ Are accurate records of use of force maintained?
- ✳ Is the use of force reported internally to superiors and to independent external bodies?

Accountability for inappropriate/excessive use of force

- ✳ Are police officers (and where relevant, their superiors) held accountable for unlawful use of force (including disciplinary, civil and criminal penalties)?
- ✳ Do victims of unlawful use of force have access to redress?

(c) Police stations and cells

Key protections upon arrest/apprehension

- * Are individuals clearly not fit for custody at the time of arrest or apprehension immediately taken to a medical service, rather than the police station?
- * Do police ensure healthcare professionals have unimpeded access to people needing medical attention at public assemblies?
- * Are only recognised places of detention used?
- * Do police notify the Aboriginal Legal Service as soon as possible after an Aboriginal and/or Torres Strait Islander person is taken into custody for any reason (i.e. via the Custody Notification Service)?
- * Are Aboriginal and/or Torres Strait Islander people in custody properly identified? Do police never act as gate-keepers when someone identifies as Aboriginal and/or Torres Strait Islander?
- * Is a family member or other nominated person promptly informed of a person's detention?
- * Upon arrest/apprehension, are people informed of their rights in a manner understandable to them?
- * Do police act promptly on a detained person's request to exercise their rights or entitlements?
- * Do detained Aboriginal and/or Torres Strait Islander people have access to culturally appropriate legal representation through Aboriginal Legal Services?
- * Are people offered an independent medical examination upon arrival at the place of detention, free of charge?
- * If people become unfit for custody, are they transferred to a medical service?
- * Can detained individuals challenge and seek review of their detention, with the assistance of legal representation? Are they brought promptly before a judicial authority?

Time limits

- * Are there are legislated limitations to the length of time individuals can be held in police custody, including during investigation and/or interview?

Police interviews

- * Is it not standard practice of police to conduct interviews of suspected/accused individuals?
- * Are safeguards for police interviews provided for in legislation?
- * Are police properly trained in lawful, effective interviewing?
- * In determining whether it is appropriate to proceed with an interview, is fitness to interview assessed?
- * Do police identify individual's vulnerabilities, in order to implement additional and/or tailored safeguards and supports for interviewing?
- * Do police officers conducting the interview inform people of their rights and the relevant procedures relating to the interview and investigation, in a manner understandable to them?
- * Do police respect people's right to silence? Are adverse inferences never drawn from people exercising this right?
- * Are non-intimidating rooms used for interviews?

- * Are interviews conducted in a non-accusatory, investigatory, non-coercive manner?
- * Are interpreters used (where appropriate)?
- * Are interviews of Aboriginal and/or Torres Strait Islander people conducted in accordance with the Anunga Rules?
- * Do police have audiovisual recordings and accurate written records of interviews, to which the interviewee and their lawyer have access?
- * Is evidence that is gained as a result of torture, or through processes that do not comply with the relevant safeguards, not admissible in court?
- * Do police meet their obligations to report torture?
- * Can interviewees complain about their mistreatment?
- * Does police leadership respond appropriately to allegations of torture and ill-treatment, or failures to comply with safeguards during interviews? Are relatively minor breaches of safeguards addressed through disciplinary procedures, and more egregious conduct referred to prosecuting bodies?

Collection of forensic samples

- * Is the collection of forensic samples regulated by legislation? Is collection of forensic samples from children prohibited without judicial authority?
- * Are the fingerprints, cellular samples and DNA profiles of persons suspected, but not convicted, of offences destroyed/not retained?
- * Do police work with Aboriginal and Torres Strait Islander communities to develop protocols regarding obtaining, storing, retaining, using and disposing of forensic samples from Aboriginal and/or Torres Strait Islander people?

Healthcare provision

- * Is culturally appropriate healthcare provided to detained Aboriginal and/or Torres Strait Islander people?
- * Are Aboriginal Community Controlled Health Organisations (ACCHOs) consulted on whether they wish to provide primary healthcare at police stations? If ACCHOs wish to do so, are they adequately and sustainably funded to deliver this service?
- * Do healthcare professionals condemn and report torture and ill-treatment of detained people? Are they protected from reprisals?
- * Do healthcare providers have clinical independence? Do they abide by the same ethical and professional standards as those for patients in the community?
- * Are healthcare providers never involved in any aspect of a police investigation?
- * Do healthcare services have appropriate access to people detained in police stations?
- * Are healthcare providers' clinical decisions not overruled? Do police act on advice given by medical professionals?
- * Does provision of healthcare never unnecessarily extend the duration of police custody?
- * Is the healthcare service delivering care in police custody multi-disciplinary and competent?
- * Have healthcare providers undertaken human rights training?
- * Is there sufficient medical staff present at police stations to meet healthcare needs of detained people?

- * Are there locally based protocols between police and medical/paramedical agencies, hospitals and ACCHOs (including for information sharing)?
- * Do healthcare providers delivering services in police custody have the requisite relationships with the general public health administration to facilitate continuity of care?
- * Are there appropriate clinical spaces in which to conduct medical examinations?
- * Are detained people's medication needs met in police custody?
- * Are detained people's medication needs met on transfer (including to court) and release from custody?
- * Do police stations have, and are police trained in the use of, first aid kits and defibrillators?
- * Are detained people provided medical care equivalent to that provided in the community?
- * Is healthcare available 24 hours a day (either at the police station or via transfer to a medical facility)?
- * Is detained people's right to informed consent to medical care respected?
- * Can detained people obtain a second opinion from a healthcare provider of their choice?
- * Are detained people seen by a healthcare professional of their preferred gender in non-emergency situations? Are they provided gender-sensitive healthcare?
- * Is confidentiality of health records maintained? With the exception of providing information to assist police custodial staff (or other detaining authorities) manage the detained person's condition/health?
- * Is the healthcare provided for people who use substances appropriate, in accordance with harm reduction principles?
- * Are requests for medical attention and medication taken seriously by police officers and other detention staff?
- * Do police monitor detained people's physical and mental health, and respond promptly and appropriately to their symptoms and behaviours?
- * Are police officers' roles in hospital settings kept to a minimum?
- * Do police officers remove handcuffs and other means of restraint before entering the hospital with the detained person?
- * Do police officers wear civilian clothes in order to not stand out in the waiting room of hospitals?
- * Are restraints used only as a last resort? Is the use of instruments of restraint prohibited during labour, childbirth or immediately after childbirth?
- * Are medical records accurate and comprehensive, and accessible to individuals (including following their transfer or release into the community)?
- * Do police and healthcare providers implement continuous improvement of healthcare provision to people deprived of their liberty?
- * Do detained people know how to make complaints about healthcare?

Use of interpreters

- * Is there a sufficient number of properly trained interpreters across Aboriginal and Torres Strait Islander languages available to assist Aboriginal and/or Torres Strait Islander people detained by police?
- * Do police officers, healthcare professionals and other service providers use interpreters where needed to communicate with a person who is in police custody?

Placement of detained people

- * Are detained people never subjected to repeated transfers or transfers over a great distance from their place of residence as a punishment or as a means to coerce a confession?

Police custody staffing

- * Are the custodial staff/police officers responsible for caring for the detained person different to police officers investigating them for alleged offending?
- * Is there sufficient staffing to ensure the safety and wellbeing of detained people in police custody?
- * Do staff have the appropriate expertise and experience to work in a custodial setting? Have they undertaken mandatory, tailored training for working in a custodial setting?
- * Are internal audits conducted to identify and address staffing issues, including in relation to supervisory/leadership roles and Aboriginal and/or Torres Strait Islander staff?

Safety in detention

- * Are holding areas within sight of the officer in charge?
- * Is cell size and design appropriate for the number of people detained/to be detained?
- * Are people placed in appropriate cells/rooms within police stations, to keep them safe from violence and other types of harm from other detained people?
- * Does placement within police stations account for factors such as cultural considerations?
- * Do police take effective steps to prevent self-harm and suicide of detained people?
- * Is self-harm in police custody not criminalised?
- * If people are marked 'at-risk', they self-harm, or they are transferred to hospital, is their family/guardian notified?
- * Are there operational call buttons/intercoms in every cell and room used to detain people? Are these systems regularly checked and well-maintained?
- * Are custodial staff located sufficiently close, and have access to the requisite keys, to enable them to respond and assist detained people promptly? Are they able to hear people call out?
- * Do custodial staff respond to all calls?
- * Does CCTV operate throughout the custodial suite with no 'black-spots' (with the exception of meeting privacy needs of detained people, such as for ablutions)? Is there high quality audio recording available?
- * Are there regular audits of all safety equipment?
- * Do police stations have evacuation procedures, in which staff are well-versed?

Isolation and solitary confinement

- * Is the use of solitary confinement of Aboriginal/and or Torres Strait Islander people prohibited?
- * Is isolation of Aboriginal/and or Torres Strait Islander people used as a last resort?

Contact with family and the outside world

- ✱ Are people never held in incommunicado detention?
- ✱ Do detained people have a right to contact with/visits from family members, services and oversight bodies?
- ✱ Is contact with family never limited as a disciplinary or punitive measure?
- ✱ Is visitors' dignity respected? Are they free from abuse and intimidation?
- ✱ Does the reception area have a welcoming atmosphere?
- ✱ Is information relating to the death of a family member delivered by someone known to the detained person? Are efforts made to ensure cultural protocols can be followed? Are detained people observed and provided/offered appropriate supports?

Respect for cultural, religious and moral beliefs

- ✱ Do police respect Aboriginal and/or Torres Strait Islander people's culture, language and beliefs?

Material conditions in police stations/cells

- ✱ Are police stations and cells accessible? Are accommodations made?
- ✱ Are detained people held in clean cells that are in a good state of repair, free from graffiti (including hate symbols and symbols of white supremacy)?
- ✱ Do cells offer sufficient privacy?
- ✱ Do detained people have access to facilities that enable dignified maintenance of hygiene and for ablutions?
- ✱ Are communal areas clean and in a good state of repair?
- ✱ Is there sufficient division between toilet facilities and sleeping/living areas?
- ✱ Are sources of drinking water separate to the toilet facilities?
- ✱ Is the use of padded cells prohibited in police stations?
- ✱ Are people not subject to sensory deprivation?
- ✱ Do detained people's cells have natural light?
- ✱ Can artificial lights be turned on and off?
- ✱ Is there proper ventilation, with temperatures maintained at an appropriate level (accounting for the location of the police station, as well as the climate of the detained person's usual place of residence)?
- ✱ Are detained people able to exercise? Do they have some time out of cell, outside in fresh air, every day?
- ✱ Do cells have a clock?
- ✱ Are detained people (including people under the influence of alcohol or other drugs) provided nutritious, hygienic, culturally appropriate food that meets dietary needs and religious and ethical beliefs, at regular, usual mealtimes?
- ✱ Do detained people have access to clean drinking water at all times?
- ✱ Do detained people have access to adequate bedding and clothing (that is not humiliating or degrading), that is both appropriate for the climate and culturally appropriate? Are detained people provided clothing that is appropriate to wear when appearing before a judicial officer?

- * Do detained people have access to educational, cultural and informational material? Are there age-appropriate activities and materials for children, and materials that account for different literacy levels and languages of detained people?
- * Are detained people's money, valuables, clothing and other effects that they cannot keep on their person placed in a secure room that is subject to CCTV? Is an inventory signed by the detained person upon reception, in an area subject to CCTV? Are measures taken to keep their personal belongings in good condition?
- * Are pregnant and nursing people provided with appropriate facilities in detention?
- * Are the views of the local Aboriginal or Torres Strait islander community and ACCOs taken into account in the design of accommodation at police stations?
- * Are police cells designed to emphasise and facilitate personal interaction between custodial officers and detained people, and between detained people and visitors?
- * Is the size of police cells appropriate?
- * Are facilities secure, so that detained people cannot escape?

(d) Transport

General

- * Do police limit unnecessary transport over long distances, balancing this with ensuring that detained people have genuine access to natural justice for criminal and administrative matters?
- * Do police make appropriate decisions on whether to transport an individual to hospital in the police vehicle or to call an ambulance?
- * Are private contractors properly trained? Do supervisors monitor their compliance with policies and procedures relating to duty of care and human rights standards?
- * Is transport prompt and by the most direct, practical route to hospital if someone is unwell?
- * Is transfer safe and dignified, protecting the health, wellbeing and privacy of the detained person?
- * Do police not use utes with cages for long distances?
- * Do police have a transport replacement strategy and budget?
- * Are the vehicles in which detained people are transported selected on the basis of an individual risk assessment and individual needs?
- * Do vehicles have a well-maintained, operational air-conditioning system?
- * Is there natural light and ventilation in the vehicle, and a view of the outside world?
- * Is the bench or seat comfortable?
- * Can police officers directly observe detained people properly during transportation and/or is there good quality audio-visual CCTV?
- * Do vehicles have a first aid kit and a spare tyre?
- * Are there basic comfort items such as sickness bags?
- * Are women, children, and men transported in separate vehicles (or, at the very least, with visual/auditory separation within the same vehicle)?
- * Are women and girls escorted by female police officers/contractors?

- * Are detained people advised of their destination?
- * Is disembarkation never unduly delayed on arrival at the destination?
- * Is the privacy and dignity of detained people maintained to the extent possible, on departure, arrival and during transport?
- * Are there comfort breaks (that are dignified) for longer drives?
- * Is food provided at usual mealtimes?
- * Are handcuffs only used on people being transported in exceptional circumstances?
- * Are vehicles driven in a safe manner?
- * Are there restraints to keep the person being transported safe (e.g. seatbelt)?
- * Is there a means by which the person can be released from the vehicle in an emergency?
- * Are police officers able to view CCTV footage while they are driving?
- * Is there an operational duress alarm for the detained person? Can they be communicated with?
- * Do police regularly stop to conduct a physical check on the detained person's welfare?
- * Are police officers trained and equipped to respond to emergencies?
- * Do the arresting and escorting police officers ensure that they communicate information relevant to risk assessments when they are transferring detained people to other detaining authorities/individuals?
- * Are planes the mode of transport used for longer distances (e.g. between remote communities and rural/urban centres), particularly where road routes are unpaved roads?
- * Is the length of time of transfers, and treatment and conditions during transport, accurately recorded?
- * Can escort vehicles be tracked at all times?
- * Is there appropriate oversight of transport where the function is contracted out?

(e) Release and transfer

Release from custody

- * Are detained people released and transferred safely?
- * Are people released from police vehicles with means of returning to their home?
- * Is the period of time that children are kept in facilities which are not fit for purpose or shared with adults, such as police watch houses, kept to a minimum?
- * Are children bailed or released in the presence of a parent, responsible adult or the relevant child protection agency?

Transfer to another detaining authority

- * Are there robust custody transfer arrangements between police and corrections/youth detention authorities, to ensure clear lines of accountability and responsibility, and information sharing, during the transfer of detained people?
- * When children are refused bail by a court, are they transferred to a youth detention facility, rather than being returned to police custody?

3. Root causes of ill-treatment

(a) Prohibition of torture and ill-treatment

General

- * Is the prohibition on torture absolute?
- * Do interpretations of 'torture' and 'cruel, inhuman or degrading treatment or punishment' account for the characteristics and vulnerabilities of the individual?
- * Do interpretations of 'torture' and 'cruel, inhuman or degrading treatment or punishment' account for Aboriginal and Torres Strait Islander perspectives?

Criminalisation, complaints and investigations of torture and ill-treatment

- * Is torture defined in legislation and criminalised at Federal and State/Territory level?
- * Are investigations undertaken where there are complaints, allegations or reasonable indications of torture or ill-treatment by police (including where there has been no complaint)?
- * Are people able to effectively exercise their right to make a complaint regarding torture or ill-treatment (including through their lawyer or other third person)?
- * Are there prompt and impartial investigations by a body independent of police (and anyone who is investigating the detained person for any alleged criminal offending)? Does the body have a statutory basis and investigatory (potentially even prosecutorial) powers?
- * Does the investigating body have the requisite resources, capacity and competency?
- * Does the investigating body reflect the diversity of the communities that it serves, particularly Aboriginal and Torres Strait Islander communities?
- * Does the investigating body work in a culturally appropriate way with Aboriginal and/or Torres Strait Islander people?
- * Does the investigating body work appropriately with interpreters?
- * Are the alleged victim and their lawyer updated on the progress of the investigation, and given access to its findings?
- * Are the alleged victim and witnesses (and their families and lawyers) protected from reprisals?
- * Do investigations consider whether discrimination was an underlying reason for the alleged torture or ill-treatment?
- * Do prosecutors refuse to use any evidence obtained through torture or ill-treatment, except for the purposes of prosecuting police who have allegedly engaged in acts of torture/ill-treatment?
- * Are there prosecutions of alleged torture, and appropriate sanctions following findings of torture? Do 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?

- * Are individuals who engage in torture or ill-treatment appropriately and adequately sanctioned (including by the criminal legal system, through termination of employment, and through workplace disciplinary measures)?
- * Are victims and/or their families provided redress for torture and ill-treatment (including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition)?

Human rights legislation

- * Does Federal, State and Territory human rights legislation provide for humane treatment when deprived of liberty?
- * Is the prohibition of torture and ill-treatment legislated for in Federal, State and Territory human rights acts? Does human rights legislation introduce an independent cause of action/type of relief for a person who has been tortured or ill-treated while deprived of their liberty?

Transparency regarding torture and ill-treatment by police

- * Do police publish disaggregated data on complaints and investigations relating to torture or ill-treatment?
- * Do governments compile and disseminate data on victims of torture and ill-treatment who have obtained redress?

(b) Police culture

The role of police

- * Are police functions and powers unambiguously defined in law?
- * Do police at all levels have a clear understanding of their role in society?
- * Are police not the default response to public health and social care issues? Rather than criminalising behaviour related to disability, health or social disadvantage, do governments provide the necessary supports to people and communities?
- * Do governments counter stigmatising narratives of protesters?
- * Do police not have the power to take people under the influence of alcohol or other drugs into 'protective custody' in police cells?
- * Do police respect the rights of organisers and participants of peaceful assemblies, and facilitate such assemblies? Do they protect participants, observers, media and others from harm?
- * Do unsworn police officers not have powers of arrest or detention, nor to carry weapons such as hand-held chemical irritants?
- * Is the delegation of police functions (particularly deprivation of liberty and use of force), to private security guards, prohibited?
- * Does police leadership prioritise and promote safe and respectful custody?

Government priorities

- * Do 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?
- * Do governments have public health responses to public health and social issues? Do they not divert resources away from programs related to healthcare and schools to detention?
- * Do governments support and fund Aboriginal community-led alternatives to policing and support programs and services to prevent contact with the criminal legal system?
- * Do governments respect and facilitate peaceful assemblies?
- * Is media coverage of issues relating to criminal offending and the criminal legal system evidence-based, accurate, non-discriminatory and non-stigmatising? Does it adequately protect the privacy of people who are, or have been, in contact with the criminal legal system?

Police service's relationships with community

- * Do police understand their role as serving the community, to whom they are accountable? Do they prioritise, develop and maintain genuine partnerships with the community?
- * Does the community have confidence in and is it satisfied with policing?
- * Do police build strong, respectful relationships with the Aboriginal and Torres Strait Islander communities that they serve?
- * Are Aboriginal Night Patrols sustainably funded and supported, with the view to reduce contact between Aboriginal and/or Torres Strait Islander people and police? Do police develop effective and respectful relationships with local Night Patrols?
- * Do police services aim to engage and operate in ways that are respectful and grounded in Aboriginal communities' perspectives and the protocols relevant to the individual communities?
- * Do 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? Do police respect court orders?
- * Do police services collaborate with key partner agencies and service providers to improve custody arrangements? Does this collaboration include exploring opportunities to reduce the incidence and impact of custody?
- * Do police services have no paramilitary units?

Police and human rights

- * In performing their duties, do police respect and protect the human rights of all people?
- * Are key human rights of children upheld, including the best interests of the child being a primary consideration in all matters?
- * Is the minimum age of criminal responsibility at least 14, and the age at which children can be detained at least 16? Are there no exceptions for alleged serious offending to the age of criminal responsibility?
- * Are children with developmental delays or neurodevelopmental disorders or disabilities supported outside criminal legal system responses?

- * Do police not solely rely, in conducting investigations, on confessions from accused during interviews? Do police appreciate that there is an inherent risk of torture if there is an overreliance on obtaining confessions during interviews, as well as a risk of confirmation bias (that may result in wrongful convictions)?
- * Is the police service 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?
- * Are police services free from systemic racism, working with ACCOs and Aboriginal and Torres Strait Islander communities to end/prevent individual and systemic racism?
- * Is an intersectional approach adopted when analysing police services for discriminatory structures, policies, procedures and practices?
- * Is predictive profiling prohibited? Are police officers held accountable for unlawful profiling?
- * Do police not engage in racial profiling?
- * Are Aboriginal and/or Torres Strait Islander staff not discriminated against?
- * Are staff not discriminated against on any other grounds, including on the basis of their gender or sexuality?
- * Are the human rights of police officers respected?
- * Do police have sufficient resources to operate in a human-rights complaint way?

(c) Integrity of police services

General

- * Are police services free from corruption?
- * Are police services transparent, making publicly available disaggregated data and internal policies and procedures?
- * Does police leadership and management promote a culture of integrity, inclusivity and accountability, and take steps to prevent the development of a culture of impunity?
- * Is leadership held to the same high standards as the rest of the police service?
- * Is there a clear chain of command, effective supervision, debriefing following incidents, and reporting of concerns to superiors?
- * Is there an effective code of conduct/ethics, to which staff adhere?
- * Is both internal and external police communication anti-racist, inclusive and non-stigmatising? Does it respect the human rights of Aboriginal and/or Torres Strait Islander people in contact with police and the criminal legal system?
- * Are there robust internal reporting mechanisms, both mandatory and voluntary? Is non-compliance with mandatory reporting sanctioned? Does voluntary reporting not attract reprisals?
- * Are there robust protections for whistleblowers?
- * Are there robust mechanisms by which detained people can make a complaint internally?

- * Are there fair and effective internal disciplinary processes, that accord with the principles of natural justice?

(d) Competency of police service

General

- * Is there appropriate and non-discriminatory screening at, and selection criteria for, recruitment? Do processes and practice support recruitment of people of diverse backgrounds and qualifications (especially the recruitment of Aboriginal and/or Torres Strait Islander people)?
- * Do police services have specialist Aboriginal and/or Torres Strait and children's units?
- * To support recruitment of appropriate individuals for law enforcement work (including leadership), are police properly remunerated for their work (including where they take on specialist roles, such as working with children)?
- * Are police officers regularly assessed for their ongoing suitability?
- * Are allegations of domestic violence against police officers properly handled?
- * Do police undergo rigorous initial training, which is supplemented by regular refresher and professional development training? Are training opportunities offered and provided without discrimination?
- * Is training delivered by appropriate, qualified professionals? Is there transparency regarding the training undertaken, and is the training evaluated?
- * Does training cover technical aspects of police roles and duties? Is it delivered in-person (not only online)? Does it incorporate practical components? Is it tailored for specialised units and/or police working with vulnerable and marginalised people, such as those who work with children, Aboriginal and/or Torres Strait Islander people, people with disabilities and women?
- * Do police and contracted workers receive regular human rights training (delivered by external experts), including with regards to the prohibition of (and reporting obligations for) torture and ill-treatment (with medical staff being trained on the Istanbul Protocol)? Do they receive anti-discrimination and anti-racism training?
- * Do police participate in cultural awareness training, which includes information on historic police treatment of Aboriginal and/or Torres Strait Islander people? Does leadership understand that such training cannot, however, in and of itself, address racism on an individual or systemic level?
- * Do police participate in working with interpreters training?
- * Do police participate in bystander training?
- * Are promotion selection criteria and policies and guidance materials that relate to career advancement regularly reviewed to ensure they do not unlawfully discriminate against police from diverse backgrounds?

Oversight and transparency

Data and record-keeping

- ✿ Are standardised police systems of record-keeping (including data retention, storage and protection) secure, accurate, precise and updated? Do they respect the human rights of detained people, including their privacy?
- ✿ Are records accessible to detained people (inclusive of an entitlement to an official record upon release), their lawyers, and oversight bodies?
- ✿ Can detained people contest the accuracy of records?
- ✿ Is non-compliance in police record-keeping sanctioned?
- ✿ Is there a robust procedure for gathering, storage and preservation of evidence?
- ✿ Does video and audio footage incentivise good police practices and improve police accountability, strengthening protections for detained people (while also respecting detained people's right to privacy)?

Independent monitoring of deprivation of liberty

- ✿ Is there regular announced and unannounced monitoring of police deprivation of liberty by independent monitors that have the requisite competencies, resources, powers, privileges and immunities to effectively exercise their mandate?
- ✿ Is there independent monitoring (by legal observers, human right defenders and journalists) of deprivation of liberty by police at public assemblies? Do monitors face reprisals? Is their equipment confiscated or damaged?
- ✿ Does monitoring include an Aboriginal monitoring scheme that is focused on police stations/cells?

Complaints adjudication by independent statutory bodies and prosecution

- ✿ Is there a culturally appropriate, independent statutory body that adjudicates complaints about police?
- ✿ Do oversight bodies conduct auditing and own motion investigations?
- ✿ Is the complaints body accessible? Are complainants supported throughout the process, and are they safe from reprisals?
- ✿ Does the complaints body have the necessary powers and capacity to effectively exercise its mandate?
- ✿ Does the body have the power to prosecute, sentence or discipline police officers it has investigated? Does it have the power to refer matters to prosecution or recommend penalties to police leadership?
- ✿ Do Aboriginal and/or Torres Strait Islander people have confidence in the complaints process and the complaints body?
- ✿ Does the complaints body have Aboriginal and/or Torres Strait Islander staff (including decision-makers)?
- ✿ Does the body have a specialised unit dedicated to investigating complaints made by Aboriginal and/or Torres Strait Islander people, under Aboriginal leadership?

Civil litigation

- ✱ Is the time limit to commence civil litigation proceedings against police of appropriate length? Where a person decides to withdraw or loses, is there judicial discretion regarding whether they are liable to pay the costs of the other side?
- ✱ Is there no time limitation for proceedings which relate to allegations of torture or ill-treatment?
- ✱ Are police 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 Freedom of Information (FOI) or informally in negotiations)?
- ✱ Where a court makes a finding in a criminal matter that a police officer has used excessive force against an individual, do police respect the court's finding in related civil litigation regarding the excessive use of force against that individual?

Transparency

- ✱ Are police officers and weapons identifiable?
- ✱ Are FOI mechanisms effective, efficient and accessible to detained/previously detained people and their representatives?
- ✱ Are disaggregated data, policies/procedures and outcomes of investigations publicly available?
- ✱ Do police respect the role of media in promoting transparency of policing?

(e) Evidence-based decision-making and continuous improvement

General

- ✱ Is accurate and disaggregated quantitative and qualitative data collected and analysed?
- ✱ Is data analysed with the view to support evidence-based decision-making, and continuous improvement by police and the government?
- ✱ Are policies, procedures and practices regularly reviewed to reflect best practices and learnings?
- ✱ Are consultations conducted and independent research commissioned to enable planning and policy development?
- ✱ Are expert recommendations from independent bodies and inquiries implemented? Do governments properly fund implementation of recommendations, and develop an implementation strategy?
- ✱ Do police receive training on findings and recommendations (including scenario-based training on previous deaths in custody)?

(f) Deaths in custody

General

- * Are independent inquiries into deaths in custody conducted?
- * When a person dies in police custody, is there a presumption of responsibility of the State (and/or authorities managing privately operated facilities)? Does the burden of proof rest with the State to rebut this presumption?
- * Is the body of the deceased person treated with dignity? Is the body returned to family as soon as reasonably possible?
- * Do police notify the deceased person's family (or other emergency contacts) in person, in a culturally appropriate manner? Do they notify the Aboriginal Legal Service, the police Aboriginal Community Liaison Officer (ACLO), and the Coroner of the death of an Aboriginal and/or Torres Strait Islander person in custody?
- * Do investigators respect the culture and customs of the Aboriginal and/or Torres Strait Islander person and their family?
- * Do family members have a right to view their loved one's body? Are culturally appropriate protocols followed in relation to viewing the body and autopsies?
- * Are autopsies conducted by a specialist forensic pathologist?
- * Are family members treated respectfully throughout the investigation process, and participate as appropriate? Do they have legal standing, are they informed of progress of the investigation in a timely manner, do they have access to relevant hearings and relevant information in advance of hearings? Are they provided funding for legal representation?
- * Are cultural protocols respected throughout the coronial inquest (e.g. can families conduct smoking ceremonies)?
- * Are efforts made to minimise the harm of the investigation process?
- * Are family members protected from reprisals? Are measures taken to ensure their well-being and privacy?
- * Do investigative mechanisms accord with the Minnesota Protocol?
- * Are investigations prompt, without unreasonable delays?
- * Are investigations effective and thorough, carried out by a body that has the requisite powers?
- * Do investigations determine the cause and manner of death, and identify individual and systemic failures?
- * Are investigators and investigating bodies independent and impartial, in both practice and perception?
- * Are the existence, procedures, findings, and outcomes of investigations transparent?
- * Are the Coroner's findings and recommendations to prevent further deaths in custody, and other relevant matters, made publicly available? Is the government's response made public?
- * Do family members have the right to adequate reparation?
- * Are matters, where there is sufficient evidence, promptly referred to prosecution for consideration of criminal charges?
- * Where prosecution decides to not prosecute following an independent finding of police misconduct, do they provide the reasons for this decision to the family of the deceased?

(g) Rights under UNDRIP

General

- * Do 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 UNDRIP?
- * Do 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?
- * Do police engage with local community leaders on how to implement international cultural rights locally, on issues including Indigenous Data Sovereignty, appropriate alternatives to arrest/detention, appropriate bail conditions, and minimising the impact of deprivation of liberty on people's ability to exercise cultural rights?